5–7–96
Vol. 61 No. 89
Pages 20419–20700

federal register

Tuesday
May 7, 1996

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the Federal Register paper edition is $494, or $544 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

WHEN: May 14, 1996 at 9:00 am
May 21, 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

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 89
Tuesday, May 7, 1996

Agriculture Department
See Animal and Plant Health Inspection Service
See Economic Research Service
See Food Safety and Inspection Service

Animal and Plant Health Inspection Service
RULES
Import and export user fees, 20421–20436
NOTICES
Meetings:
National Animal Damage Control Advisory Committee, 20508

Army Department
See Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Evans Subport Fort Monmouth, NJ, 20516

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Meetings:
ICD–9–CM Coordination and Maintenance Committee, 20526–20527
Vital and Health Statistics National Committee, 20527

Coast Guard
RULES
Vessels; small passenger inspection and certification
Correction, 20556–20557

Commerce Department
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 20513

Commodity Futures Trading Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 20515–20516

Comptroller of the Currency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 20551–20552

Consumer Product Safety Commission
PROPOSED RULES
Consumer Product Safety Act:
Multi-purpose lighters; child-resistance standard; rulemaking petition, 20503

Defense Department
See Army Department
See Engineers Corps

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Organix Inc., 20541

Economic Research Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 20508–20509

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 20516–20517
Submission for OMB review; comment request, 20517–20518

Employment and Training Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 20542–20543

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Eastern Energy Marketing, Inc., et al., 20518
Tenneco Gas Marketing Co., 20518

Engineers Corps
NOTICES
Base realignment and closure:
Surplus Federal property—
Rio Vista Army Reserve Facility, CA, 20516

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Ohio, 20458–20473
Air quality implementation plans; approval and promulgation; various States:
California, 20453–20455
Illinois, 20455–20457
Superfund program:
Emergency Planning and Community Right-to-Know Act—
Extremely hazardous substances list and reportable quantities, 20473–20490
National oil and hazardous substances contingency plan—
National priorities list update, 20473
Water pollution control:
Water quality standards—
Arizona surface waters, 20686–20694
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 20504
Illinois, 20504–20505

NOTICES
Agency information collection activities:
Proposed collection; comment request, 20520–20522
Meetings:
Gulf of Mexico Program Joint Management and Policy Review Board Committees, 20522
Reports; availability, etc.:
Particulate matter; air quality criteria, 20522–20523

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 20523

Federal Aviation Administration
RULES
Aircraft products and parts; certification procedures:
Helicopter design; noise level compliance; type certificates, 20696–20699
Airworthiness directives:
Aerospatiale, 20646–20667
Beech, 20638–20639
British Aerospace, 20671–20672
Cessna, 20641–20643
Construcciones Aeronauticas, S.A., 20674–20676
de Havilland, 20616–20636, 20679–20681
Dornier, 20639–20641, 20676–20677
Empresa Brasileira de Aeronautica, S.A. (EMBRAER), 20636–20638, 20677–20679
Fairchild, 20643–20644
Fokker, 20681–20682
Jetstream, 20644–20646, 20668–20671
SAAB, 20672–20674
Short Brothers, 20682–20684

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 20490
Virginia and North Carolina, 20490–20491
PROPOSED RULES
Practice and procedure:
North American numbering plan; carrier identification codes expansion—
Transition period extension, 20505
Radio stations; table of assignments:
Virginia, 20505–20506
NOTICES
Meetings; Sunshine Act, 20523–20524
Rulemaking proceedings; petitions filed, granted, denied, etc.; correction, 20556

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Arkansas, 20524
Illinois, 20524–20525
Indiana, 20525
New York, 20525
Oregon, 20525–20526

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Indeck Pepperell Power Associates, Inc., et al., 20519–20520
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 20518–20519
National Fuel Gas Supply Corp., 20519

Federal Highway Administration
RULES
Motor vehicle safety standards:
Hazardous materials transportation; technical amendment, 20496–20497
NOTICES
Committees; establishment, renewal, termination, etc.:
National Motor Carrier Advisory Committee, 20550

Federal Railroad Administration
RULES
Federal hours of service laws, agency interpretation; Supreme Court decision; nationwide applicability, 20494–20496

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 20526
Formations, acquisitions, and mergers, 20526

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Organization, functions, and authority delegations:
Government Losses in Shipment Act, claims; address change, 20437

Food and Drug Administration
NOTICES
Meetings:
Advisory committees, panels, etc., 20527–20528

Food Safety and Inspection Service
NOTICES
Meat and poultry inspection:
Interstate shipment of State-inspected products; recommendations; comment request, 20509–20513

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Care Financing Administration
NOTICES
Privacy Act:
Systems of records, 20528–20531

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
June, 20531

Interior Department
See National Park Service
RULES
Natural resource damage assessments, 20560–20614

Internal Revenue Service
PROPOSED RULES
Income taxes:
Individual returns; automatic filing extension; cross reference
Hearing cancellation, 20503–20504
NOTICES
Agency information collection activities:
Proposed collection; comment request, 20552–20555

International Trade Commission
NOTICES
Meetings; Sunshine Act, 20541

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 20541–20542

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
West End Coal Co. et al., 20543–20545

National Foundation on the Arts and the Humanities
NOTICES
Grants and cooperative agreements; availability, etc.:
Research in learning in museums, 20545–20546

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
High intensity discharge light source use in replaceable bulb headlamp systems, 20497–20502

National Institute for Literacy
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 20545

National Institute of Standards and Technology
NOTICES
European Union (EU) commerce; identification of bodies to perform product conformity assessment activities, 20513–20514

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 20532
Meetings:
National Center for Human Genome Research, 20533
National Center for Research Resources, 20533
National Eye Institute, 20532–20533
National Heart, Lung, and Blood Institute, 20533–20534
National Institute of Allergy and Infectious Diseases, 20534–20537
National Institute of Child Health and Human Development, 20535
National Institute of Mental Health, 20536–20537
National Library of Medicine, 20537
Research Grants Division initial review groups, 20538–20540

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Summer flounder, 20506–20507
NOTICES
Permits:
Endangered and threatened species, 20514–20515

National Park Service
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission, 20540
National Register of Historic Places:
Pending nominations, 20540–20541

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 20545

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 20546
Environmental statements; availability, etc.:
BP Chemicals, Inc., 20548–20549
Jefferson Proving Ground (U.S. Army), IN, 20546–20548
Meetings; Sunshine Act, 20549–20550

Presidential Documents
PROCLAMATIONS
Special observances:
Labor History Month (Proc. 6891), 20419

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern Railroad Co., 20550
Owensville Terminal Co., Inc., 20550–20551
Pittsburg & Shawmut Railroad, Inc., 20551

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
See Fiscal Service
See Internal Revenue Service

United States Information Agency
RULES
Exchange visitor program:
Program extension procedures, research programs design and conduct, etc.
Partial stay, 20437

NOTICES–I33Art objects; importation for exhibition:
Africa: The Art of a Continent, 20555

Veterans Affairs Department
RULES
Acquisition regulations:
Loan guaranty and vocational rehabilitation and counseling programs, 20493–20494
Miscellaneous amendments, 20491–20493
Adjudication; pensions, compensation, dependency, etc.:
Vicious habits; references removed, 20438
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Single member and panel decisions, reconsiderations, etc., 20447–20453
Disabilities rating schedule:
Endocrine system, 20440–20447
Fibromyalgia, 20438–20440
Organization, functions, and authority delegations:
Miscellaneous amendments, 20438
NOTICES
Meetings:
Persian Gulf Expert Scientific Committee, 20555

Separate Parts In This Issue

Part II
Department of the Interior, 20560–20614

Part III
Department of Transportation, Federal Aviation Administration, 20616–20684

Part IV
Environmental Protection Agency, 20686–20694

Part V
Department of Transportation, Federal Aviation Administration, 20696–20699

Reader Aids

Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

6891 20419

9 CFR

130 20421

14 CFR

21 20696

39 (18 documents) 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682

16 CFR

Proposed Rules:

1210 20503

22 CFR

514 20437

26 CFR

Proposed Rules:

1 20503

301 20503

31 CFR

361 20437

38 CFR

2 24037

3 20438

4 (2 documents) 20438, 20440

19 20447

20 20447

40 CFR

52 (3 documents) 20453, 20455, 20458

81 458

131 20686

300 20473

355 20473

Proposed Rules:

52 (2 documents) 20504

43 CFR

11 20560

46 CFR

114 20556

116 20556

117 20556

118 20556

119 20556

120 20556

121 20556

122 20556

170 20556

173 20556

175 20556

176 20556

177 20556

178 20556

179 20556

180 20556

181 20556

182 20556

183 20556

185 20556

47 CFR

73 (2 documents) 20490

Proposed Rules:

1 20505

73 20505

48 CFR

801 20491

803 20491

804 20491

805 20491

806 20491

808 20491

810 20491

812 20491

813 20491

815 20491

816 20491

820 20491

822 20491

828 20491

833 20491

834 20491

836 20491

837 20491

846 20491

871 20493

49 CFR

228 20494

397 20496

564 20497

571 20497

50 CFR

Proposed Rules:

625 20506

Federal Register
Vol. 61, No. 89
Tuesday, May 7, 1996

Presidential Documents

Title 3—

The President

Proclamation 6891 May 3, 1996

Labor History Month, 1996

By the President of the United States of America

A Proclamation

In the early 1900s, millions of Americans left their farms to begin new lives as factory workers. Sadly, many of these citizens found neither secure employment nor higher wages at their new jobs, and the industrial economy brought them exploitation, continued poverty, and the risk of injury and death. No student of American history can forget the images of filthy children emerging from mills and mines, the stories of terrible fires and explosions, or the grim legacy of the slums that grew up in factory towns.

Although child labor, sweatshops, and workplace disasters are largely horrors of the past, efforts to eliminate them began to succeed only after workers organized and spoke with a united, independent voice. The American labor movement helped the first generation of industrial employees to express their aspirations and insecurities, empowering them with the necessary tools to define the terms and conditions of their employment and to expand the role of labor in the larger society.

As we approach the 21st century, our Nation's economy is undergoing a transformation as momentous as the change that spurred the exodus from farms to factories 100 years ago. And in facing the challenges posed by global competition and rapid technological advances, the workers of the Information Age need the same effective leadership that allowed their forbears to succeed. Each new generation of workers must embrace the activism that has characterized labor's rich history, and all Americans should recognize the role that labor has played in the continuing progress of our democracy.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 1996, as Labor History Month. I call upon Government officials, educators, the media, and all the people of the United States to observe this month with ceremonies, activities, and programs that encourage reflection on the labor movement's heritage and its many contributions to the creation and maintenance of a just America.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–11505
Filed 5–6–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 61, No. 89
Tuesday, May 7, 1996

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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 92–174–2]

RIN 0579–AA67

Import/Export User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending user fees for certain import- and export-related services we provide for live animals and birds, animal products, organisms and vectors, and germ plasm and veterinary diagnostic services. We are also establishing user fees for certain import- and export-related services we provide for live animals and birds, and animal products and byproducts. We are also making several miscellaneous changes, such as amending the definitions of certain words. These actions are necessary to help ensure that we recover our costs and to simplify and clarify the application of user fees for the public. These actions are taken in accordance with the Food, Agriculture, Conservation, and Trade Act of 1990, as amended, which gives us the authority to set and collect these user fees.

EFFECTIVE DATE: June 6, 1996.

FOR FURTHER INFORMATION CONTACT: For information concerning services provided for live animals and birds, and germ plasm, contact Dr. Gary S. Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3294.

For information concerning services provided for animal products and byproducts, organisms and vectors, contact Dr. Kathleen Akin, Senior Staff Veterinarian, Import/Export Products, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–7830.

For information concerning services provided for veterinary diagnostics, contact Dr. James E. Pearson, Acting Director, National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010; (515) 239–8266.

For information concerning fees, contact Ms. Barbara Thompson, Chief, Financial Systems and Services Branch, Budget and Accounting Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the Farm Bill), authorizes the Secretary of Agriculture, among other things, to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal animal quarantine laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance (section 2509(c)(1) of the Farm Bill). The Secretary of Agriculture is also authorized, under section 2509(c)(2) of the Farm Bill, to prescribe and collect fees to recover the costs of carrying out certain veterinary diagnostics services.

The user fee regulations in 9 CFR part 130 (referred to below as the regulations) prescribe user fees that the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) collects for various services that APHIS provides. The regulations currently include user fees for: (1) Providing quarantine, importation, and entry services within the United States for imported animals; (2) conducting certain veterinary diagnostics services; (3) endorsing export health certificates for animals; (4) providing certain inspection and supervision services within the United States for animals intended for export; and (5) conducting certain veterinary inspections outside the United States.

Our user fees are calculated to recover the full cost of providing the service for which the user fee is charged. The cost of providing a service includes direct labor costs and a pro rata share of administrative support, agency overhead, and Departmental charges.

On May 26, 1995, we published in the Federal Register (60 FR 27913–27924, Docket No. 92–174–1) a proposal to amend the regulations by revising and adding new hourly, minimum, and flat rate user fees in the regulations. We proposed to increase most of the hourly, minimum, and flat rate user fees for import-related services in §§ 130.2, 130.3, 130.5, 130.6, 130.7, and 130.9 of the regulations and for export-related services in §§ 130.9 and 130.21 of the regulations. For services performed on overtime, we proposed to add new premium hourly rate user fees, to replace the practice of charging two separate hourly rates (see §§ 130.5, 130.9 and 130.21 of the regulations). We proposed to add a new minimum user fee in § 130.3 of the regulations. We proposed to add a new § 130.10 for hourly, minimum, and flat rate user fees for pet birds. We proposed to add new requirements for special mail handling to be paid for by the user in §§ 130.14 through 130.18 of the regulations. We proposed to add a new fee for nonendorsed export health certificates in § 130.20 of the regulations. Additionally, we proposed to accept credit cards in certain locations as an optional payment method. We also proposed to make several other changes to simplify and clarify the regulations.

We solicited comments concerning our proposal for 60 days ending July 25, 1995. We received 60 comments by that date. They were from veterinarians, representatives of agricultural industries, exporters, producers, a State department of livestock, a Member of Congress, and other interested parties.

Summary of Changes Made in Response to Comments

We are making the following changes in response to the comments we received. We are combining the services covered under § 130.4 with the services covered under § 130.5. Section 130.4 covers inspection services at privately operated permanent import-quarantine facilities. Under § 130.4, a flat rate user fee is charged for each animal quarantined at the facility. Section 130.5 covers inspection services at privately operated temporary import-quarantine facilities. Under § 130.5, an hourly user fee is charged for animals quarantined at the facility. We are adding quarter-hour

and minimum user fee rates to premium user fees added in §§ 130.5, 130.9, and 130.21. We are clarifying § 130.20(a) and § 130.20(b)(1) to specify that the user fees listed in § 130.20(b)(1) for endorsing export health certificates which require tests or vaccinations are charged for endorsements when tests or vaccinations are required. We are changing ''APHIS veterinarian'' to ''designated APHIS employee'' and changing ''requested'' to ''requested and reviewed'' in § 130.20(d) of this final rule. In addition, we are revising the text of footnote 9 to reflect the availability of lists for APHIS offices that accept cash or credit cards. Footnotes to text or tables in §§ 130.7, 130.8, 130.10, 130.14, and 130.15 have been revised to add clarity. The comments and responses are discussed below by topic.

General Comments

One commenter opposed the entire proposed rule. All of the other commenters opposed some portion of the proposed rule. Twelve commenters included the following positive comments concerning user fees and the services APHIS provides. Several commenters expressed an understanding of our need to increase user fees or supported user fees which cover costs. Several expressed appreciation for the services APHIS provides, such as APHIS' role in disease control and maintenance of a healthy and robust livestock industry in the United States, helping export business in the United States, and negotiating import- and export-related issues with foreign countries. One commenter supported modest increases in certain user fees as proposed.

1. Taxes and Budget Deficit

Nine commenters expressed concerns about taxes and the budget deficit. Some commenters expressed more than one concern; specific concerns follow.

Two commenters stated that APHIS was assessing taxes of its own volition. Six commenters stated that the APHIS user fee is a tax, not a fee.

A tax is money paid to support government operations that benefit the general public. A user fee is money collected for a specific service provided to a readily identifiable recipient. The 1990 Farm Bill authorizes USDA to prescribe and collect user fees to reimburse the cost of carrying out certain import- and export-related services for animals, animal products, and veterinary diagnostics. The Farm Bill further states that ''Any person for whom an activity related to the importation, entry, or exportation of an animal, article, or means of conveyance or relating to veterinary diagnostics, is performed pursuant to the section, shall be liable for payment of fees assessed.'' Generally speaking, no one is required to conduct any business or endeavor which is regulated by APHIS. However, anyone who does so must comply with APHIS requirements. In this manner, all users ask for service from APHIS. The APHIS user fees herein are designed to recover and fund the cost of providing specific services. As such, the APHIS user fee is a fee for specific services provided to a certain portion of the public and, therefore, is not a tax.

Three commenters stated that our services are already paid for by taxes, and therefore, we should not charge fees for them. One commenter suggested that we should fund increases in the costs through other methods.

After the passage of the 1990 Farm Bill, Congress reduced APHIS' appropriations (i.e., tax revenue) by the estimated costs of providing these import- and export-related services. Congress authorized APHIS to recover all costs associated with these services by establishing and charging user fees. Consequently, any increases in our costs must be recovered by increasing the user fees we charge. Otherwise, we would have to reduce or discontinue the service or use funds appropriated for other purposes, to the detriment of the program from which the funds were reallocated.

One commenter stated that APHIS user fees should not be used for general Federal budget deficit reduction. One commenter questioned what will be done with revenues.

The user fees are not being used for general Federal budget deficit reduction in the sense that the revenue does not fund or offset general government operations. The user fees collected pay for the actual user fee services provided and will allow APHIS to continue providing import- and export-related and veterinary diagnostic services. The user fees our Agency collects for these services are deposited into user fee accounts, and the salaries of veterinarians, animal health technicians, and other APHIS personnel who perform these services are paid from this account. An employee who spends a portion of his work time on user fee activities and a portion on other activities is paid the appropriate percentage of his salary with user fee revenue. In addition, a pro rata share of administrative support, agency overhead, and Departmental charges is paid from this account.

Two commenters questioned user fees as they relate to other APHIS services. One commenter questioned charging user fees for certain services when other services are provided at no cost. The commenter referenced free rabies vaccination clinics on reservations.

The Farm Bill identified specific program areas for the implementation of user fees, generally related to the importation and exportation of animals and animal products. APHIS does not have the authority under the Farm Bill to charge fees for other services, such as rabies vaccinations, which we provide on reservations to protect public health.

2. Fee Calculations

We received several comments related to how we calculated our user fees. One commenter was concerned about the methods used to calculate the fees and the possibility that the user fees are underwriting other APHIS services. Several comments questioned whether we should include certain cost factors, for example, agency overhead charges, in calculating user fees. Other comments stated that we would recover more money from our proposed user fees than it costs to provide APHIS services.

As described in the proposal, the user fees were calculated to recover the full cost of providing the service for which the fee is charged. ''Full cost'' includes not only the direct labor of the veterinarian, animal health technician, or other APHIS personnel providing the service, but a pro rata share of administrative support, agency overhead, and Departmental charges. These additional indirect and overhead costs are included as directed in the Office of Management and Budget (OMB) Circular A–25, User Charges, and in accordance with generally accepted cost accounting principles.

Had Congress intended for APHIS to recover only direct labor costs, the authorizing language would have specified that and Congress would have continued to give APHIS appropriations to fully fund all indirect and overhead costs associated with import- and export-related services. The comments that we may be underwriting other services and that we will recover more money than it costs to provide the service would only be true if the Farm Bill authorized us to only recover direct costs. However, because we are authorized to fully recover all costs, our fees include all appropriate direct, indirect, and overhead costs.

3. Trade Concerns

Twenty-eight commenters expressed concern about the increases in user fees and the possible subsequent decrease in exports.

We realize that payment of the proposed user fees will increase the up-front cost of doing business for importers and exporters. However, before this time, users have been subsidized by the taxpayers in general, in that those who receive services from APHIS have not been charged the full cost for services. As explained above, appropriations from taxes are not available to fund these services. To continue providing import- and export-related and veterinary diagnostic services, APHIS must charge user fees which will recover the costs of providing services. We attempt to minimize the cost of our services to keep APHIS user fees at the lowest possible level. We do not anticipate that exports will decline significantly as a result of these increases in user fees.

Many commenters stated that our proposed user fees would make it difficult or impossible for U.S. products to compete in the international marketplace. Examples of the issues raised included the following: U.S. products will be less competitive, the increased user fees will be a deterrent to international trade, exportation of animals will become unprofitable, and there will be a decrease in export activity. Many of these comments mentioned trade related issues with Canada.

Although some countries do not currently charge for import- and export-related services, user fees for these services are being adopted by more and more countries. In fact, as of May 3, 1995, Canada charges user fees for certain import- and export-related animal health services (see May 3, 1995, Canada Gazette Part II, Vol. 129, No. 9, SOR/DORS/95–198). Therefore, we do not believe that U.S. exporters are at a competitive disadvantage compared with exporters in other countries.

4. Other Countries' Requirements

Two commenters raised the following concerns related to the requirements other countries impose on U.S. exports. One commenter questioned why it costs significantly more to export animals to Canada as opposed to exporting animals to the European Union.

APHIS costs for export-related services depend on the importing countries' requirements. Canada has significantly different paperwork requirements than most other countries in the world. Often, more work is required on the part of APHIS employees to ensure the animals being exported have met all of Canada's paperwork requirements. In those instances, the user fees for animals being exported to Canada may be higher than for animals exported to the rest of the world.

One commenter suggested that APHIS should seek elimination of import- and export-related testing procedures which are not science- or risk-based and which may add unnecessary costs to import- and export-related procedures.

According to the World Trade Organization (WTO), as established by the Uruguay Round of the General Agreement on Tariffs and Trade, and the North American Free Trade Agreement (NAFTA), effective January 1995, import- and export-related requirements must be science- and risk-based. Along with the United States, many countries are revising their requirements to comply with WTO and NAFTA. In addition, APHIS continually negotiates with other countries to achieve less onerous import requirements for U.S. exporters. Since our costs vary depending on the requirements imposed by the importing country, when other countries lessen their import requirements, our user fees may decrease. For example, if a country were to no longer require tests or were to allow more animals on a single export health certificate, the average amount of time it would take to provide endorsement services would decrease and the user fees charged could decrease.

5. Improve Services to Lower Costs

Six commenters suggested that we lower costs and simplify paperwork requirements. Five commenters suggested that we review and improve services. Specific suggestions included privatizing services, automating services, streamlining tests, increasing field staff, and basing user fees on speed of service.

APHIS continually strives to improve efficiency in operations. APHIS seeks to eliminate duplication of services and to utilize employees better without jeopardizing the quality of our work in carrying out the provisions of the Federal animal quarantine laws. Most paperwork services and the related costs associated with imports and exports are required by the importing country and we cannot do anything directly to change those requirements. However, as explained above, we do try to negotiate with other countries to make requirements less onerous. If we propose to eliminate a service for which we have a user fee, then we will also propose to eliminate the user fee. Likewise, if in the future we propose to add a service, then we may also propose to add a user fee for the service. If we propose in the future to substantially change a service for which we charge a user fee, then we will recalculate the user fee for the service to reflect those changes.

6. Economic Analysis

One commenter stated that we should have included a small business impact statement in the proposed rule.

A regulatory flexibility analysis, which includes a small business impact statement, was included in the proposed regulations at 60 FR 27919–27920.

One commenter stated that the costs used in our economic analysis did not provide an accurate picture of how importers assess costs related to importing animals. The commenter specified that these costs are generally broken down into the following three areas: the purchase price of the animal, freight charges, and importing or exporting expenses.

The costs used in the economic analysis performed for the regulatory flexibility analysis for the proposal included all of these expenses. As stated in the proposal, the figures shown in the analysis included purchase and import costs, including freight. Therefore, we are making no changes as a result of this comment.

7. Effective Date

Three commenters suggested that we delay the effective date of the final rule.

We understand the commenters' desire to make business plans and not have business affected by increases in our user fees. Our proposal signaled our intention to revise the import- and export-related service user fees. The proposal was published in the Federal Register on May 25, 1995, and open for public comments for 60 days. This rule will not take effect until 30 days after the date it is published in the Federal Register. This delay should give the commenters and others adequate time to prepare.

8. Independent Review

One commenter suggested that a review team should be established to conduct an independent user fee review.

APHIS monitors user fees regularly and reviews user fees at least annually to ensure that they continue to correspond with our costs. In addition, outside reviews are performed by the Office of the Inspector General and the General Accounting Office (GAO).

9. Privately Owned Import Quarantine Facilities (§§ 130.4 and 130.5)

One commenter pointed out that inspection services for animals provided for privately owned permanent import quarantine facilities under § 130.4 are

similar to those provided for privately owned temporary import quarantine facilities under § 130.5, and stated that having different user fees for similar services is unfair. The commenter stated that depending on the number of animals being imported, the user fees could be less for the services provided under § 130.5 during the regular tour of duty and on overtime than the user fee for the same services if provided under § 130.4. The commenter asked if APHIS is recovering all the import-related costs from the hourly user fee charged under § 130.5; and if so, why is there such a difference between that hourly user fee and the per head flat rate user fee plus reimbursable overtime proposed under § 130.4 which can be higher.

The commenter is correct that depending on the number of animals being imported, if service must be provided on overtime, then the per head user fees charged under § 130.4 can be higher than the hourly user fees charged under § 130.5. We have evaluated this situation and have determined that based on the similar nature of the services being provided, animals that are imported into a permanent facility should be charged at the same rate as those imported into a temporary facility. As suggested by the commenter, we are making the fees the same. We are making this change by eliminating § 130.4 and including privately owned permanent import quarantine facilities under § 130.5.

10. Overtime and Premium User Fees (§§ 130.5, 130.9, and 130.21)

One commenter stated that charging both reimbursable overtime and the flat rate user fee under § 130.4 is double charging for the time spent by USDA personnel.

As explained above, we are eliminating § 130.4 and these services will now be covered under § 130.5. Under § 130.5, during overtime, only the premium rate user fee will be charged.

One commenter asked if there are any quarter- or half-hour premium user fee rates for the premium hourly user fee. We are adding quarter-hour and minimum rates for each of the new premium user fees. Not listing such rates was an oversight in the proposal. For periods of less than an hour, the quarter-hour premium rate will be multiplied by 2 or 3 for half and three quarters of an hour, respectively. Therefore, we are not adding half-hour premium rates. The premium user fee will become the new hourly overtime charge for import- and export-related services; it will apply to services provided under §§ 130.5, 130.9, and 130.21 and replace our previous policy of charging a user fee at the hourly rate (per 9 CFR part 130) plus reimbursable overtime at the hourly rate (per 9 CFR part 97).

One commenter protested that the proposed premium user fee is an increase over the current overtime rate.

While the hourly rate for the premium user fee is higher than the hourly reimbursable overtime rate, application of the premium user fee will decrease the overall user fee charges because the premium user fee will be charged in lieu of both the hourly user fee and reimbursable overtime. Therefore, we are making no changes based on this comment.

One commenter questioned how the new premium user fee will apply. Another commenter, stating that work for which the user fees are charged usually takes 15 minutes, protested the minimum time charged for the work during overtime.

For clarification, in §§ 130.5, 130.9, and 130.21 we will add that the procedures for applying the new premium user fee rates will follow the procedures for applying reimbursable overtime as prescribed under 9 CFR part 97 with regard, for example, to call-backs, continuation, commuted travel time, and maximum travel times. For example, when 9 CFR part 97 prescribes a 2 hour minimum, that 2 hour minimum will be charged at the premium user fee rate. This is consistent with United States Code, Title 5 Government Organizations and Employees, Subchapter V Premium Pay, section 5542 (referenced in the authority citation for this final rule), which states that ''unscheduled overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration.'' Because employees are entitled to a 2 hour minimum of pay in these circumstances, we must charge a minimum of 2 hours in order to recover the cost of providing that service on overtime.

11. Import Fee (§ 130.7)

One commenter stated that the user fee charged in § 130.7 would not fully recover costs if an APHIS veterinarian had to travel to a port to perform the inspections. The commenter suggested that we change this flat rate user fee to an hourly user fee to fully recover costs.

The commenter is correct that, as calculated, the user fees may not cover the costs of providing import and entry services at any given air or ocean port. These user fees were calculated based on the average time required for an APHIS employee to provide import or entry services at all ports. The occasional inspections which require an APHIS veterinarian to travel to a limited port, as designated in 9 CFR part 92, were one of the many factors considered in calculating the user fees. To reflect past experience, the calculation for these user fees included 2 hours of travel time for 1 percent of the estimated importations. We are making no changes based on this comment. However, we will consider this for future revisions to the user fees. All user fee changes will be published in the Federal Register for public comment.

12. Germ Plasm User Fees (§ 130.8)

One commenter questioned the statement in the proposal that empty germ plasm containers that have been exported are presented for inspection when returned to the United States. The commenter asked if there was a protocol in place to ensure that these containers are presented for inspection.

APHIS employees review ship manifests to determine which items need to be held for inspection. The empty germ plasm containers are listed on the ship manifests, held, and inspected.

One commenter suggested charging an hourly user fee for import germ plasm inspections because the time spent performing the inspections at the port is usually 3 hours; this time would not be covered by the flat rate user fee.

The calculation for the user fee for imported germ plasm considered inspection at all ports. These user fees were calculated on the average direct labor hours required for the inspections nationwide. We surveyed APHIS employees performing the inspections and visited ports to determine the amount of direct labor required for the inspections. Therefore, we are making no changes based on this comment. However, we will consider this for future revisions. All user fee changes will be published in the Federal Register for public comment.

One commenter suggested we charge the same amount for endorsing export health certificates for each group of five embryo donor pairs.

We have determined that there is a marginal cost decrease to endorse additional groups of donor pairs on the same export health certificate. User fees are calculated to recover only the cost of services. Therefore, the proposed tiered user fee rate, with a lower fee for additional groups of donor pairs on the same certificate, is appropriate. We are making no changes based on this comment.

13. User Fees for Endorsing Export Health Certificates (§ 130.20)

The May 26, 1995, proposed rule also proposed to raise user fees for endorsing export health certificates for the exportation of animals and animal products. APHIS employees endorse export health certificates in accordance with the regulations in 9 CFR part 91. An APHIS endorsement certifies that animals and animal products being exported from the United States are free from communicable diseases.

Most of the comments we received addressed these user fees. The commenters were opposed to any fee increases. The comments raised the following issues.

User Fee Increases

According to most of the commenters, proposed user fees for endorsement of export health certificates are too high, and the increases are not justified.

We understand that some of the proposed user fees for endorsement of export health certificates are significantly higher than the previous user fees. The reason is that the previous user fees were based on estimates and were set too low. The original user fees for export health certificates implemented in January 1992 were calculated using the best information available at that time. Since that time, APHIS has separately identified, through our accounting system, costs for services for which user fees are authorized. Our accounting data and a deficit of over $1 million for each fiscal year from 1992 through 1994 for export-related user fee services shows that the previous user fees have not been recovering our costs. Our proposed user fees were calculated based on more accurate information, including all of the costs of providing our services, than was available when we calculated our previous user fees.

In addition to our accounting data, we surveyed APHIS locations nationwide where export health certificates are endorsed to identify the amount of direct labor time APHIS employees spend providing these services. Direct labor activities may include the following: Telephone time for providing information about the export health certification process, mailing information to customers, protocol research, review of paperwork such as health certificates, verification of laboratory test results, confirmation that the importing country's requirements have been met, paperwork completeness review, certification statements review, endorsement/signing, placing an official seal on documents if needed, and completing APHIS paperwork related to the endorsement. Many of the activities listed above must be performed to make it possible for APHIS employees to endorse the export health certificates. Some endorsements are for exportations which are routine and require relatively little time. Other endorsements require more work and therefore take more time. Further, endorsements of export health certificates of the same certificate category take different amounts of time because import requirements differ for each importing country. On average, when no tests or vaccinations are required, direct labor time for endorsing export health certificates varies, by category, between 14 and 22 minutes, for example, endorsements for poultry take 18 minutes. On average, when verification of tests or vaccinations is required, direct labor time for endorsing export health certificates varies, based on the number of tests, between 45 and 65 minutes for the first animal on the certificate.

After estimating the average direct labor time involved in endorsing export health certificates, direct labor costs were calculated. To calculate the direct labor costs, we used the actual salary of each individual that provides the services and weighted these costs according to the number of export health certificates endorsed at each location to arrive at the average direct labor rate per hour, $34.06. This includes salary and benefits.

The average number of minutes per endorsement is multiplied by the average direct labor rate to arrive at the total direct labor cost in each certificate category.

User fee calculations were based on the direct labor costs and a pro rata share of support costs, agency overhead, and Departmental charges. Costs were assigned directly to a service only when the cost was directly related to providing that service. Where an expense was attributable to several or all categories of service, it was pro-rated among the categories based on historic direct labor staff hours. This calculation provided the raw fee.

As explained in the proposal, we rounded the raw fees up to the nearest quarter. We rounded them off to simplify collection and accounting. We rounded our user fees up, rather than down, because if we were to round down, even if only by pennies, the user fees would not fully recover our costs. If there is a shortfall for a service category, we cannot recover it by charging a higher user fee for another service category.

We compared the resulting user fees and the revenue they generate to the costs of these activities for reasonableness. Adjustments were made for anticipated changes in volume, based on past changes and other factors such as current market and economic conditions.

We put as much of our supporting data in the proposed rulemaking as possible. However, it was not feasible to include all the materials used to develop the user fees. Therefore, as stated in the proposed rulemaking, we made it available for inspection at our headquarters in Riverdale, MD.

Many of the comments related to the proposed increases in poultry health certificates. Therefore, we have included an example of the calculation for the user fee for endorsing export health certificates for poultry. The average amount of time it takes to endorse an export health certificate for poultry is 18 minutes, which can include any of the direct labor activities listed above. Using the average direct labor rate per hour of $34.06, the direct labor cost for 18 minutes is $10.08. As described earlier, the following costs are the pro rata share for endorsing export health certificates. Administrative support costs are added at about $0.69 for each $1 of direct labor incurred, adding $6.89. Agency overhead and departmental charges are added at $2.74 and $1.08, respectively. The total cost is $20.79, which is rounded up to the nearest quarter to $21.00. When factoring in all of the costs involved in endorsing an export health certificate, the fees are reasonable. When comparing the proposed user fees to the previous user fees, which were too low, they appear high. However, we could not continue to provide these services if we did not increase the user fees to fully recover our costs. Therefore, we are making no changes based on these comments.

Objections to User Fees for Endorsing Export Health Certificates

Many commenters objected in general terms to user fees for endorsing export health certificates.

Export health certificates are required by the country importing the animal or animal product; they are not required by APHIS, USDA, or any other agency or organization within the Federal Government. Therefore, we are unable to eliminate services and costs associated with the endorsement of export health certificates. However, we do attempt, whenever possible, to negotiate with foreign governments to eliminate export health certificate requirements or make them less onerous to U.S. exporters. We are continually negotiating with other countries to

eliminate or minimize requirements. The success of our negotiations can be seen in the following changes in other country's requirements. Canadian test requirements for blue tongue tests on live cattle have been liberalized. Chile has dropped test requirements for contagious caprine pleuropneumonia tests on U.S. goats. Argentina has dropped test requirements for contagious equine metritis test requirements for horses. In addition, there are ongoing negotiations with Mexico to eliminate their requirement that breeding swine be tested for porcine respiratory and reproductive syndrome, and with Russia to sustain markets for U.S. fresh and frozen poultry meat. We will continue to work for improvements in these and other areas.

Small Business

Many commenters maintained the proposed APHIS user fees would be detrimental to small businesses in general, or to specific industries, such as manufacturers of medical diagnostic reagents. Other commenters stated that paying the user fees would be a hardship, increase their cost of doing business, or have other detrimental effects. Some commenters proposed that we exempt certain industries or classes of users from the proposed user fees or charge them reduced fees. Among those mentioned were members of the poultry industry involved in the National Poultry Improvement Plan.

We realize that the proposed user fees may increase the up-front cost of doing business. APHIS sympathizes with these commenters and has attempted to minimize the cost of services to keep the user fees at the lowest possible level for all users.

However, when Congress authorized APHIS to prescribe and collect user fees to recover the costs of import- and export-related services for animals, birds, and animal products, it specifically reduced APHIS' appropriations by the estimated amount of providing such services. Currently, APHIS is not appropriated funds to cover the cost of providing these services. Therefore, APHIS cannot exempt certain classes of users, such as small businesses, from the user fees, and cannot charge user fees which recover less than the full cost of providing the service without using funds appropriated for other purposes. We are therefore not making any changes based on these comments.

Services Provided

Nine commenters addressed the services for which APHIS charges user fees to endorse export health certificates. Several commenters raised more than one issue; specific issues follow.

Five commenters took exception to the perceived duplication of services provided by local veterinarians and APHIS veterinarians.

Even though local veterinarians may be federally accredited, importing countries require an APHIS veterinarian to endorse export health certificates.

Several commenters objected to user fees for services required by the regulations, as opposed to voluntary services.

Our authority to collect user fees does not distinguish between mandatory and voluntary services. Further, we do not agree with the commenters' basic proposition that users do not ask for APHIS services if they are complying with a regulatory requirement. As stated in § 130.20 of the regulations, ''An export certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export health certificates as a service.'' No one is required to conduct any business or endeavor which is regulated by APHIS. However, anyone who does so must comply with APHIS requirements. In this manner, all users ask for service from APHIS.

APHIS services are provided to enhance U.S. agriculture. APHIS services concerning exportation of animals and animal products are designed either to provide services to exporters which they need in order to meet requirements of the importing country, or to help ensure that no infected animals or animal products are exported from the United States. This service helps protect the individual exporter and helps foreign markets for American animals and animal products.

Many commenters asserted that most of the work is performed by the exporters and local veterinarians, and that APHIS only signs the forms.

Even though in some instances it may appear to the person obtaining the endorsement for the export health certificate that the only step APHIS does is sign the certificates, there are many other steps that may be involved. As explained earlier in response to another comment, direct labor activities may include the following: Telephone time for providing information about the export health certification process, mailing information to customers, protocol research, review of paperwork such as health certificates, verification of laboratory test results, confirmation that the importing country's requirements have been met, paperwork completeness review, certification statements review, endorsement/signing, placing an official seal on documents if needed, and completing APHIS paperwork related to the endorsement. Many of the activities listed above must be performed to make it possible for APHIS employees to endorse the export health certificates.

Multiple Versus Single Export Health Certificates

Three commenters were concerned about whether we would charge for multiple or single export health certificates in situations where multiple export health certificates are required for a single exportation or where multiple similar export health certificates are required in a limited time. Examples included egg shipments to one corporate agent who then redistributes the eggs to various customers; containers of export product which require up to five copies of the same export health certificate, each requiring an original signature; and hundreds of export health certificates per month where the commenter suggested that economies of scale and time management could be realized if numerous certificates are signed at the same time.

Different countries have different requirements as to the number and kinds of tests that are required and the number of animals, birds, or animal products which can be covered by one export health certificate. As a result, the amount of time required to endorse export health certificates varies. Since our goal is to fully recover our costs, we charge the user fee that equals the work required for an export health certificate going from one consignee to one consignor. If the APHIS employee responsible for endorsing the export health certificate determines that the animals, birds, or animal products are part of one consignment, originating from one farm or ranch and destined for one location, the user is charged as though all of the animals, birds, or animal products are on one export health certificate. If this is not the case, more work may be required for the endorsement, and a separate fee is assessed for each endorsement. For occasions where shipments being exported from the same consignor to the same consignee are presented a day apart, a separate fee is charged for each endorsement.

Nonendorsed Export Health Certificates

Seven commenters opposed the new user fee in § 130.20(d) for nonendorsed export health certificates. There

appeared to be confusion about the reasons for charging the user fee for nonendorsed export health certificates and when the user fee would be charged.

To clarify our intentions, we are not charging $16.50 for blank export health certificates. Rather, the user fee will be assessed after the APHIS veterinarian has received the export health certificate for endorsement, has begun to review it, and subsequently finds a problem which prevents him or her from endorsing the export health certificate as presented. At this point the APHIS veterinarian will return the nonendorsed export health certificate to the exporter for corrective action. Since work has been performed, we must charge the user fee to recover our costs for the services. To clarify this, we are revising the wording proposed in § 130.20(d) to specify that the charge applies to export health certificates presented for endorsement which were reviewed, but not endorsed.

Nonslaughter Horses to Canada

One commenter raised concerns about the movement of race horses to Canada. The commenter maintained that export health certificates and inspections should not be required for race horses, and stated that Canadian race tracks are dropping the Coggins test requirement.

As explained earlier, we are continually negotiating with Canada and other countries to eliminate or minimize their import requirements. The movement of race horses is one of the items under discussion. If Canadian requirements change, or if a service is no longer required because Canada has changed its import requirements, any corresponding fee changes will be published in the Federal Register for public comment.

Slaughter Animals to Canada or Mexico

One commenter questioned whether, for slaughter animals going to Canada or Mexico, we will charge the flat rate user fee in § 130.20(a) or the scaled user fee in § 130.20(b)(1) which is based on the number of tests or vaccinations required for the animals listed on the export health certificate. This question was raised because all cattle, including slaughter cattle, are required to be tested for tuberculosis and brucellosis prior to exportation.

To fully recover our costs, the user fees in § 130.20(b)(1) apply whenever tests or vaccinations are required. Costs associated with endorsing export health certificates which cover individually identified animals requiring tests or vaccinations are higher than those which cover animals as a group which do not require tests or vaccinations. This is because APHIS personnel must verify the results of tests or vaccinations. The greater the number of animals, and the larger the number of tests or vaccinations, the more time consuming it is for APHIS personnel to perform the verifications necessary to endorse export health certificates. To clarify which fee is charged, we are revising the text in § 130.20(a) and (b)(1) to indicate that § 130.20(b)(1) applies when tests or vaccinations are required and § 130.20(a) applies when tests and vaccinations are not required.

Reconsider User Fee Increases

Three commenters suggested that we reconsider the user fee increases for export health certificates and get more input from industry.

By publishing the proposed rule and requesting comments for 60 days we believe that we have provided industry with ample opportunity to provide input into the changes in the export health certificate user fees. Therefore, we are making no changes based on these comments.

APHIS veterinarian

One commenter questioned what would happen when an export health certificate for an animal product is not endorsed by an APHIS veterinarian, but by another APHIS employee.

Other designated APHIS employees may endorse export health certificates for animal products. Therefore, in § 130.20(d), we are changing the term ''APHIS veterinarian'' to ''designated APHIS employee''.

14. Payment of User Fees (§ 130.50)

One commenter suggested that we charge user fees in whole dollar amounts to eliminate the need for APHIS offices to keep and make change.

APHIS offices should rarely need to accept cash, as we also accept credit cards and checks in payment for user fees. The regulations explain that a list of the APHIS offices which accept each form of payment is available from APHIS headquarters in Riverdale, MD. The slight inconvenience to APHIS created by accepting change is more than offset by convenience to the public. Therefore, we are making no changes based on this comment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic effect of this rule on small entities.

Need and Objective of This Rule

In accordance with the Farm Bill of 1990, the Secretary of Agriculture is authorized to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal animal quarantine laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance (section 2509(c)(1) of the 1990 Farm Bill). The Secretary of Agriculture is also authorized, under section 2509(c)(2) of the Farm Bill, to prescribe and collect fees to recover the costs of carrying out certain veterinary diagnostics services. As a result of this authority, Congress no longer allocates funds to APHIS for these import- and export-related services and veterinary diagnostics services. Therefore, we established user fees which were intended to recover the full cost of providing these services. The cost of providing these services includes direct labor costs and a pro rata share of administrative support, agency overhead, and Departmental charges.

When we established our original user fees on February 9, 1992, we used the best estimates we had available. At that time, our accounting system did not track costs related to these services separately from other appropriation funded activities. When a service has been provided to the users free of charge for years, it is difficult to predict the economic decisions people will make regarding those services after a user fee is established. Therefore, we had to estimate the costs and the demand for those services without historical data for import- and export-related services.

Since we established these user fees, our accounting system has tracked the costs associated with user fees by imports and exports and for veterinary diagnostics. Therefore, we now have actual cost and usage data for our calculations. This has also improved the accuracy of our estimates for other user fees. The original user fees established on February 2, 1992, were primarily for export-related services. On September 1, 1993, we established user fees for veterinary diagnostics services. On

January 21, 1994, we established additional user fees primarily for import-related services. Annual reviews of our user fees, based on our accounting data and experience with providing these services, show that while many of the estimates resulted in accurate user fees which require only moderate increases, some of our original user fees were significantly lower than the cost of providing the services. Because these user fees were set too low, we have been running a deficit to provide the requested services. Therefore, these user fees must be increased to recover the costs of providing requested services.

Specifically, we reviewed our records of user fees collected during fiscal years (FYs) 1992 through 1995. The original user fees established on February 9, 1992, are based on FY 90 costs. In the 5 years since then, there has been an overall increase in all costs of providing services, due to inflation and changes in general economic conditions. Additionally, we underestimated personnel costs when we set the user fees. For example, in addition to anticipated Federal pay increases (4.2 percent in FY 92 and 3.7 percent in FY 93), in FY 94, there were locality pay and cost of living increases of 3.09 to 8 percent for employees stationed in different parts of the United States. We also underestimated support costs, such as clerical support, office rent, telephone, etc., in setting our current user fees. As a result, the costs of endorsing export health certificates, for example, for which we established user fees on February 9, 1992, were drastically underestimated. In addition, the user fees established on January 21, 1994, lacked the pay raises and increased costs since they were calculated in 1993 based on FY 92 costs.

As a result of general cost increases and the inherent difficulty in setting new user fees, as discussed above, we did not collect enough money in user fees during FYs 1992 through 1995 to recover the costs of providing the services for which we charged user fees. In fact, for each of those fiscal years, we incurred a deficit of over $1 million. As our user fees are intended to recover full cost, it is apparent that our user fees are too low and must be raised to reflect changes in actual costs and demand for services.

Changes to the Regulations

Consequently, this rule updates certain user fees related to import- and export-related inspection and certification, animal quarantine, and veterinary diagnostics. This rule changes user fees that are currently charged for eight broad categories of services. These services include the inspection, certification, or authorization of: (1) live animal imports at animal import centers; (2) live animal imports at the Mexican border; (3) live animal imports at the Canadian border, airports, and ocean ports; (4) other import and inspection services for the importation of live animals and animal products; (5) veterinary diagnostics; (6) the endorsement of export health certificates; (7) facility rentals at APHIS' animal import centers and (8) import and export hourly user fees. New user fees are also being established for the exclusive use of additional space at the Animal Import Center in Newburgh, NY, for the endorsement of export health certificates for animal products, and for pet birds quarantined in an APHIS owned or supervised quarantine facility. In addition, we are changing our method of charging hourly user fees when import- and export-related services are performed outside of an employee's normal tour of duty.

Overall Impact of Changes

Table 1 summarizes the estimated changes in user fees that are necessary to fully recover costs. This rule will result in a net increase in agency collections of about $3 million, from $8 million to $11 million. Approximately $1.1 million of this increase represents new user fees and $2 million is attributed to changes in current collections (revised and premium user fees). These changes will shift the burden from taxpayers to the importers and exporters who use these APHIS services. Additional tables providing details of the user fee changes summarized in Table 1 are available for inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect these detailed tables are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

TABLE 1.—SUMMARY OF ESTIMATED COLLECTIONS FOR IMPORT- AND EXPORT-RELATED SERVICES [1]

Category	Current	Projected	Change
New User Fees:			
Exclusive use of space at the Newburgh, NY Animal Import Center (9 CFR § 130.3)	.....	$157,109	$157,109
Quarantine for pet birds (9 CFR § 130.10)	.....	265,245	265,245
Endorsement of export health certificates for animal products (9 CFR § 130.20)	.....	645,000	645,000
Total New User Fees	.....	1,067,354	1,067,354
Revised User Fees:			
Animal import centers (9 CFR § 130.2)	2,168,468	2,461,334	292,865
APHIS animal import centers and hourly user fees (9 CFR §§ 130.3, 130.5, 130.9, 130.10, and 130.21)	648,318	740,942	92,624
Imports at the Mexican border (9 CFR § 130.6)	1,047,184	1,214,532	167,349
Imports at other ports of entry (9 CFR § 130.7)	817,862	834,251	16,388
Import and inspection services (9 CFR § 130.8)	944,087	970,072	25,986
Veterinary diagnostics (9 CFR § 130.16)	450,118	429,076	(21,042)
Endorsements of export health certificates (9 CFR § 130.20)	798,260	2,195,111	1,396,851
Total Revised User Fees	6,874,296	8,845,316	1,971,020
Premium User Fees (9 CFR §§ 130.5, 130.9, and 130.21)	990,900	1,033,319	42,419
Total Revised Collections (Revised and Premium User Fees)	7,865,196	9,878,635	2,013,439

TABLE 1.—SUMMARY OF ESTIMATED COLLECTIONS FOR IMPORT- AND EXPORT-RELATED SERVICES [1]—Continued

Category	Current	Projected	Change
Projected Total (New and Revised)	7,865,196	10,945,989	3,080,793

[1] Projections based on average annual volume estimates provided by the Financial Systems and Services Branch, Budget and Accounting Division, Management and Budget, APHIS, USDA. NOTE: Column and row totals may not be exact due to rounding.

Summary of Comments, Assessment of Issues, and Resulting Changes

Due to the nature of this rule, most of the comments we received on the proposed rule focused on economic issues; several took exception to the results of our economic analysis. The comments raised concerns about potential inequitable charges for permanent and temporary privately owned import quarantine facilities (§ 130.4 and § 130.5, respectively), impacts on small entities, increases in user fees for the endorsement of export health certificates, and impact on international trade. As a result of the issues raised about inequitable charges, we combined the user fee regulations for permanent and temporary facilities under § 130.5 and removed § 130.4 from the regulations. This will result in lower charges for economies of scale where there are multiple animals in a single shipment than those previously assessed under § 130.4 for permanent facilities. Assessments of the other issues raised are provided in the more detailed economic analysis below.

Impact on Small Entities

User fee revisions included in this rule could affect some importers and exporters of live animals, importers and exporters of animal byproducts, and firms that seek APHIS' veterinary diagnostic services. We received comments from importers and exporters, many of whom are small entities. The Small Business Administration's definition of a small entity involved in these activities is one whose total sales is less than $5 million annually. The number of entities who are importing and exporting live animals and would qualify as a small entity under this definition cannot be determined. However, except possibly for those entities who deal exclusively in more valuable animals, such as breeding or registered animals, data from the 1995 Bureau of the Census indicates that the majority of agricultural entities who deal in less valuable animals, such as feeding or slaughter animals, can be considered small. While there is a wide range in the sizes of entities who use our import- and export-related services, our experience shows that as many as 50 percent may be considered large.

To the extent that changes in user fees will impact operational costs or profits, any entity who utilizes APHIS's services and is subject to user fees will be impacted by this rule. The degree of the impact depends on the entity's market power, or the ability to which cost increases can be either absorbed or passed on to its buyers. Without information on either profit margins and operational expenses of the affected entities,[2] or the supply responsiveness of the affected industry,[3] the impacts cannot be precisely predicted. However, given the amount of the user fee changes (and new user fees) relative to the value of the imported or exported animals and animal products, some conclusions on overall impacts to domestic and international commerce are drawn below.

Exports

Many comments addressed the impact these user fee increases will have on exports. Most of these comments objected to increases in the user fees for the endorsement of export health certificates. Many of the comments we received focused on the impact on entities in the poultry and horse industries.

Most of the commenters stated that the increase in the user fee for the endorsement of export health certificates for poultry and hatching eggs is too high. As explained earlier, these user fees were based on FY 90 costs and low estimates of personnel costs. The user fees have not been increased in 5 years, and the original user fees were drastically underestimated.

Breeding chicks and hatching eggs, while worth only fractions of a dollar individually, are generally exported in batches of up to hundreds of thousands; the total value of these shipments could exceed $10,000. As shown in Table 2, the user fee for the endorsement of export health certificates for poultry and eggs is $21.00 (an increase of $19.00 from the original $2.00 user fee). The user fee is less than 0.5 percent of the estimated value of a shipment. Therefore, while the increase in the user fee is significant, the user fee is still small relative to the total value of the shipments. Table 2: Projected User Fee Collections for the Endorsement of Export Health Certificates (9 CFR § 130.20).[4]

[2] Information on profits from sales by small entities is proprietary in nature and was not available to APHIS for this analysis.

[3] The measurement of supply responsiveness would provide information on the likely impact on an entity's production due to changes in operating costs.

[4] Projections based on average annual volume estimates provided by the Financial Systems and Services Branch, Budget and Accounting Division, Management and Budget, APHIS, USDA. Note: Column and row totals may not be exact due to rounding.

Category	Annual volume	User fee			Collections	
		Current	New	Change	Current	Projected
Per Certificate User Fees:						
Slaughter Animals to Canada or Mexico	4,811	$10.00	$24.50	$14.50	$48,110	$117,870
Non-Slaughter Horses to Canada	27,275	10.00	26.25	16.25	272,750	715,969
Poultry	7,037	2.00	21.00	19.00	14,074	147,777
Hatching Eggs	7,036	2.00	21.00	19.00	14,072	147,756
Other:						
Endorsements	20,748	4.00	16.50	12.50	82,992	342,342
Per Head User Fees:						
Export Animal, 1–2 tests	2,656	38.00	52.50	14.50	100,928	139,440
Each additional animal	35,235	1.00	3.00	2.00	35,235	105,705
Export Animal, 3–6 tests	3,950	41.50	64.75	23.25	163,925	255,763
Each additional animal	34,905	1.25	5.00	3.754	3,631	174,525
Export Animal, 7 + tests	421	44.00	75.75	31.75	18,524	31,891
Each additional animal	2,679	1.50	6.00	4.50	4,019	16,074
Projected totals					798,260	2,195,111

Since many of the comments related to the proposed increases in user fees for the endorsement of export health certificates concerned poultry and egg exports, we will show how this user fee is calculated by using, as an example, the endorsement of an export health certificate for poultry. The calculation for the user fees for endorsing other export health certificates varies by the amount of direct labor hours required to provide the endorsement services. The average amount of time it takes to endorse an export health certificate for poultry is 18 minutes. The direct labor time includes phone time, paperwork review time, and endorsement time. Using the average direct labor cost per hour of $34.06, the direct labor cost for 18 minutes is $10.08. As described earlier, the following costs are the pro rata share for endorsing export health certificates.

Administrative support costs are added at about $0.69 for each $1.00 of direct labor incurred, adding $6.89. Administrative support costs include local clerical and administrative activities; indirect labor hours (supervision of personnel and time spent doing work that is not directly connected with the service but which is nonetheless necessary, such as repairing equipment); travel and transportation for personnel; supplies, equipment, and other necessary items; training; general supplies for offices, washrooms, cleaning, etc.; contractual services (such as guard service, maintenance, trash pickup, etc.); grounds maintenance; chemicals and glassware; and utilities (such as water, telephone, electricity, natural and propane gas, heating and diesel oil). Some administrative support items may be contractual or not, depending on local circumstances. For example, trash pickup may be provided as a contractual service or a utility. However, the costs are all administrative support.

In addition, Agency overhead and departmental charges are added at $2.74 and $1.08, respectively. The total cost is $20.79, which is rounded up to the nearest quarter to $21.00. When factoring in all of the costs involved in endorsing an export health certificates, the user fees are reasonable. When comparing the proposed user fees to the previous user fees, which were based on FY 90 costs and were too low, they appear high. However, we could not continue to provide these services if we did not increase the user fees to fully recover our costs.

The value of a non-slaughter horse could range between $1,000 and $50,000 and more. As shown in Table 2, the user fee for non-slaughter horses to Canada is $26.25 (an increase of $16.25 from the original $10.00 user fee). The user fee is less than 3 percent of the lower value for the non-slaughter horse. Therefore, the user fee is small relative to the total value of the horse.

Many commenters stated that the user fees for the endorsement of export health certificates that require the verification of tests are too high. As shown in Table 2, for any animal, endorsements requiring the verification of 1 or 2 tests increased by $14.50 per endorsement (from $38.00 to $52.50). The largest increase of $31.75 per endorsement (from $44.00 to $75.75) relates to the endorsement of export health certificates that require verification of 7 or more tests required by the importing country. Of the 80,277 certificates endorsed in FY 94, only 421 certificates (or 0.5 percent) were issued that required the verification of 7 or more tests. These certificates covered 3,092 animals for an average charge of $7.29 per animal ($44.00 for the first animal and $1.50 for additional animals on a certificate). The new user fees raise this average to $15.50 per animal ($75.75 for the first animal and $6.00 for additional animals on a certificate), or a difference of $8.21 per animal. Certificates that are issued in this category are endorsed largely for the export of breeding or registered animals whose worth could be over $2,000 per animal. It is therefore expected that these user fee increases will not have a significant impact on exporters, given that the amount of the increases is small in comparison to the value of the exported animals.

Impact on International Trade

Several commenters suggested that the increases in user fees could result in a decrease in international trade. Most of the commenters specified trade in poultry, horses, and cattle to Canada. As stated above, the increases in the user fees are small in relation to the value of the exported animals. While it follows that some businesses will feel the impact of these increases, overall, the revised user fees are not expected to impede commerce and international trade.

Although some countries do not currently charge for import- and export-related services, user fees for these services are being adopted by more and more countries. In fact, as of May 8, 1995, Canada charges user fees for certain import- and export-related services (see May 3, 1995, Canada Gazette Part II, Vol. 129, No. 9, SOR/DORS/95–198). In addition, further supports have been eliminated. Therefore, we do not believe that U.S. exporters are at a competitive disadvantage compared with exporters in other countries.

Imports

While most comments addressed exports, several objected to the increases in user fees for import-related services. For import-related services for animals at all ports of entry, including Canadian and Mexican borders, and animal import centers, increases from the previous user fees range from $0.25 to $21.00. Except for the increases of $12.75 to $21.00 for import services for equines at animal import centers, the other increases are all $5.50 or less, while the majority of these user fee increases are less than $1.00. These changes represent modest increases and are a small fraction of the typical cost of purchasing and importing a breeding grade animal into the United States, which ranges between $1,500 and $5,000 per head. Purchase and import costs for feeder and slaughter animals are often significantly lower per animal, but can easily exceed $1,500 per shipment depending on the number and type of animals in the shipment.

The increase in user fees for other import services related to animal products and byproducts range from $0.50 for an application for a permit renewal, to $10.25 for the inspection of an approved establishment. Because the user fees charged in this category of service are based on either a per load, inspection, application, or certification basis, the amount of increase is small in comparison to the total value of the animal products and byproducts for which the services are required. The majority of the increases are $1.50 or less. The $1.50 increase per permit for the importation of germ plasm (from $38.00 to $39.50), for instance, is not expected to cause a significant economic burden to importers, given that the cost of importing semen could be over $100,000 per permit when imported from countries with foot-and-mouth disease. Although the breakdown of entity sizes is unknown, as stated above, the revised user fees are not expected to have a significant impact on either large or small importers of live animals and animal products.

Shift From Reimbursable Overtime to Premium User Fees

This rule also changes the way in which hourly user fees for import- and export-related services conducted outside an employee's normal tour of duty will be charged. While revising our user fees, we took many factors into account, including public confusion about the way we charged for services provided during overtime. As a result, we changed the method of charging hourly user fees for import- and export-related services provided outside of an employee's normal tour of duty. Now, users of these services, previously charged the hourly user fee plus reimbursable overtime, will be charged the single new premium user fee. This premium user fee reflects both changes in costs and a change in the structure of the user fee. The intent of this change is to avoid any confusion and the perception of double charging for services. The impact is to lower the average hourly user fees for import- and export-related services performed outside of an employee's normal tour of duty.

The $1 million projected collection for this category represents a modest increase, approximately $40,000, to APHIS collections. All of the projected calculations are not considered new user fees or new collections for APHIS for the following reasons. In FY 95, we collected $990,900 for import- and export-related services that involved a combination of both hourly user fees and reimbursable overtime. Of this, $398,425 was collected at the $50.00 hourly user fee, and $592,475 was collected at the reimbursable overtime rates specified in 9 CFR 97 (for example, $37.84 for holidays and overtime other than on Sundays). As explained below, a portion of the $398,425 was for services that began during the regular tour of duty and for which the hourly user fee will still be charged.

The hourly user fee charges ($398,425) include the costs for services which may have begun during the regular tour of duty but were completed on overtime in addition to the hourly user fee charge for the services provided during overtime. Our accounting system tracks user fees and reimbursable overtime separately. While we can identify total hourly user fees and total reimbursable overtime hours performed in conjunction, we cannot specifically identify the hours of services which began on regular time and continued into overtime.

Next, reflecting the change in costs, we estimated FY 95 collections using the increased FY 96 hourly rate of $56.00 plus reimbursable overtime. With this increase in the hourly user fee, the projected FY 96 collections would have been $1,040,298 ($447,823 at $56.00 per hour for hourly user fees and $592,475 at the reimbursable overtime rates as described above).

Finally, we changed the method of charging user fees for hourly services performed during overtime to a single premium user fee. To calculate the projected FY 96 collections for the premium user fee ($1,033,319), we used the total FY 95 hours multiplied by the average premium user fee (6 out of 7 days at $65.00 plus 1 out of 7 days at $74.00, the sum divided by 7 days in a week). Our historical accounting data for reimbursable overtime confirms this method resulted in a reasonable split between Sunday and other overtime.

These calculations show an estimated overall increase of approximately $40,000. While this is a modest increase over the previous charges for services performed outside employees' normal tour of duty, this is a decrease of approximately $7,000 from the increases which would have been incurred under the old method. Therefore, entities should realize a long-term economic benefit from the lower increase.

Based on the earlier discussion of the regular time, which is included in the estimates for reimbursable overtime, it follows that the premium user fee, which was estimated for the same number of hours as the reimbursable overtime plus hourly user fee, is an overestimate of charges, as some of these hours will remain at $56.00 per hour. Therefore, we anticipate that the increase will be lower than our estimate shows.

Summary

In summary, while it follows that, if the user fees cannot be passed on, the profit margins of some entities may decline as user fees for endorsing export health certificates are increased. However, the revised user fees represent a small fraction of the value of the imported and exported animals and are not generally expected to reduce profits or impede exports. Indeed, the full burden of the user fee increases are not likely to be borne entirely by the directly affected entities, as some of the cost increases are expected to be passed on to the purchasers of these exported animals.

Alternatives

One alternative to this rule would be to take no action. Another alternative to this rule would be to establish a different user fee structure for small businesses. We do not consider taking no action a reasonable alternative, because we would not recover the full cost of providing import- and export-related services and would continue to incur annual deficits of over $1 million. We also do not consider establishing a different user fee structure for small businesses a viable option. As stated above, Congress does not appropriate funds to APHIS for these services. Therefore, APHIS cannot exempt certain classes of users, such as small businesses, from the user fees, and cannot charge user fees that recover less

than the full cost of providing the service.

Another alternative to this rule would be to spread the increased costs over all of the user fees, so no single user fee would increase significantly. Our user fees are calculated to recover the costs of the service for which each user fee is charged. To spread the increases would mean that some entities would subsidize others. The intent of these user fees is to shift the burden of the cost of these services from the general taxpayer to the entity receiving the service. Therefore, APHIS cannot spread the increases evenly over all of the user fees.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control numbers are 0579–0015, 0579–0040, 0579–0055, and 0579–0094.

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, 9 CFR part 130 is amended as follows:

PART 130—USER FEES

1. The authority citation for part 130 is revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 130.1, the definitions for *Germplasm* and *Pet bird* are removed; the definition for *Load* is revised; and definitions for *Germ plasm, Pet birds, Test,* and *United States* are added, in alphabetical order, to read as follows:

§ 130.1 Definitions.

* * * * *

Germ plasm. Semen, embryos, or ova.

* * * * *

Load. Those animals, birds, or animal germ plasm, presented for importation into the United States in a single shipment, that originate from one address, are destined for one address, and require one entry permit or authorization.

* * * * *

Pet birds. Birds, except ratites, which are imported for the personal pleasure of their individual owners and are not intended for resale.

* * * * *

Test. A single analysis performed on a single specimen from an animal, animal product, commercial product, or animal feed.

United States. The several States of the United States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

* * * * *

3. Section 130.2 is amended as follows:

a. By revising the section heading and in paragraph (a), the table, to read as set forth below.

b. By adding at the end of the section the OMB control number as set forth below.

§ 130.2 User fees for individual animals and certain birds quarantined in APHIS Animal Import Centers.

(a) * * *

Animal or bird	Daily
Birds (including zoo birds, but excluding ratites and pet birds imported in accordance with part 92 of this subchapter):	
0–250 grams	$1.00
251–1,000 grams	3.25
Over 1,000 grams, and any bird in nonstandard housing or receiving nonstandard care and handling	7.50
Ratites:	
Chicks (less than 3 months of age)	5.75
Juveniles (3 months through 10 months of age)	8.00
Adults (11 months of age and older)	16.25
Poultry (including zoo poultry):	
Doves, pigeons, quail	2.00
Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	3.50
Game cocks, geese, swans, turkeys, any poultry housed in nonstandard housing or receiving nonstandard care and handling	8.25
Equines (including zoo equines, but excluding miniature horses):	
1st through 3rd day	149.50
4th through 7th day	108.25
8th and later days	91.75
Miniature horses	40.25
Zoo animals (except equines, birds, and poultry)	32.25
Domestic animals:	
Camels, cattle, bison, buffalo	56.50
All others	15.00

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0094.)

4. Section 130.3 is amended as follows:

a. In paragraph (a)(1), by revising the table to read as set forth below.

b. By revising paragraph (c)(3) to read as set forth below.

c. By revising the OMB control numbers at the end of the section as set forth below.

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) * * *

Animal import center	Space available	Monthly user fee
Miami, FL:		
South Wing	6,952 sq. ft. (645.9 sq. m.)	$30,285.00
North Wing	6,545 sq. ft. (608.1 sq. m.)	29,377.00
Newburgh, NY:		
Space A	5,904 sq. ft. (548.5 sq. m.)	47,609.00
Space B	9,742 sq. ft. (905 sq. m.)	78,555.00

* * * * *

(c) * * *

(3) If the importer chooses to pay for additional services on an hourly basis, the user fees for each employee required to perform the service are:

(i) $56.00 per hour;

(ii) $14.00 per quarter-hour;

(iii) With a minimum of $16.50.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0094.)

§ 130.4 [Removed and reserved]

5. Section 130.4 is removed and reserved.

6. Section 130.5 is amended as follows:

a. The section heading, is revised to read as set forth below.

b. In paragraph (a), before the word ''temporary'', by adding the words ''permanent or''.

c. In paragraph (b)(1), by removing ''$50'' and adding ''$56'' in its place.

d. In paragraph (b)(2), by removing ''$12.50'' and adding ''$14.00'' in its place.

e. In paragraph (b)(3), by removing ''$16.00'' and adding ''$16.50'' in its place.

f. By adding a new paragraph (c) to read as set forth below.

g. By adding at the end of the section the OMB control number as set forth below.

§ 130.5 User fees for services at privately operated permanent and temporary import-quarantine facilities.

* * * * *

(c) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate, as provided for in 9 CFR part 97, in lieu of the user fee listed in paragraph (b) of this section, must be paid for each employee required to perform each service:

(1) $65.00 per hour for weekdays and holidays;

(2) $16.25 per quarter-hour for weekdays and holidays;

(3) $74.00 per hour for Sundays;

(4) $18.50 per quarter-hour for Sundays;

(5) With a minimum of $16.50.

(Approved by the Office of Management and Budget under control number 0579–0094.)

7. Section 130.6 is amended as follows:

a. In paragraph (a), by removing ''$16.00'' and adding ''$16.50'' in its place.

b. In paragraph (a), by removing the phrase ''live animals imported into or entering the United States'' and adding ''live animals presented for importation into or entry into the United States'' in its place.

c. In paragraph (a), by revising the table to read as set forth below.

§ 130.6 User fees for import or entry services for live animals at land border ports along the United States-Mexico border.

(a) * * *

Type of live animal	User fee (per head)
Feeder	$1.75
Slaughter	2.50
Horses, other than slaughter	29.25
In-bond or in transit	3.75
Any ruminants not covered above	6.00

* * * * *

8. Section 130.7 is amended as follows:

a. In paragraph (a), by removing ''$16.00'' and adding ''$16.50'' in its place.

b. In paragraph (a), by removing the phrase ''live animals imported into or entering the United States'' and adding ''live animals presented for importation into or entry into the United States'' in its place.

c. In paragraph (a), by revising the table to read as set forth below:

§ 130.7 User fees for import or entry services for live animals at all other ports of entry.

(a) * * *

Type of live animal	User fee
Animals being imported into the United States:	
Horses, other than slaughter and in transit	$19.00 per head.
Breeding animals (Grade animals, except horses):	
Swine	0.50 per head.
Sheep and goats	0.50 per head.
All others	2.25 per head.
Registered animals, all types	4.00 per head.
Feeder animals:	
Cattle (not including calves)	1.00 per head.
Swine	0.25 per head.
Sheep and calves	0.25 per head.
Slaughter animals, all types	16.50 per load.
Poultry (including eggs), imported for any purpose	33.00 per load.
Animals transiting[1] the United States:	
Cattle	1.00 per head.
Swine	0.25 per head.
Sheep and goats	0.25 per head.

Type of live animal	User fee
Horses and all other animals	4.50 per head.

[1] The user fee in this section will be charged for intransit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the applicable hourly user fee will apply.

* * * * *

9. In § 130.8, paragraph (a) is amended by revising the table to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	User fee
Inspection for approval of slaughter establishment:	
Initial approval	$246.50 for all inspections required during the year.
Renewal	213.50 for all inspections required during the year.
Pet birds, except pet birds of U.S. origin entering the United States from Canada:	
Which have been out of United States more than 60 days	169.75 per lot.
Which have been out of United States 60 days or less	71.25 per lot.
Germ Plasm Being imported: [1]	
Semen	39.50 per load.
Embryo	39.50 per load.
Germ Plasm Being exported: [2]	
Semen	33.50 per certificate.
Embryo (up to 5 donor pairs)	54.75 per certificate.
Embryo (each additional group of donor pairs, up to 5 pairs per group, on the same certificate)	24.75 per group of donor pairs.
Processing VS form 16–3, ''Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors'':	
For permit to import fetal bovine serum when facility inspection is required	208.50 per application.
For all other permits	27.50 per application.
Amended application	11.50 per amended application.
Application renewal	15.00 per application.
Fetal Bovine Serum sample verification	666.00 per verification.
Import compliance assistance	24.00 per release.
Release from export agricultural hold	24.00 per release.
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:	
Approval (Compliance Agreement)	262.75 for first year of 3-year approval (for all inspections required during the year).
Renewed approval	152.00 per year for second and third years of 3-year approval (for all inspections required during the year).

[1] For inspection of empty containers being imported into the United States, the applicable hourly user fee would apply, unless a user fee has been assessed under 7 CFR part 354.3.

[2] This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the applicable hourly user fee would apply.

* * * * *

10. Section 130.9 is amended as follows:

a. In paragraph (a), introductory text, by removing ''$50'' and adding ''$56'' in its place, and by removing ''$12.50'' and adding ''$14.00'' in its place.

b. In paragraph (a), introductory text, by removing ''$16.00'' and adding ''$16.50, for each employee required to perform the service'' in its place.

c. By revising paragraph (b) to read as set forth below.

§ 130.9 User fees for miscellaneous import or entry services.

* * * * *

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate, as provided for in 9 CFR part 97, in lieu of the user fee listed in paragraph (a) of this section, must be paid for each employee required to perform each service:

(1) $65.00 per hour for weekdays and holidays;

(2) $16.25 per quarter-hour for weekdays and holidays;

(3) $74.00 per hour for Sundays;

(4) $18.50 per quarter-hour for Sundays;

(5) With a minimum of $16.50.

* * * * *

11. In § 130.50(b)(1), footnote 8 and the reference to it are redesignated as footnote 9, and in § 130.20(a), footnote 7 and the reference to it, are redesignated as footnote 8.

12. A new § 130.10 is added to read as follows:

§ 130.10 User fees for pet birds quarantined at APHIS-owned or supervised quarantine facilities.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for the following user fees, which include standard care, feed, and

handling, and which must be paid for each animal or bird quarantined in an Animal Import Center[7] or other APHIS owned or supervised quarantine facility:

Number of birds is isolette	Daily user fee
1	$6.50
2	7.75
3	9.25
4	10.75
5	12.00

(b) Based on the information provided to APHIS personnel, APHIS personnel at the Animal Import Center or other APHIS owned or supervised quarantine facility will determine the appropriate number of birds that should be housed per isolette.

(c) If the person or persons for whom the service is provided or the person or persons requesting the service request additional services on an hourly basis, the user fees for each employee required to perform the service are:

(1) $56.00 per hour;

(2) $14.00 per quarter-hour;

(3) With a minimum of $16.50.

(Approved by the Office of Management and Budget under control number 0579–0094.)

13. Section 130.14 is amended as follows:

a. By revising the section heading to read as set forth below.

b. In paragraph (a), after the term ''NVSL'', by adding the phrase ''or at authorized import sites (excluding FADDL)''.

c. In paragraph (a), by revising the text of footnote 1 to the table to read as set forth below.

d. By adding a new paragraph (c) to read as set forth below.

e. By adding at the end of the section the OMB control numbers as set forth below.

§ 130.14 User fees for tests performed by the NVSL or at authorized import sites (excluding FADDL).

(a) * * *

[1] Tests with multiple and subsequent antigens can be set up for a fraction of the cost of multiple single-antigen tests. Tests subsequent to the first antigen used for these assays are reduced down to 20% of the cost of using the first antigen. The following are examples of these cost savings: complement fixation (CF) tests for equine encephalomyelitis or vesicular stomatitis; hemagglutination inhibition (HI) for equine encephalomyelitis or equine influenza; virus neutralization (VN) tests for porcine respiratory and reproductive syndrome. For example, for CF tests for eastern equine encephalomyelitis (EEE), western equine encephalomyelitis (WEE), and Venezuelan equine encephalomyelitis (VEE) and for VN tests for the New Jersey and Indiana serovars of vesicular stomatitis (VS), the costs are as follows: EEE—$9.00, WEE and VEE—$2.00 each; VS New Jersey—$7.50, VS Indiana—$1.50. The total of these five assays is $22.00 for each specimen submitted.

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section, in addition to the user fee listed in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094.)

14. Section 130.15 is amended as follows:

a. In paragraph (a), by revising the text of footnote 1 to the table to read as set forth below.

b. By adding a new paragraph (c) to read as set forth below.

c. By adding at the end of the section the OMB control numbers as set forth below.

§ 130.15 User fees for tests performed at FADDL.

(a) * * *

[1] Tests with multiple and subsequent antigens can be set up for a fraction of the cost of multiple single-antigen tests. Tests subsequent to the first antigen used for these assays are reduced down to 20% of the cost of using the first antigen. The following assays are examples of these cost savings: complement fixation (CF) tests for foot-and-mouth disease or vesicular stomatitis; virus neutralization (VN) tests for foot-and-mouth disease or vesicular stomatitis. For example, for CF and VN tests for foot-and-mouth disease A, O, and C antigens, the costs are as follows: CF A antigen—$30.50, O antigen—$6.25, and C antigen—$6.25; VN A antigen—$22.00, O antigen—$4.50, and C antigen—$4.50. The total of these six assays is $74.00 for each specimen tested for these agents.

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section in addition to the user fee listed in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094.)

15. Section 130.16 is amended as follows:

a. In paragraph (a), in the table, by revising the entry for ''Virus isolation'' and by adding a new test in alphabetical order to read as set forth below.

b. By adding a new paragraph (c) to read as set forth below.

c. By adding at the end of the section the OMB control numbers as set forth below.

§ 130.16 User fees for reference assistance testing.

(a) * * *

Test	User fee
* * * * *	
(3) Other tests:	
* * * * *	
Virus isolation (except Newcastle disease virus)	29.75
Virus isolation for Newcastle disease virus	14.00
* * * * *	

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section in addition to the user fee listed in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094.)

16. Section 130.17 is amended as follows:

a. In paragraph (a), in the table, in the entry for Johnin: OT, under the Unit (ml.) column, by removing ''10'' and adding ''2'' in its place.

b. By adding a new paragraph (c) to read as set forth below.

c. By adding at the end of the section the OMB control number as set forth below.

§ 130.17 User fees for diagnostic reagents, slide sets, and tissue sets.

* * * * *

(c) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section in addition to the user fee listed in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 0579–0094.)

[7] APHIS Animal Import Centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 92 of this chapter.

17. Section 130.18 is amended as follows:

a. By redesignating the existing text as paragraph (a).

b. By adding a new paragraph (b) to read as set forth below.

c. By adding at the end of the section the OMB control number as set forth below.

§ 130.18 User fees for sterilization by gamma radiation.

(a) * * *

(b) The user fees in this section do not include any costs that may be incurred due to special mail handling, such as express, overnight, or foreign mailing. If a test requires special mail handling, all costs incurred must be paid by the user as specified in paragraph (a) of this section in addition to the user fee listed in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 0579–0094.)

18. Section 130.20 is amended as follows:

a. By revising paragraph (a) to read as set forth below.

b. By revising (b)(1) to read as set forth below.

c. In paragraph (c), by removing the words ''it is endorsed'' and by adding the phrase ''the export health certificate is prepared for endorsement completely at the site of the inspection'' in their place.

d. In paragraph (c), by removing the reference ''§ 130.7'' and adding ''§ 130.21'' in its place.

e. By redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as set forth below.

§ 130.20 User fees for endorsing export health certificates.

(a) All user fees in this paragraph are for services provided for the endorsement of export health certificates which do not require the verification of tests or vaccinations. The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the following user fees for each export health certificate[8] endorsed for the following types of animals, birds, or animal products, regardless of the number of animals, birds, or animal products covered by the certificate.

Certificate categories	User fee
Slaughter animals, of any type, moving to Canada or Mexico	$24.50
Nonslaughter horses to Canada	26.25
Poultry	21.00
Hatching eggs	21.00
Animal products	21.50
Other endorsements or certifications	16.50

[8] An export health certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export health certificates as a service.

(b)(1) All user fees in this paragraph are for services provided for the endorsement of export health certificates which require the verification of tests or vaccinations. The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the following user fees for each export health certificate endorsed for animals and birds, depending on the number of animals covered by the certificate and the number of tests required.

Number of tests/vaccinations	Number of animals or birds on certificate	User fee
1–2	First animal	$52.50
	Each additional animal.	3.00
3–6	First animal	64.75
	Each additional animal.	5.00
7 or more	First animal	75.75
	Each additional animal.	6.00

* * * * *

(d) The user fees prescribed in this section will not apply if a requested export health certificate is not endorsed by a designated APHIS employee. The minimum user fee of $16.50 will be charged for each export health certificate that is requested and reviewed, but not endorsed.

* * * * *

19. Section 130.21 is amended as follows:

a. By revising paragraphs (a)(1) through (a)(5) to read as set forth below.

b. By adding new paragraphs (a)(6) and (a)(7) to read as set forth below.

c. In paragraph (b) introductory text, before the colon, by adding the phrase ''charged per each employee required to perform the service''.

d. In paragraph (b)(1), by removing ''$50'' and adding ''$56'' in its place.

e. In paragraph (b)(2), by removing the figure ''$12.50'' and adding ''$14.00'' in its place.

f. In paragraph (b)(3), by removing the figure ''$16.00'' and adding ''$16.50'' in its place.

g. By revising paragraph (c) to read as set forth below.

§ 130.21 User fees for inspection and supervision services provided within the United States for export animals, birds, and animal products and byproducts.

(a) * * *

(1) Inspecting an export isolation facility and the animals in it;

(2) Supervising animal or bird rest periods prior to export;

(3) Supervising loading or unloading of animals or birds for export shipment;

(4) Inspecting means of conveyance used to export animals or birds;

(5) Conducting inspections under authority of part 156 of this chapter;

(6) Approving or inspecting an embryo or semen collection center or the animals in it; and

(7) Other export or embarkation services not specified elsewhere in this part.

* * * * *

(c) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then the premium user fee rate, as provided for in 9 CFR part 97, in lieu of the user fee listed in paragraph (b) of this section, must be paid for each employee required to perform each service:

(1) $65.00 per hour for weekdays and holidays;

(2) $16.25 per quarter-hour for weekdays and holidays;

(3) $74.00 per hour for Sundays;

(4) $18.50 per quarter-hour for Sundays;

(5) With a minimum of $16.50.

* * * * *

20. Section 130.50 is amended as follows:

a. In paragraph (b)(1), newly designated footnote 9 is revised to read as set forth below.

b. In paragraph (b)(2), immediately before the semi-colon, by adding ''drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA''.

c. In paragraph (b)(3), immediately before the semi-colon, by adding ''drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA''.

d. By revising paragraph (b)(4) to read as set forth below.

§ 130.50 Payment of user fees.

* * * * *

(b) * * *

(4) Credit cards (VISA™ or MasterCard™) if payment is made at an Animal Import Center or an APHIS office that is equipped to process credit cards.[9]

[9] A list of Animal Import Centers and APHIS offices that accept cash or credit cards may be

* * * * *

Done in Washington, DC, this 1st day of May 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–11211 Filed 5–6–96; 8:45 am]

BILLING CODE 3410–34–P

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Interim rule; partial stay.

SUMMARY: The Agency hereby stays the effective date of § 514.20(j)(2)(i). This regulation was promulgated pursuant to interim rule published on April 8, 1996 (61 FR 15373). This stay will delay by 150 days, the requirement that program extension requests for professor or research scholar participants be received by the Agency ninety days prior to the expiration of the participant's program. This stay will permit a transition period for the requirement set forth in § 514.20(j)(2)(i). This stay does not apply to any other section of the interim rule published on April 8, 1996.

DATES: This stay is effective from May 7, 1996, until October 4, 1996.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547; telephone, (202) 619–4979.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Dated: May 2, 1996.

Les Jin,

General Counsel.

Accordingly, 22 CFR Part 514 is amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for Part 514 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p 200; E.O. 12048, 43 FR 13361, 3 CFR, 1978 Comp. p 168, USIA Delegation order No. 85–5 (50 FR 27393).

2. Section § 514.20 (j)(2)(i) is stayed from May 7, 1996 until October 4, 1996.

[FR Doc. 96–11351 Filed 5–6–96; 8:45 am]

BILLING CODE 8230–01–M

obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231.

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 361

Claims Pursuant to the Government Losses in Shipment Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends 31 CFR Part 361 to reflect the change of address which resulted when the Bureau of the Public Debt's Division of Financial Management was moved from Washington, D.C. to Parkersburg, West Virginia.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa Yoke Martin, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Parkersburg, WV, at 304–480–5197, or via the Internet at lmartin@bpd.treas.gov, or Kila Frank, CFO Coordinator, Division of Financial Management, Bureau of the Public Debt, Parkersburg, WV, at 304–480–6201. A copy of this final rule has been made available for downloading from the Bureau of the Public Debt home page at the following address: http://www.ustreas.gov/treasury/bureaus/pubdebt/pubdebt.html

SUPPLEMENTARY INFORMATION:

Background

The Bureau of the Public Debt has consolidated many of its functions and offices, including its Division of Financial Management, into its offices in Parkersburg, West Virginia. Accordingly, reports and claims pursuant to the Government Losses in Shipment Act should now be sent directly to the Division's Parkersburg address.

Procedural Requirements

This final rule is not a ''significant regulatory action'' pursuant to Executive Order 12866. This final rule merely reflects the change of address which resulted when the Bureau of the Public Debt's Division of Financial Management was moved from Washington, DC to Parkersburg, WV. Accordingly, notice and public procedure thereon is unnecessary. Pursuant to 5 U.S.C. 553(d)(3), good cause is found for making this rule effective upon publication. As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply. There are no collections of information required by this rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 361

Claims, Common carriers, Fiscal Service, Freight, Government property.

Dated: May 1, 1996.

Richard L. Gregg,

Commissioner of the Public Debt.

For the reasons set out in the preamble, 31 CFR Part 361 is amended as follows:

PART 361—CLAIMS PURSUANT TO THE GOVERNMENT LOSSES IN SHIPMENT ACT

1. The authority citation for Part 361 continues to read as follows:

Authority: Sec. 6, 50 Stat. 480; 40 U.S.C. 728.

2. Paragraph (a) of § 361.7 is amended by revising the first sentence to read as follows:

§ 361.7 Report of loss, destruction or damage.

(a) If a consignor receives notice that loss or destruction of, or damage to, valuables shipped in accordance with the Act has occurred, an immediate written report shall be forwarded by the consignor to the Secretary, to the attention of the Bureau of the Public Debt, Division of Financial Management, Room 201, P. O. Box 1328, Parkersburg, WV 26106–1328. * * *

* * * * *

3. Section 361.8 is amended by revising the first sentence to read as follows:

§ 361.8 Claim for replacement.

Claim for replacement shall be made in writing to the Secretary, to the attention of the Bureau of the Public Debt, Division of Financial Management, Room 210, P. O. Box 1328, Parkersburg, WV 26106–1328. * * *

[FR Doc. 96–11282 Filed 5–6–96; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 2

RIN 2900–AI08

Delegations of Authority; Nonsubstantive Miscellaneous Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the delegation of authority regulations by removing redundant material and by removing other information not required to be published in the Federal Register.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Dawn McGowan, Chief, Directives, Forms, Records Management, Headquarters Health Administration Service (161A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–7444. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

The Secretary hereby certifies that the rule will not have a significant economic impact on a substantial number of small entitles as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule merely consists of nonsubstantive changes.

There is no Catalog of Federal Domestic Assistance Number.

List of Subjects in 38 CFR Part 2

Authority delegations (Government agencies).

Approved: April 29, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 2 is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 302; 38 U.S.C. 501, 512; 44 U.S.C. 3702.

§§ 2.3, 2.72, 2.73, 2.74, 2.91, 2.93, 2.94 [Removed]

2. In part 2, §§ 2.3, 2.72, 2.73, 2.74, 2.91, 2.93, and 2.94 are removed.

[FR Doc. 96–11278 Filed 5–6–96; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 3

RIN 2900–AH87

Removal of References to ''Vicious Habits''

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: Certain Department of Veterans Affairs (VA) regulations state that to be eligible for pension a veteran must be permanently and totally disabled from nonservice-connected disability not due to the veteran's own willful misconduct or vicious habits. The statute upon which these regulations is based was changed in 1978 to delete references to ''vicious habits.'' The purpose of this rule is to conform the regulations to the statute.

EFFECTIVE DATE: This amendment is effective May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Before 1978, the statute governing entitlement to pension for nonservice-connected disability (now 38 U.S.C. 1521(a)) provided that VA pension was potentially payable to a veteran who was permanently and totally disabled from non-service-connected disability not the result of the veteran's willful misconduct or vicious habits. In 1978 the Veterans' and Survivors' Pension Improvement Act of 1978, Public Law 95–588, deleted the words ''vicious habits'' from the pension statute.

In 1990 VA amended 38 CFR 3.301(b) to delete the reference to ''vicious habits'' (55 FR 13529). 38 CFR 3.301(b) now states simply that ''disability pension is not payable for any condition due to the veteran's own willful misconduct.''

There are additional references to ''vicious habits'' in 38 CFR sections 3.314(b)(2), and 3.323(b) which apparently were overlooked when 38 CFR 3.301(b) was amended in 1990. This rule deletes those references and conforms the rules to the current language of 38 U.S.C. 1521(a).

Since these amendments are in the nature of a technical correction, the Secretary finds that notice and public procedure thereon are unnecessary. Accordingly, these amendments are promulgated without regard to the notice-and-comment and effective-date provisions of 5 U.S.C. 553.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This amendment will directly affect VA beneficiaries but will not affect small businesses.

The catalog of Federal Domestic Assistance program number is 64.104.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: April 19, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.314 Basic pension determinations.

2. In § 3.314(b)(2) remove the words ''or vicious habits''.

§ 3.323 Combined ratings.

3. In § 3.323(b)(1) and (b)(2) remove the words ''or vicious habits''.

[FR Doc. 96–11280 Filed 5–6–96; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 4

RIN 2900–AH05

Schedule for Rating Disabilities; Fibromyalgia

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by adding a diagnostic code and evaluation criteria for fibromyalgia. The intended effect of this rule is to ensure that veterans receive consistent evaluations for this condition.

DATES: This interim final rule is effective May 7, 1996. Comments must be received on or before July 8, 1996.

ADDRESSES: Mail written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420 or hand deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye St., NW., Washington, DC 20001. Comments should indicate that they are submitted in response to ''RIN 2900–AH05.'' All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye St., NW., Washington, DC 20001 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: The VA Schedule for Rating Disabilities, which constitutes 38 CFR Part 4, is a guide for the evaluation of disability resulting from diseases or injuries. This document adds to the musculoskeletal section of the Schedule, § 4.71a, a new diagnostic code, 5025, for fibromyalgia, also called fibrositis or primary fibromyalgia syndrome, and establishes criteria for its evaluation.

Fibromyalgia is a syndrome of chronic, widespread musculoskeletal pain associated with multiple tender or ''trigger'' points, and often with multiple somatic complaints. Sleep disorders are present in more than half of the patients. Anxiety, fatigue, headache, and irritable bowel symptoms are also common. Some patients complain of neurologic symptoms such as numbness and weakness, but objective neurologic abnormalities are not found. Other associated findings include depression, Raynaud's-like symptoms, and stiffness. The etiology is unknown.

Classification criteria for fibromyalgia for research and epidemiological purposes were established by the American College of Rheumatology in 1990. The first requirement is a history of widespread pain, which means pain in both the left and right sides of the body, pain both above and below the waist, and pain in both the axial (cervical spine, anterior chest, thoracic spine, or low back) and peripheral (extremity) skeleton. The second requirement is the presence of pain on digital palpation at a minimum of 11 of the following 18 tender point sites: occiput, low cervical, trapezius, supraspinatus, second rib, lateral epicondyle, gluteal, greater trochanter, knee (there is a left site and a right site at each location). In clinical practice, the diagnosis is often made on less stringent criteria, with fewer tender points required.

We are providing three levels of evaluation: 10, 20, and 40 percent, consistent, in our judgment, with the clinical range of impairment of this condition. While patients may have numerous symptoms that may be chronic, it is a benign disease that does not result in loss of musculoskeletal function. For the 40 percent level, the requirements are that the widespread pain and multiple tender points, with or without certain associated complaints, be constant, or nearly so, and refractory to therapy. For the 20 percent level, the requirements are that the pain and tender points, etc., be episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but present more than one-third of the time. For the 10 percent level, the requirement is that the pain and tender points, etc., require continuous medication for control.

It is necessary to make this rule effective upon publication. Conditions not listed in the Schedule may be evaluated under a closely related condition in which anatomical localization, functions affected, and symptomatology are closely analogous. (See 38 CFR 4.20.) However, because of the variety of analogous conditions under which fibromyalgia may be evaluated, it is necessary to establish a final rule immediately in order to avoid inconsistency in evaluations. Comments are being solicited for 60 days after publication of this document. VA may modify the rule in response to comments, if appropriate.

Because no notice of proposed rulemaking was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, this amendment would not directly affect any small entities since it would affect only individuals.

This rule has been reviewed as a ''significant regulatory action'' under E.O. 12866 by the Office of Management and Budget.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: December 7, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 4, subpart B is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. In § 4.71a, diagnostic code 5025 is added immediately after the sentence that follows diagnostic code 5024, to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

	Rating
* * * * * * *	
5025 Fibromyalgia (fibrositis, primary fibromyalgia syndrome)	
With widespread musculoskeletal pain and tender points, with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud's-like symptoms:	
That are constant, or nearly so, and refractory to therapy	40
That are episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but that are present more than one-third of the time	20
That require continuous medication for control	10
* * * * * * *	

Note: Widespread pain means pain in both the left and right sides of the body, that is both above and below the waist, and that affects both the axial skeleton (i.e., cervical spine, anterior chest, thoracic spine, or low back) and the extremities.

[FR Doc. 96–11275 Filed 5–6–96; 8:45 am]
BILLING CODE 8320–01–P

38 CFR Part 4

RIN 2900–AE41

Schedule for Rating Disabilities; Endocrine System Disabilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the Endocrine System. The effect of this action is to update the endocrine portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances which have occurred since the last review.

DATES: This amendment is effective June 6, 1996.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: As part of the first comprehensive review of the rating schedule since 1945, VA published a proposal to amend 38 CFR 4.119, which addresses the endocrine system, in the Federal Register of January 22, 1993 (58 FR 5691–95). Interested persons were invited to submit written comments on or before March 23, 1993. We received comments from The American Legion, Disabled American Veterans, Veterans of Foreign Wars, Paralyzed Veterans of America, and VA employees.

There were a number of general comments. Two commenters requested that we establish more objective criteria, especially for thyroid disease, parathyroid disease, and diabetes mellitus. One of them noted that a substantial number of subjective descriptors remained. The other recommended that we remove ambiguous and undefined terms. One commenter said that the schedule should eliminate, as much as possible, the potential for inconsistency and error. Another suggested that removing comparative descriptions such as ''severe,'' ''moderate'', etc., would not disturb the remaining criteria and would result in more uniform rating decisions.

Although the commenters offered no specific alternatives for consideration, VA agrees that objective rating criteria help assure consistency of evaluations. With that in mind, we have revised the proposed criteria. In some cases we have simply removed subjective terms such as ''marked'', ''increasingly severe'', and ''pronounced'' when they did not substantively explain or clarify the evaluation criteria. In other cases, we have supplied objective definitions of terms. In still others, establishing more objective, consistent, and unambiguous criteria required more detailed modification of the proposed criteria, which will be discussed under the affected diagnostic codes.

One commenter, while agreeing with the removal of ambiguous words such as ''severe,'' urged that the rules not be made too concrete and thus sterile.

We believe that providing clear and objective criteria is the best way to assure that disabilities will be evaluated fairly and consistently. Judgment and flexibility are required in the evaluation process, since patients do not commonly present as textbook models of disease, and those evaluating disabilities always have the task of assessing which evaluation level best represents the overall picture. (See 38 CFR 4.7.)

One commenter stated that it would be helpful to have additional notes, such as the note under DC 7913 on the evaluation of the complications of diabetes mellitus, discussing pertinent clinical and nonclinical factors to be considered in assigning evaluations.

In general, we have retained or expanded upon such notes. Where it seemed more appropriate, we have incorporated the content of notes into the evaluation criteria. We have not added notes containing background material, such as general medical information that is available in standard textbooks, or other material that neither prescribes VA policy nor establishes procedures a rating board must follow, because such material is not appropriate in a regulation.

We have revised hyperthyroidism, DC 7900, in response to the comment suggesting more objectivity. The proposed criteria required ''severe tachycardia'' at the 100 percent level and ''tachycardia'' at all other levels. According to ''The Merck Manual'' (463, 16th ed. 1992), tachycardia is a heart rate greater than 100 beats per minute, but the medical literature does not define ''severe'' tachycardia. Using the word ''severe'' therefore imposed upon the rater the burden of subjectively determining its meaning, and we have removed ''severe'' at the 100 percent level. We have also made the criteria more objective by indicating that tachycardia means more than 100 beats per minute.

We proposed that the criteria for hyperthyroidism include ''marked sympathetic nervous system, cardiovascular, or gastrointestinal symptoms'' at the 100 percent level and ''marked emotional instability'' at the 60 percent level. In both cases, we have removed the indefinite word ''marked'' because it does not substantively explain or clarify the evaluation criteria, and the criteria are clear without it.

One commenter suggested that we specify the symptoms of the sympathetic nervous system proposed as criteria at the 100 percent level of evaluation under DC 7900.

VA does not concur. The sympathetic nervous system innervates thoracic, abdominal, and pelvic viscera as well as blood vessel walls. Therefore, exaggerated sympathetic nervous system activity can have widespread manifestations including, but not limited to, elevated blood pressure, increased cardiac output, increased metabolic rate, sweating, nervousness, weight loss, tachycardia, palpitations, increased frequency of bowel movements, and heat intolerance. Certain conditions, hyperthyroidism among them, are known as sympathomimetic conditions because they mimic the effects of increased activity of the sympathetic nervous system, although the sympathetic nervous system itself is normal. Since the particular signs and symptoms that might be exhibited vary widely from individual to individual, limiting the criteria at the 100 percent level to a few selected symptoms of the sympathetic nervous system would be inappropriate.

We proposed that increased pulse pressure be one of the criteria for the 60 percent and 30 percent levels of hyperthyroidism. One commenter questioned the use of pulse pressure as a criterion, stating that it is not a diagnostic marker and is not routinely recorded on an examination report.

Pulse pressure is the difference between the systolic and diastolic blood pressures, and it is readily available for anyone who has had a blood pressure recorded. Hyperthyroidism is one of a number of diseases that may produce an increased (or widened) pulse pressure, which results from an elevated systolic blood pressure and a lowered diastolic blood pressure. Because increased pulse pressure is a common sign of hyperthyroidism, it is an appropriate criterion to use in evaluating hyperthyroidism.

One commenter suggested that tremor (one of several proposed criteria for hyperthyroidism at the 10 and 30

percent levels of evaluation) be evaluated as a secondary condition with a minimum evaluation of 20 percent, even for involvement of only one hand, because it is an employment handicap.

VA does not concur. There are several types of tremors, and it appears that the commenter may have based his suggestion on the observation of an individual with a tremor other than the type characteristic of hyperthyroidism. The tremor of hyperthyroidism is a fine tremor most noticeable in the outstretched hands. It is characterized as a physiologic tremor, i.e., one that is an exaggeration of the normal physiologic tremor that virtually everyone experiences at times (''Harrison's Principles of Internal Medicine'' 167 (Jean D. Wilson, M.D. et al. eds., 12th ed. 1991)), and is not severely disabling. Including tremor as one of the requirements at the 10 and 30 percent levels of evaluation for hyperthyroidism takes into account the type and severity of the characteristic hyperthyroid-induced tremor. In our judgment, the presence of such a tremor would not, in and of itself, warrant the 20 percent evaluation the commenter suggests.

One commenter suggested that emotional disorders and gastrointestinal and cardiovascular symptoms due to thyroid conditions (hyperthyroidism, DC 7900; toxic adenoma of thyroid gland, DC 7901; hypothyroidism, DC 7903) be evaluated separately rather than being part of the evaluation criteria for thyroid conditions.

Severe thyroid disease may produce distinct secondary conditions, including certain mental disorders, and such conditions can always be service-connected and separately evaluated (see 38 CFR 3.310(a)). Some secondary conditions, e.g., dementia under hypothyroidism (DC 7903), are specifically included in the evaluation criteria for the 60- or 100-percent levels of thyroid disease. This does not exclude the possibility of service-connecting and separately evaluating the secondary condition, but provides an alternative means of evaluation by allowing the secondary condition to be used to support the 60- or 100-percent evaluation level of thyroid disease. However, the same condition cannot be separately evaluated and concurrently used to evaluate the primary condition (DC's 7900, 7901, or 7903). (See 4.14 of this part.) This is comparable to the evaluation of diabetes mellitus (DC 7913), where compensable complications of diabetes may be either separately evaluated or used to support a 100-percent evaluation.

The request for separate evaluation of symptoms is a different issue. Because of the widespread effects of thyroid hormone, the symptoms of thyroid disease are diverse, reflecting effects on multiple body systems. However, the presence of such symptoms (e.g., gastrointestinal symptoms under hyperthyroidism (DC 7900)) can be an inherent part of thyroid disease and does not ordinarily indicate that a separate and distinct secondary condition is present. Unless they are clearly part of a distinct condition secondary to thyroid disease, the symptoms must be used in the overall evaluation criteria for the thyroid condition. The evaluation of secondary conditions is discussed in the preceding paragraph.

In the previous schedule, nontoxic adenoma of the thyroid (DC 7902) was evaluated on the basis of pressure symptoms or marked disfigurement. We proposed that it be evaluated at the 20 percent level if there is ''marked disfigurement of the head or neck.'' One commenter suggested that nontoxic adenoma of the thyroid be rated analogous to DC 7800 (scars, disfiguring, head, face, or neck).

We do not concur. Disfigurement from a nontoxic adenoma of the thyroid is not a skin phenomenon but an enlargement of the thyroid that produces an unsightly neck mass through sheer bulk. Factors that are used to evaluate skin conditions, such as discoloration and color contrast, are not appropriate for evaluating that type of disfigurement. In response to the general request for more objective criteria previously mentioned, we have removed the word ''marked'', leaving ''with disfigurement of the head or neck'' as the sole criterion for a 20 percent evaluation. In our judgment, any adenoma that is substantial enough to be disfiguring warrants a 20 percent evaluation. This does not represent a substantive change from the proposed criteria.

The proposed note under DC 7902 stated to rate as impairment of affected organ if a higher evaluation is warranted. For the sake of clarity, we have revised the note to state that if there are symptoms due to pressure on adjacent organs such as the trachea, larynx, or esophagus, nontoxic adenoma of the thyroid will be evaluated under the diagnostic code for disability of that organ, if doing so would result in a higher evaluation. This does not represent a substantive change from the proposed note.

We proposed to delete the zero percent level of evaluation for nontoxic adenoma (DC 7902) that was present in the previous schedule. However, to clarify that not all nontoxic adenomas are considered disfiguring, we have restored the zero percent level for those ''without disfigurement of the head or neck.'' This does not represent a substantive change.

For the sake of clarity, we have also removed the indefinite word ''severe'' before ''cold intolerance'' in the proposed criteria for a 100 percent evaluation for hypothyroidism (DC 7903) and revised the indefinite criterion ''slow pulse'' to the more precise medical term ''bradycardia'', which is defined as less than 60 beats per minute. We have also revised the requirement of ''mental symptoms'' to ''mental disturbance,'' since some of the possible manifestations are symptoms but others are distinct mental disorders. These are not substantive changes.

One commenter, stating that obesity is such a pervasive problem in American society that weight gain is not a true measure or mark of a specific disorder, felt that weight gain should not be included in the criteria for the 60 percent evaluation for hypothyroidism (DC 7903).

VA does not concur. There are special characteristics of the weight gain associated with hypothyroidism that distinguish it from the weight gain seen in simple obesity. The weight gain in hypothyroidism is largely due to fluid retention, which appears as ascites, pleural effusion, edema of the extremities, or even edema of the nervous system (''Williams Textbook of Endocrinology'' 447–48 (Jean D. Wilson, M.D. and Daniel W. Foster, M.D. eds., 8th ed. 1992)). This type of weight gain is unlikely to be confused with obesity. For this reason, we believe that weight gain is appropriate as part of the overall criteria for the evaluation of hypothyroidism, and we have retained it among the criteria for the 60 percent level.

The previous schedule included ''sluggish mentality and other indications of myxedema'' in the criteria for the 30 percent evaluation level of hypothyroidism (DC 7903). We proposed to retain mental sluggishness as one of the criteria, but to delete the term myxedema. A commenter objected to the removal of myxedema, saying there is no basis for our contention that myxedema is seldom encountered.

The term myxedema is sometimes used loosely to refer to hypothyroidism in general, but in its stricter meaning, it is full-blown hypothyroidism with fluid retention. Hypothyroidism may present at any level of severity, including a subclinical form, and myxedema in the strict sense is found only in severe disease, when hypothyroidism is

untreated or has reached an advanced stage. We therefore replaced ''sluggish mentality with other indications of myxedema'' at the 30 percent level with less ambiguous criteria: fatigability, constipation, and mental sluggishness.

The previous schedule assigned hyperthyroidism (DC 7900) and hypothyroidism (DC 7903) minimum ten percent evaluations when continuous medication is required for control. We proposed to delete the minimum evaluations, and three commenters objected.

Upon further review, VA agrees that a ten percent evaluation is appropriate when continuous medication is required for control of these conditions because such treatment implies both the need for repeated medical evaluations and the possibility of side effects that may themselves require treatment. We have therefore restored the ten percent evaluation level under diagnostic codes 7900 and 7903 for those who require continuous medication. For the sake of consistency, we have also added a ten percent evaluation level under hyperparathyroidism (DC 7904) for those who require continuous medication. We have recast the note under hypoparathyroidism (DC 7905) establishing a minimum evaluation of ten percent when continuous medication is required as ten percent evaluation criteria. The change under DC 7905 is editorial in nature and does not represent any substantive change to the criteria as proposed.

''Decreased levels of circulating thyroid hormones (T4 and/or T3 by specific assays)'' was one of the criteria for a 100 percent evaluation for hypothyroidism (DC 7903) in the previous schedule. We proposed a change to ''undetectable levels of circulating thyroid hormones'' as one of the criteria for the 100 percent level. Two commenters felt that the proposed change made the criteria too stringent.

VA concurs. Therapy is instituted as soon as medical personnel learn that there are no detectable levels of hormone; the therapy produces a rapid reversion of hormone levels toward normal but leaves the clinical signs of disease to resolve more slowly. Although many endocrine conditions require laboratory confirmation of hormone levels for diagnosis, the hormone levels may not correlate with the severity of the clinical findings, and laboratory findings are therefore more useful for diagnosis than evaluation. For these reasons, we have removed: (1) ''undetectable levels of circulating thyroid hormones'' from the criteria for the 100 percent level of hypothyroidism (DC 7903), (2) ''decreased levels of circulating thyroid hormone'' from the 60 percent and 30 percent levels of hypothyroidism, (3) ''elevated levels of circulating thyroid hormones'' as a requirement for the 100 and 60 percent levels of hyperthyroidism (DC 7900), and (4) ''elevated blood and urine calcium levels'' as a requirement for the 100 and 60 percent levels of hyperparathyroidism (DC 7904).

One commenter suggested that we quantify weight loss by indicating a percentage below normal weight or similar objective measure rather than using the term ''marked weight loss'' for the 100 and 60 percent levels of hyperparathyroidism (DC 7904).

In addition to removing the references to laboratory findings, as discussed above, we have modified the criteria for hyperparathyroidism by removing ''marked weight loss'' from the criteria for the 100 and 60 percent levels. Since severe hyperparathyroidism may manifest itself through a variety of gastrointestinal symptoms, weight loss being only one (Williams, 1431), we have replaced the separate requirement for weight loss with the more flexible requirement for ''gastrointestinal symptoms (nausea, vomiting, anorexia, constipation, weight loss, or peptic ulcer)'' at the 100 and 60 percent levels. This change recognizes that gastrointestinal symptoms are part of an overall pattern of abnormalities, but that any individual symptom, such as a specified amount of weight loss, is not required for either level of severity. This offers more flexibility than the proposed requirement for marked weight loss.

We proposed that ocular disturbances be one of the criteria for both the 100 percent and 60 percent levels of evaluation for hypoparathyroidism (DC 7905). One commenter, while giving no reason, requested that ocular disturbances be removed as a criterion.

There are two distinct types of ocular disturbance that may occur in hypoparathyroidism—cataracts and papilledema (Williams, 1456–57; Harrison, 1915–16). Papilledema, if present, would be an indication of the increased intracranial pressure that sometimes occurs in hypoparathyroidism, but it is only one possible manifestation of increased intracranial pressure. Cataracts are unrelated to increased intracranial pressure. For the sake of making the criteria clearer and more objective, we have substituted ''cataract or evidence of increased intracranial pressure (such as papilledema)'' for ''ocular disturbances''.

One commenter mentioned hypoparathyroidism as another example of a condition where objective criteria should be employed in place of ambiguous terms.

Criteria we proposed for the 100 percent level of hypoparathyroidism, in addition to ocular disturbances, were: seizures or convulsions, muscular spasm (tetany), or marked neuromuscular excitability. Since muscular spasms and convulsions are themselves two specific manifestations of marked neuromuscular excitability, for more clarity and to eliminate redundancy, we have retained marked neuromuscular excitability as one of the criteria, giving its most common manifestations—convulsions, muscular spasms (tetany), and laryngeal stridor—in parentheses. By providing this list of conditions, we have made the meaning of ''marked'' definite enough that it substantively clarifies the degree of neuromuscular excitability needed to support a 100 percent evaluation.

For the 60 percent level of hypoparathyroidism, the proposed criteria were: marked neuromuscular excitability, ocular disturbances, and constipation or numbness and tingling of the extremities. We have revised the proposed criteria by providing three alternative sets of criteria: marked neuromuscular excitability, a combination of paresthesias (of arms, legs, or circumoral area) and cataract, or a combination of paresthesias and increased intracranial pressure. While this represents a substantive change, it responds to the general comment that we eliminate, as much as possible, the potential for inconsistency and error. The proposed criteria appeared to be more stringent at the 60 percent level than at the 100 percent level, and there also could have been confusion about which of the criteria listed were required and which were alternatives. The revision eliminates this confusion, affords more flexibility, and provides a clearer differentiation between the 100 and 60 percent levels.

We deleted the word ''marked'', modifying loss of muscle strength, at the 100 percent level of Cushing's syndrome (DC 7907). This is more objective because the rater does not now have to estimate whether a reported loss of muscle strength is ''marked.'' The change allows any reported loss of muscle strength to serve as one of the requirements at the 100 percent level.

We proposed to retain 100 and 60 percent levels of evaluation for Cushing's syndrome, as in the previous schedule. One commenter stated that the condition warrants additional levels of evaluation, especially when it is secondary to medication.

VA agrees. Although secondary Cushing's syndrome (due to steroid

therapy) has physical findings indistinguishable from primary Cushing's syndrome (Harrison, 1723), there is a wide range of severity depending on the dosage of steroids used, duration of therapy, etc. We have therefore added a 30 percent level of Cushing's syndrome for those with milder manifestations: striae, obesity, moon face, glucose intolerance, and vascular fragility.

The previous schedule required increased intracranial pressure, hypertension, genital decline and atrophy, hypotrichosis, hypoglycemia, obesity, and asthenia for a 100 percent evaluation of acromegaly (DC 7908). We proposed to revise the criteria by requiring increased intracranial pressure, arthropathy, glucose intolerance, hypertension, cardiomegaly, and visual impairment. One individual felt that represents a tightening of the requirements and recommended that cardiomegaly not be required at the 100 percent level.

Upon further consideration, VA has revised the proposed criteria for the 100 percent level. Cardiomegaly is present in 80 percent of acromegalics and may be part of the generalized organomegaly that is sometimes seen (Williams, 272). It is therefore seen commonly enough to be an appropriate criterion. Hypertension occurs in approximately 20–40 percent of acromegalics, and overactivity of the sympathetic nervous system has been suggested as a possible etiology. Hypertension and cardiomegaly are thus independent entities, with apparently different etiologies (although they may be associated when hypertension results in cardiomegaly). Because either may be a manifestation of acromegaly, instead of removing cardiomegaly, we have made cardiomegaly an alternative criterion to hypertension at the 100 percent level, rather than requiring both.

The previous schedule required intracranial pressure as one of the criteria for the 100 percent level of acromegaly, and symptoms of intracranial pressure in the optic region for the 60 percent level. We proposed to require both increased intracranial pressure and visual impairment for the 100 percent level. One commenter, noting that increased intracranial pressure specifically impairs peripheral vision, stated that ''visual impairment'' is too broad a term. He said we should distinguish visual field loss from central visual acuity loss and other visual deficits.

We agree. The term ''visual impairment'' can have many meanings, and not all types of visual impairment result from acromegaly. Those that do occur are the result of localized or generalized increased intracranial pressure because acromegaly is almost always due to a pituitary adenoma (Merck, 1064). There may, for example, be a visual field defect when the pituitary tumor presses on the optic chiasm. However, it is increased intracranial pressure from the tumor that is the underlying cause of any visual impairment that is present, and the increased pressure is at times manifested only by findings other than visual impairment. We have therefore revised the criteria by deleting the requirement for both increased intracranial pressure and visual impairment in favor of a more flexible, but also more specific, requirement for evidence of increased intracranial pressure ''such as visual field defect.'' This will allow other possible manifestations of increased intracranial pressure, such as papilledema, headaches, etc., to satisfy one of the requirements for a 100 percent level of evaluation and will exclude as criteria visual impairments that have no relationship to acromegaly.

In further response to the general request for more objective criteria, we have revised the proposed criteria for diabetes insipidus (DC 7909) by removing the subjective terms ''excessive thirst'' and ''severe polyuria'' wherever they occurred in favor of the more objective phrase ''polyuria with near-continuous thirst.'' We also revised the criteria for the 100 percent evaluation, which we proposed to be: ''excessive thirst and severe polyuria requiring parenteral hydration therapy, episodes of syncope, and low systolic and diastolic blood pressure'' to a requirement for ''polyuria with near-continuous thirst, and more than two documented episodes of dehydration requiring parenteral hydration in the past year.'' The excretion of large quantities of very dilute urine is the underlying abnormality in this condition, and this leads to dehydration and hypovolemia. Syncope and low blood pressure are not isolated separate signs but are common effects of dehydration, and these criteria therefore encompass both parenteral hydration therapy, used to treat dehydration, and two of the signs of dehydration (syncope and low blood pressure).

The proposed criteria for the 60 percent level included excessive thirst, polyuria, dehydration, serum osmolality greater than 295 mOsm/kg., and urine osmolality less than 38 mOsms/kg. We revised these to a requirement for one or two documented episodes of dehydration requiring parenteral hydration in the past year, in addition to the basic requirements of thirst and polyuria. Serum and urine osmolality levels are objective criteria, but osmolality levels were not proposed as criteria for the 20, 40, or 100 percent levels. The change in favor of specifying the number of episodes of dehydration provides criteria that are more parallel and comparable from one level to the next, and are objective enough that the additional laboratory tests are not needed to determine a 60 percent level of severity. Finally, we have changed the proposed requirement for the 40 percent level from ''polyuria, excessive thirst, and dehydration'' to ''polyuria with near-continuous thirst, and one or more episodes of dehydration in the past year not requiring parenteral hydration.''

We have also deleted the words ''increasingly,'' ''severe,'' ''pronounced,'' and ''marked'' wherever they occurred in the proposed evaluation criteria for Addison's disease (DC 7911). These words did not substantively explain or clarify the evaluation criteria, and the criteria are clear without them.

The proposed criteria for the 20 percent level of Addison's disease required either corticosteroid therapy or a combination of weakness and fatigability. In response to the commenter who said that the schedule should eliminate the potential for inconsistency, we have added alternative criteria for the 20 percent level that are parallel to the higher levels. These criteria require one or two crises or two to four episodes during the past year, which assures consistency of evaluation for those with fewer crises or episodes. For further clarity of the criteria, we added two notes under DC 7911 that define Addisonian ''crises'' and Addisonian ''episodes.''

In the previous schedule, under diabetes mellitus (DC 7913), regulation or careful regulation of activities (defined as avoidance of strenuous occupational and recreational activities) was one of the criteria at the 100 percent and 40 percent evaluation levels. We proposed ''regulation of activities,'' not further defined, as a criterion at the 100, 60, and 40 percent levels. One commenter felt that the proposed change in language made the meaning less clear.

We agree and have retained the definition used in the previous rating schedule, ''avoidance of strenuous occupational and recreational activities,'' and included it in the evaluation criteria for the 100 percent level.

The same commenter said that it is meaningless to include limitation of

activities as a factor in evaluating diabetes mellitus since information of this type is not provided in a VA examination.

VA disagrees. VA's Physician's Guide for Disability Evaluation Examinations is meant to insure that all necessary tests are performed and that all findings are provided for diagnosis and/or evaluation to meet the specific requirements of the Schedule for Rating Disabilities and related programs. It is available to VA and fee-basis examiners conducting examinations for VA disability benefits. The Guide will be revised to provide detailed guidelines for examinations reflecting the revised provisions of the rating schedule. It is incumbent upon the rating board to return to the examiner reports that lack information necessary to apply the provisions of the rating schedule (see § 4.2 of 38 CFR).

The proposed 100 percent level for diabetes mellitus required ''repeated'' episodes of ketoacidosis or hypoglycemic reactions requiring, among other things, ''frequent'' hospital or physician treatment. We received one comment requesting that we clearly define ''frequent treatment.''

We concur and have revised that portion of the criteria to require ''episodes of ketoacidosis or hypoglycemic reactions requiring at least three hospitalizations per year or weekly visits to a diabetic care provider.'' Similarly, for the 60 percent level we have changed the requirement from ''occasional'' episodes of ketoacidosis or hypoglycemic reactions to ''episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider.'' The change from a requirement for physician treatment to a requirement for visits to a diabetic care provider reflects the fact that diabetics are usually under the care of a multidisciplinary diabetic team, and at any given visit may see a nurse practitioner, physician's assistant, etc.

The previous schedule required ''severe complications'' as one of the alternative criteria for the 100 percent level of diabetes mellitus (DC 7913). The proposed revision instead required ''severe complications such as retinopathy, nephropathy, arteriosclerosis, or neuropathy'' as one of the alternatives. For the 60 percent level the previous schedule required ''mild complications, such as pruritus ani, mild vascular deficiencies, or beginning diabetic ocular disturbances.'' The proposed revision required ''mild complications such as mild vascular deficiencies or beginning diabetic ocular disturbances.''

A commenter stated that the word ''severe,'' referring to complications at the 100 percent level of diabetes mellitus, is a subjective description that should be changed.

VA agrees. We have revised the language at both the 60 and 100 percent levels to make it more objective, consistent from level to level, and more precise. We have revised the 100 percent criteria to require complications that would be compensable if separately evaluated and the 60 percent criteria to require complications that would not be compensable if separately evaluated. This is also consistent with note (1), following DC 7913, that directs that compensable complications of diabetes mellitus are to be rated separately unless they support a 100 percent evaluation and that noncompensable complications are considered part of the diabetic process under DC 7913.

One commenter questioned whether a 10 percent evaluation included those with Type II (adult onset) diabetes without symptoms and not following a restricted diet.

The criterion we proposed for the 10 percent level, ''controlled by restricted diet only,'' refers to anyone with diabetes mellitus mild enough not to require insulin or oral hypoglycemics. For the sake of greater clarity, we have revised the requirement for zero percent to ''manageable by restricted diet only.'' This does not represent a substantive change.

A proposed note under diabetes mellitus (DC 7913) stated that when diabetes mellitus has been definitely diagnosed, a glucose tolerance test need not be ordered solely for rating purposes. A commenter said that the term ''definitely diagnosed'' is an entirely subjective descriptor.

To assure that there is no misunderstanding about the meaning, we have changed the term ''definitely diagnosed'' to ''conclusively diagnosed.'' The intent of the term ''conclusively diagnosed'' is to indicate those individuals who have a diagnosis of diabetes mellitus that has been established through the usual medical means, both clinical and laboratory, and to exclude those with insufficient evidence to support a clear diagnosis.

One commenter stated that the revision should address the basic concept of lost earnings due to time lost from work. He suggested no alternatives.

In our judgment, the evaluation criteria we have provided are clearly linked to lost earnings because they include such things as periods of hospitalization, episodes of incapacitating symptoms, muscular weakness, arthropathy, fatigability, etc., all of which may affect the ability to work. Furthermore, we have provided criteria for the 100 percent levels that indicate a degree of severity that would render the average person completely unable to work. Thus the proposed criteria do address the effects of time lost from work.

An additional general comment was that recently discharged veterans would be discriminated against by being evaluated under the revised rating schedule, which he said is ''deliberalized''.

VA disagrees. 38 U. S. C. gives the Secretary the authority to readjust the schedule of ratings from time to time in accordance with experience. The significant medical advances that have occurred since 1945 form part of the experience that must be taken into account in revising the rating schedule. In order to assure fair and consistent evaluations for veterans, the schedule must reflect actual residuals of disease or injuries, not what residuals might have been in the past. Furthermore, Congress foresaw that evaluations might change when the rating schedule is revised and amended 38 U.S.C. 1155 to prohibit a reduction in a veteran's disability rating because of a readjustment of the rating schedule unless an improvement in the disability has been shown.

The previous schedule had a 100 percent evaluation for one year following the cessation of treatment of malignancies. We proposed that the 100 percent evaluation continue indefinitely but that there be a mandatory VA examination six months following the cessation of treatment, with any change in evaluation based on that or any subsequent examination, to be implemented under the provisions of 38 CFR 3.105(e). Three commenters recommended that VA retain the evaluation criteria from the previous schedule.

We do not concur. An examination six months following the cessation of treatment affords sufficient time for convalescence and stabilization of residuals because the rule requires an examination, not a reduction, six months after the cessation of treatment. In fact, the rule precludes a reduction at that time because the process of re-evaluation does not begin until then.

First, there must be a VA examination six months after completion of treatment. If the results of that or any subsequent examination warrant a reduction in evaluation, the reduction will be implemented under the provisions of 38 CFR 3.105(e), which

require a 60 day notice before VA reduces an evaluation and an additional 60 day notice before the reduced evaluation takes effect. The revision not only requires a current examination to assure that all residuals are documented, but also offers the veteran more contemporaneous notice of any proposed action and expands the veteran's opportunity to present evidence showing that the proposed action should not be taken. In our judgment, this method will better ensure that actual side-effects and recuperation times are taken into account because they will be noted on the required VA exam.

Because of commenters' concerns, however, we have revised the note under this code so that it cannot be misinterpreted as requiring a reduction six months after treatment is terminated. We have also added to the note a direction to rate on residuals, if there has been no local recurrence or metastasis, in order to make these provisions consistent with those we provided for malignancies of the revised genitourinary system. This is not a substantive change, but has been made to provide further clarity, as well as internal consistency within the rating schedule.

One commenter said that VA exceeded its mandate by proposing the change in convalescence.

VA does not concur. VA's mandate arises from 38 U.S.C. 1155, which authorizes the Secretary to readjust the rating schedule from time to time in accordance with experience.

Another commenter objected to the change in convalescence, saying that the average person would require at least 12 months of convalescence for brain surgery.

VA does not agree. The convalescent periods adopted in this change represent, in our judgment, based on sound medical advice, neither the longest nor shortest periods that any individual patient might require for recovery, but the usual or normal periods during which a normal patient, under normal circumstances, would be expected to recover from a specific condition or surgical procedure. Furthermore, these convalescent periods represent the point at which the individual patient's condition is to be evaluated by examination, and do not preclude an extension of a total evaluation, if appropriate, based on the individual patient's condition.

Another commenter said that the proposed changes in convalescent periods appear to be purely economically based.

The myriad of advances in medicine that have occurred since 1945, such as early ambulation, better surgical techniques, new anesthetics, and better control of infectious diseases, have led to strikingly shorter periods of convalescence after both medical and surgical treatment. The revisions were proposed based on medical considerations; no cost studies or projections were conducted in conjunction with this review. Cost cutting was therefore not an issue.

One commenter stated that applying § 3.105(e) will cause significant problems from an administrative standpoint and will often significantly lengthen the periods for which a convalescent rate is paid.

VA believes that the changes in convalescence following treatment of malignancy where § 3.105(e) must be applied can be implemented without serious administrative problems. Similar changes are being made in each body system, and any procedural changes that may be necessary to implement the new process will be made as needed. We have included the implementation of the provisions of § 3.105(e) to assure that veterans are afforded due process before convalescent ratings are reduced, and if administrative delays do occur from time to time, they cannot operate to the disadvantage of veterans. Also, since § 3.105(e) applies only to reductions in ''compensation payments currently being made,'' it need not be applied in cases where a total evaluation will be assigned and reduced retroactively.

One commenter urged that VA provide zero percent evaluations for all diagnostic codes.

We do not agree. On October 6, 1993 VA revised its regulation addressing the issue of zero percent evaluations (38 CFR 4.31) to authorize assignment of a zero percent evaluation for any disability in the rating schedule when minimum requirements for a compensable evaluation are not met. In general, that regulatory provision precludes the need for zero percent evaluation criteria. We have retained zero percent evaluation criteria only when necessary to give the rater clear and unambiguous instructions on rating where it might otherwise be unclear whether commonly occurring minor findings warrant a compensable evaluation.

One commenter noted that veterans are receiving diagnoses of hyperlipidemia, elevated triglycerides, and elevated cholesterol, and the commenter asked that we address the handling of claims for these findings.

The diagnoses listed by the commenter are actually laboratory test results, and are not, in and of themselves, disabilities. They are, therefore, not appropriate entities for the rating schedule to address. In addition, they have no special relationship to the endocrine system.

We have made several additional changes based on our own review of the proposed regulation. For example, we edited the proposed note under malignant neoplasm (DC 7914) by modifying the sentence ''Any change in evaluation based upon that examination shall be subject to the provisions of § 3.105(e) of this chapter'' to ''Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.'' The change assures that the veteran will be given the notices described above regardless of when an examination leading to a proposed change in evaluation is done and is consistent with changes we have made in the revision of other portions of the rating schedule. This represents no substantive change.

The previous schedule had a note under DC 7900, hyperthyroidism, addressing the issue of evaluating hyperthyroid heart disease if disease of the heart predominates. We have expanded the note for clarity by adding ''if doing so would result in a higher evaluation than using the criteria above.''

We also made a nonsubstantive editorial change in the note following pheochromocytoma (DC 7918) from the proposal to rate hyperpituitarism, hyperaldosteronism and pheochromocytoma as malignant or benign neoplasm under DC 7914 or 7915, whichever is applicable, to a direction to evaluate those conditions under benign or malignant neoplasms as appropriate.

For the sake of greater clarity and ease of comparison, we rearranged the order of the criteria for diabetes mellitus (DC 7913) regarding need for insulin or an oral hypoglycemic agent, diet, and regulation of activities, putting them in the same order at all levels where they appear. This does not represent a substantive change.

We proposed that constipation be one of the criteria for the 60 percent level of hypoparathyroidism (DC 7905). However, because standard medical textbooks such as ''The Merck Manual'' and ''Williams Textbook of Endocrinology'' do not include it as a characteristic clinical manifestation of hypoparathyroidism, we have concluded that it is not appropriate as

part of VA's evaluation criteria, and we have, therefore, removed it.

We proposed that DC 7901 (thyroid gland, toxic adenoma of) be rated as DC 7900 (hyperthyroidism). For the convenience of rating specialists, we have instead repeated the rating criteria for DC 7900 under DC 7901. For the same reason, we have repeated the note under DC 7914, which explains evaluation of malignant neoplasms, under C-cell hyperplasia of the thyroid (DC 7919), rather than instructing to rate C-cell hyperplasia of the thyroid as malignant neoplasm, as we proposed. These changes reduce the risk of error because the necessary criteria are closely associated with the diagnostic code rather than on another page, and they also save time for the rating specialist. They do not represent substantive changes.

We have made additional nonsubstantive editorial changes in language by substituting ''evaluate'' for ''rate'' in several instances and by changing ''neoplasms'' to ''neoplasm'' in DC's 7914 and 7915, for internal consistency in the rating schedule.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted with the amendments noted above.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: December 5, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. Section 4.119 is revised to read as follows:

§ 4.119 Schedule of ratings—endocrine system.

	Rating
7900 Hyperthyroidism	
Thyroid enlargement, tachycardia (more than 100 beats per minute), eye involvement, muscular weakness, loss of weight, and sympathetic nervous system, cardiovascular, or astrointestinal symptoms	100
Emotional instability, tachycardia, fatigability, and increased pulse pressure or blood pressure	60
Tachycardia, tremor, and increased pulse pressure or blood pressure	30
Tachycardia, which may be intermittent, and tremor, or; continuous medication required for control	10
NOTE (1): If disease of the heart is the predominant finding, evaluate as hyperthyroid heart disease (DC 7008) if doing so would result in a higher evaluation than using the criteria above.	
NOTE (2): If ophthalmopathy is the sole finding, evaluate as field vision, impairment of (DC 6080); diplopia (DC 6090); or impairment of central visual acuity (DC 6061–6079).	
7901 Thyroid gland, toxic adenoma of	
Thyroid enlargement, tachycardia (more than 100 beats per minute), eye involvement, muscular weakness, loss of weight, and sympathetic nervous system, cardiovascular, or gastrointestinal symptoms	100
Emotional instability, tachycardia, fatigability, and increased pulse pressure or blood pressure	60
Tachycardia, tremor, and increased pulse pressure or blood pressure	30
Tachycardia, which may be intermittent, and tremor, or; continuous medication required for control	10
NOTE (1): If disease of the heart is the predominant finding, evaluate as hyperthyroid heart disease (DC 7008) if doing so would result in a higher evaluation than using the criteria above.	
NOTE (2): If ophthalmopathy is the sole finding, evaluate as field vision, impairment of (DC 6080); diplopia (DC 6090); or impairment of central visual acuity (DC 6061–6079).	
7902 Thyroid gland, nontoxic adenoma of	
With disfigurement of the head or neck	20
Without disfigurement of the head or neck	0
NOTE: If there are symptoms due to pressure on adjacent organs such as the trachea, larynx, or esophagus, evaluate under the diagnostic code for disability of that organ, if doing so would result in a higher evaluation than using this diagnostic code.	
7903 Hypothyroidism	
Cold intolerance, muscular weakness, cardiovascular involvement, mental disturbance (dementia, slowing of thought, depression), bradycardia (less than 60 beats per minute), and sleepiness	100
Muscular weakness, mental disturbance, and weight gain	60
Fatigability, constipation, and mental sluggishness	30
Fatigability, or; continuous medication required for control	10
7904 Hyperparathyroidism	
Generalized decalcification of bones, kidney stones, gastrointestinal symptoms (nausea, vomiting, anorexia, constipation, weight loss, or peptic ulcer), and weakness	100
Gastrointestinal symptoms and weakness	60
Continuous medication required for control	10
NOTE: Following surgery or treatment, evaluate as digestive, skeletal, renal, or cardiovascular residuals or as endocrine dysfunction.	
7905 Hypoparathyroidism	
Marked neuromuscular excitability (such as convulsions, muscular spasms (tetany), or laryngeal stridor) plus either cataract or evidence of increased intracranial pressure (such as papilledema)	100
Marked neuromuscular excitability, or; paresthesias (of arms, legs, or circumoral area) plus either cataract or evidence of increased intracranial pressure	60
Continuous medication required for control	10
7907 Cushing's syndrome	
As active, progressive disease including loss of muscle strength, areas of osteoporosis, hypertension, weakness, and enlargement of pituitary or adrenal gland	100
Loss of muscle strength and enlargement of pituitary or adrenal gland	60
With striae, obesity, moon face, glucose intolerance, and vascular fragility	30
NOTE: With recovery or control, evaluate as residuals of adrenal insufficiency or cardiovascular, psychiatric, skin, or skeletal complications under appropriate diagnostic code.	
7908 Acromegaly	

	Rating
Evidence of increased intracranial pressure (such as visual field defect), arthropathy, glucose intolerance, and either hypertension or cardiomegaly	100
Arthropathy, glucose intolerance, and hypertension	60
Enlargement of acral parts or overgrowth of long bones, and enlarged sella turcica	30
7909 Diabetes insipidus	
Polyuria with near-continuous thirst, and more than two documented episodes of dehydration requiring parenteral hydration in the past year	100
Polyuria with near-continuous thirst, and one or two documented episodes of dehydration requiring parenteral hydration in the past year	60
Polyuria with near-continuous thirst, and one or more episodes of dehydration in the past year not requiring parenteral hydration	40
Polyuria with near-continuous thirst	20
7911 Addison's disease (Adrenal Cortical Hypofunction)	
Four or more crises during the past year	60
Three crises during the past year, or; five or more episodes during the past year	40
One or two crises during the past year, or; two to four episodes during the past year, or; weakness and fatigability, or; corticosteroid therapy required for control	20
NOTE (1): An Addisonian ''crisis'' consists of the rapid onset of peripheral vascular collapse (with acute hypotension and shock), with findings that may include: anorexia; nausea; vomiting; dehydration; profound weakness; pain in abdomen, legs, and back; fever; apathy, and depressed mentation with possible progression to coma, renal shutdown, and death.	
NOTE (2): An Addisonian ''episode,'' for VA purposes, is a less acute and less severe event than an Addisonian crisis and may consist of anorexia, nausea, vomiting, diarrhea, dehydration, weakness, malaise, orthostatic hypotension, or hypoglycemia, but no peripheral vascular collapse.	
NOTE (3): Tuberculous Addison's disease will be evaluated as active or inactive tuberculosis. If inactive, these evaluations are not to be combined with the graduated ratings of 50 percent or 30 percent for non-pulmonary tuberculosis specified under § 4.88b. Assign the higher rating.	
7912 Pluriglandular syndrome	
Evaluate according to major manifestations.	
7913 Diabetes mellitus	
Requiring more than one daily injection of insulin, restricted diet, and regulation of activities (avoidance of strenuous occupational and recreational activities) with episodes of ketoacidosis or hypoglycemic reactions requiring at least three hospitalizations per year or weekly visits to a diabetic care provider, plus either progressive loss of weight and strength or complications that would be compensable if separately evaluated	100
Requiring insulin, restricted diet, and regulation of activities with episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider, plus complications that would not be compensable if separately evaluated	60
Requiring insulin, restricted diet, and regulation of activities	40
Requiring insulin and restricted diet, or; oral hypoglycemic agent and restricted diet	20
Manageable by restricted diet only	10
NOTE (1): Evaluate compensable complications of diabetes separately unless they are part of the criteria used to support a 100 percent evaluation. Noncompensable complications are considered part of the diabetic process under diagnostic code 7913.	
NOTE (2): When diabetes mellitus has been conclusively diagnosed, do not request a glucose tolerance test solely for rating purposes.	
7914 Neoplasm, malignant, any specified part of the endocrine system	100
NOTE: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	
7915 Neoplasm, benign, any specified part of the endocrine system rate as residuals of endocrine dysfunction.	
7916 Hyperpituitarism (prolactin secreting pituitary dysfunction)	
7917 Hyperaldosteronism (benign or malignant)	
7918 Pheochromocytoma (benign or malignant)	
NOTE: Evaluate diagnostic codes 7916, 7917, and 7918 as malignant or benign neoplasm as appropriate.	
7919 C-cell hyperplasia of the thyroid	100
NOTE: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	

[FR Doc. 96–11281 Filed 5–6–96; 8:45 am]

BILLING CODE 8320–01–P

Board of Veterans' Appeals

38 CFR Parts 19 and 20

RIN 2900–AH16

Appeals Regulations, Rules of Practice: Single Member and Panel Decisions; Reconsiderations; Order of Consideration

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Appeals Regulations and Rules of Practice of the Board of Veterans'' Appeals. The amendments incorporate recent statutory changes (including provisions to allow matters to be decided by individual Board members), set forth procedures regarding reconsideration of decisions, change office names and designations due to administrative changes within the Board, and make other nonsubstantive changes.

DATES: Effective Date: This final rule is effective May 7, 1996.

Applicability Dates: The incorporation of statutory provisions and statutory interpretations contained in this final rule will be applied retroactively from the effective dates of the statutory provisions. For more information concerning the application of the provisions of this final rule, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: This document amends the Appeals Regulations, 38 CFR Part 19, and the Rules of Practice, 38 CFR Part 20, of the

Board of Veterans' Appeals (Board). The Board adjudicates appeals of denials of claims for veterans' benefits.

Public Law 103–271

In large part, the amendments made by this document reflect statutory changes made by Public Law 103–271.

Changes are made to §§ 19.3, 19.9, 19.11, 19.12, 19.76, 20.3, 20.102, 20.401, 20.606, 20.700, 20.702 through 20.705, 20.707 through 20.708, 20.711, 20.714 through 20.717, 20.901, 20.1003, and 20.1100, to reflect that, under Public Law 103–271, the Board's Chairman may assign matters, including hearings, to individual Board members or to panels of three or more members.

Changes are made to §§ 19.3, 19.11, 20.102, 20.608, 20.707, 20.711, 20.717, and 20.1304 to reflect that, under Public Law 103–271, a proceeding may not be assigned to the Chairman as an individual member but that the Chairman may participate in a proceeding assigned to a panel, or in a reconsideration assigned to a panel, and to reflect how a reconsideration panel is to be constituted.

Changes are made to §§ 19.11 and 20.707 to reflect that, under Public Law 103–271, reconsideration of a matter heard by a single member shall be referred to a panel of not less than three Board members, that reconsideration of a matter heard by a panel of members shall be referred to an enlarged panel, and that a reconsideration panel may not include any member who made the decision that is being reconsidered.

Changes are made to §§ 19.75 and 20.704 to reflect that, under Public Law 103–271, hearings at a facility within the area served by a VA regional office shall be scheduled to be held in the order in which requested, but may be scheduled earlier if the appellant is seriously ill or under severe financial hardship.

Changes are made to § 20.3 to reflect that, under Public Law 103–271, in lieu of a personal hearing, an appellant may participate in a Board hearing through picture or through voice transmission, by electronic or other means, with the Board member or members at the Board's principal location.

Miscellaneous

In addition, definitions of ''electronic hearing'' and ''presiding member'' have been added to § 20.3 to reflect the Board's interpretation of Public Law 103–271 and, in § 20.900, paragraph (b) has been revised and paragraph (d) added to reflect the Board's interpretation of the requirement, established by Public Law 103–446, Section 302, that cases remanded by the Court of Veterans Appeals be treated expeditiously.

Further, § 19.11(b) has been amended to provide that reconsideration panels are to be enlarged in increments of three as necessary to obtain a majority decision. This constitutes the policy for the Board to use in implementing the provisions of Public Law 103–271.

Finally, Parts 19 and 20 are amended to update current titles and designations within the Board, and to make other nonsubstantive changes.

This final rule consists of incorporation of statutory provisions, interpretive rules, rules of agency procedure or practice, and nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, since it does not contain any substantive provisions. This final rule would not cause a significant effect on any entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Incorporation of statutory provisions and statutory interpretations made by this final rule will be applied retroactively from the effective dates of the statutory provisions. The dates of application for such changes and for certain of the nonsubstantive changes made for clarity, to correct typographical errors, or to reflect statutory recodification changes are as follows:

July 1, 1994: §§ 19.3(a) and (b); 19.4; 19.9; 19.11; 19.12(b); 19.75; 19.76; 20.3(h) and (n); 20.102(c) and (d); 20.401(b); 20.606(a), (b), and (d); 20.608(b)(2); 20.700(b) and (d); 20.702(a), (c), (d), and (e); 20.704(a), (c), (d), (e), and (f); 20.705(b); 20.707; 20.708; 20.711(e) and (h); 20.714(a)(4); 20.715; 20.716; 20.717(d); 20.901(e); 20.1003; 20.1100(a); and 20.1304(b).

November 2, 1994: § 20.900(b) and (d).

List of Subjects

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: April 30, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, title 38 of the Code of Federal Regulations, parts 19 and 20, are amended under the authority of Public Law 103–271, 108 Stat. 740, and Public Law 103–446, 108 Stat. 4645, as set forth below:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a)

Subpart A—Operation of the Board of Veterans' Appeals

2. Section 19.2 is revised to read as follows:

§ 19.2 Composition of the Board.

The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members and professional, administrative, clerical and stenographic personnel. Deputy Vice Chairmen are Members of the Board who are appointed to that office by the Secretary upon the recommendation of the Chairman.

(Authority: 38 U.S.C. 501(a), 512, 7101(a))

3. Section 19.3 is revised to read as follows:

§ 19.3 Assignment of proceedings.

(a) *Assignment.* The Chairman may assign a proceeding instituted before the Board, including any motion, to an individual Member or to a panel of three or more Members for adjudication or other appropriate action. The Chairman may participate in a proceeding assigned to a panel of Members.

(Authority: 38 U.S.C. 7102)

(b) *Inability to serve*. If a Member is unable to participate in the disposition of a proceeding or motion to which the Member has been assigned, the Chairman may assign the proceeding or motion to another Member or substitute another Member (in the case of a proceeding or motion assigned to a panel).

Authority: 38 U.S.C. 7101(a), 7102)

§ 19.4 [Amended]

In § 19.4 the authority citation is revised to read as follows:

(Authority: 38 U.S.C. 7102, 7104, 7107)

5. Section 19.7 is amended by adding a new paragraph (c) to read as follows:

§ 19.7 The decision.

* * * * *

(c) A decision by a panel of Members will be by a majority vote of the panel Members.

6. Section 19.9 is revised to read as follows:

§ 19.9 Remand for further development.

When, during the course of review, it is determined that further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, a Member or panel of Members of the Board shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(Authority: 38 U.S.C. 7102, 7104(a))

7. Section 19.11 is revised to read as follows:

§ 19.11 Reconsideration panel.

(a) *Assignment of Members.* When a motion for reconsideration is allowed, the Chairman will assign a panel of three or more Members of the Board, which may include the Chairman, to conduct the reconsideration.

(b) *Number of Members constituting a reconsideration panel.* In the case of a matter originally heard by a single Member of the Board, the case shall be referred to a panel of three Members of the Board. In the case of a matter originally heard by a panel of Members of the Board, the case shall be referred to an enlarged panel, consisting of three or more Members than the original panel. In order to obtain a majority opinion, the number of Members assigned to a reconsideration panel may be increased in successive increments of three.

(c) *Members included in the reconsideration panel.* The reconsideration panel may not include any Member who participated in the decision that is being reconsidered. Additional Members will be assigned in accordance with paragraph (b) of this section.

(Authority: 38 U.S.C. 7102, 7103)

8. Section 19.12(b) is revised to read as follows:

§ 19.12 Disqualification of Members.

* * * * *

(b) *Appeal on same issue subsequent to decision on administrative appeal.* Any Member of the Board who made the decision on an administrative appeal will disqualify himself or herself from acting on a subsequent appeal by the claimant on the same issue.

(Authority: 38 U.S.C. 7102, 7104, 7106)

* * * * *

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.30 [Amended]

9. In § 19.30 paragraph (b), is amended by removing ''VA Form 1–9'' and adding, in its place, ''VA Form 9''.

§ 19.31 [Amended]

10. In § 19.31, the last sentence is removed.

§ 19.35 [Amended]

11. Section 19.35 is amended by removing ''VA Form 1–8'' and adding, in its place, ''VA Form 8''.

Subpart C—Administrative Appeals

12. Section 19.51(a)(1) is revised to read as follows:

§ 19.51 Officials authorized to file administrative appeals and time limits for filing.

* * * * *

(a) *Central Office*—(1) *Officials.* The Under Secretary for Benefits or a service director of the Veterans Benefits Administration, the Under Secretary for Health or a service director of the Veterans Health Administration, and the General Counsel.

* * * * *

13. The heading for Subpart D is revised to read as follows:

Subpart D—Hearings Before the Board of Veterans' Appeals at Department of Veterans Affairs Field Facilities

14. Section 19.75 is revised to read as follows:

§ 19.75 Hearing docket.

Hearings on appeal held at Department of Veterans Affairs field facilities will be scheduled for each area served by a regional office in the order in which requests for such hearings within that area are received by the Department except when a motion to advance the case on the hearing docket is granted under Rule of Practice 704(f) (38 CFR 20.704(f)).

(Authority: 38 U.S.C. 7107)

15. Section 19.76 is revised to read as follows:

§ 19.76 Notice of time and place of hearing before the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

The agency of original jurisdiction will notify the appellant and his or her representative of the place and time of a hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility not less than 60 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to the prior failure of an appellant to appear at a scheduled hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility with good cause. The right to notice at least 60 days in advance will be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled hearing.

(Authority: 38 U.S.C. 7107)

§ 19.77 [Removed and revised]

16. Section 19.77 is removed, and revised.

Subpart E—Simultaneously Contested Claims

17. Section 19.101 is amended by removing ''VA Form 1–9'' and adding, in its place, ''VA Form 9''.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

18. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a)

Subpart A—General

19. Section 20.3 is amended by redesignating paragraphs (h), (i), (j), (k), (l), (m), and (n) as (i), (j), (k), (l), (m), (o), and (p) respectively, and adding new paragraphs (h) and (n) to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(h) *Electronic hearing* means a hearing on appeal in which an appellant or a representative participates, through voice transmission or through picture and voice transmission, by electronic or other means, in a hearing with a Member or Members sitting at the Board's principal location in Washington, DC.

* * * * *

(n) *Presiding Member* means that Member of the Board who presides over a hearing, whether conducted as a single Member or panel hearing.

* * * * *

Subpart B—The Board

20. In § 20.102 paragraph (d) is removed, and paragraph (c) is revised to read as follows:

§ 20.102. Rule 102. Delegation of authority—Rules of Practice.

* * * * *

(c) The authority exercised by the Chairman of the Board of Veterans'

Appeals described in Rules 2 and 606(e) (§§ 20.2, and 20.606(e) of this part), may also be exercised by the Vice Chairman of the Board; by Deputy Vice Chairmen of the Board; and, in connection with a proceeding or motion assigned to them by the Chairman, by a Member or Members of the Board.

* * * * *

Subpart C—Commencement and Perfection of Appeal

§ 20.202 [Amended]

21. Section 20.202 is amended by removing ''VA Form 1–9'' and adding, in its place, ''VA Form 9''.

Subpart E—Administrative Appeals

22. In § 20.401, paragraph (b) is revised to read as follows:

§ 20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.

* * * * *

(b) *Appeal not merged.* If the claimant does not authorize merger, normal appellate rights on the same issue are preserved, and the Chairman will assign the proceeding to a Member or panel of Members of the Board who did not make the decision on the administrative appeal. The period of time from the date of notification to the claimant of the administrative appeal to the date of the Board's decision on the administrative appeal is not chargeable to the claimant for purposes of determining the time limit for perfecting his or her separate appeal.

* * * * *

Subpart G—Representation

§ 20.603 [Amended]

23. Section 20.603(a) is amended by removing ''VA Form 2–22a'' and adding, in its place, ''VA Form 22a''.

§ 20.604 [Amended]

24. Section 20.604(a) is amended by removing ''VA Form 2–22a'' and adding, in its place, ''VA Form 22a''.

§ 20.605 [Amended]

25. Section 20.605(c) is amended by removing ''VA Form 2–22a'' and adding, in its place, ''VA Form 22a''.

§ 20.606 [Amended]

26. In § 20.606, paragraph (a) is amended by removing ''before traveling Sections of the Board''. Paragraph (b) is amended by removing ''Chief, Hearing Section (014B)'' and adding, in its place, ''Director, Administrative Service (014)''; and by removing ''appeals before traveling Sections of the Board'' and adding, in its place, ''hearings before a Member or Members of the Board at Department of Veterans field facilities''; and by removing ''traveling Section'' and adding, in its place, ''hearing''. Paragraph (d) is amended by removing ''Chief of Hearing Section'' and adding, in its place, ''Director of the Administrative Service''; and by removing ''proceedings before traveling Sections'' and adding, in its place, ''hearings before a Member or Members''; and by revising the phrase ''not more than 10 days prior to the scheduled hearing date'' to read, ''not less than 10 days prior to the scheduled hearing date,'' and reinserting it directly after the first appearance of ''attorney-at-law'' in the second sentence; and removing ''traveling Section'' in the third sentence and adding, in its place, ''hearing''.

§ 20.608 [Amended]

27. In § 20.608, paragraph (b)(2), the last sentence is removed.

28. The heading for Subpart H is revised to read as follows:

Subpart H—Hearings on Appeal

29. In § 20.700, paragraph (b) is amended in the third sentence by removing ''personal'', and by removing ''of the hearing panel involved'' in the last sentence and adding, in its place, ''assigned to conduct the hearing''; paragraph (d) is amended in the second sentence by removing ''a Board of Veterans' Appeals hearing panel'' and adding, in its place, ''the Board of Veterans Appeals'', and by removing ''panel members'' in the third sentence and adding, in its place, ''Member or Members to whom the appeal has been assigned for a determination''; a new paragraph (e) is added; and the authority citation is revised to read as follows.

§ 20.700 Rule 700. General.

* * * * *

(e) *Electronic hearings.* When suitable facilities and equipment are available, an appellant may be scheduled for an electronic hearing. Any such hearing will be in lieu of a hearing held by personally appearing before a Member or panel of Members of the Board and shall be conducted in the same manner as, and considered the equivalent of, such a hearing. If an appellant declines to participate in an electronic hearing, the appellant's opportunity to participate in a hearing before the Board shall not be affected.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

§ 20.701 [Amended]

30. In § 20.701, the authority citation is revised to read as follows:

(Authority: 38 U.S.C. 7102, 7105, 7107)

31. Section 20.702 is amended by revising the last sentence in paragraph (c)(1), the last two sentences in paragraph (c)(2), the fourth and last sentences in paragraph (d), the last sentence in paragraph (e), and the authority citations for paragraphs (a) through (e) to read as follows:

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC.

(a) * * *

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(b) * * *

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(c) *Requests for changes in hearing dates.* (1) * * * In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, such requests for a new hearing date must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(2) * * * In the case of a hearing conducted by the Board of Veterans' Appeals in Washington, DC, whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member assigned to conduct the hearing. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion for a new hearing date must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7105(a), 7105A, 7107)

(d) *Failure to appear for a scheduled hearing.* * * * In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. * * * In the case of hearings before the Board of Veterans' Appeals in Washington, DC, whether good cause for such failure to appear has been established will be determined by the presiding Member assigned to conduct the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7105A, 7107)

(e) *Withdrawal of hearing requests.* * * * In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the notice of withdrawal must be sent to: Director, Administrative Service (014), Board of

Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(Approved by the Office of Management and Budget under control number 2900–0085)

32. Section 20.703 is revised to read as follows:

§ 20.703 Rule 703. When right arises to hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility.

A hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility is a ''hearing on appeal.'' Accordingly, there is no right to such a hearing until a Notice of Disagreement has been filed. Any request for such a hearing filed with a Notice of Disagreement, or filed subsequent to the filing of a Notice of Disagreement, will be accepted by the agency of original jurisdiction. Requests for such hearings filed before a Notice of Disagreement has been filed, or after the Board has entered a final decision in the case on the issue (or issues) appealed will be rejected, except for requests for such hearings after a Notice of Disagreement has been filed appealing a denial of benefits in a reopened claim which followed a prior Board decision or after a motion for reconsideration of a prior Board decision has been granted.

(Authority: 38 U.S.C. 7105(a), 7107)

33. In § 20.704, the section heading; paragraphs (a), (c), (d), and (e); and the authority citation are revised and paragraph (f) is added to read as follows:

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

(a) *General.* Hearings are conducted by a Member or Members of the Board of Veterans' Appeals during prescheduled visits to Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings. The hearings will be scheduled in the order in which requests for such hearings within that area were received by the agency of original jurisdiction, except as provided in paragraph (f). Requests for such hearings must be submitted to the agency of original jurisdiction, in writing, and should not be submitted directly to the Board of Veterans' Appeals.

* * * * *

(c) *Requests for changes in hearing dates.* Requests for a change in a hearing date may be made at any time up to two weeks prior to the scheduled date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant elects not to appear at the prescheduled date, the request for a hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted for review by the Member who would have presided over the hearing. If the presiding Member determines that good cause has been shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted. Such motions must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Whether good cause for such failure to appear and the impossibility of timely requesting postponement have been established will be determined by the Member who would have presided over the hearing. If good cause and the impossibility of timely requesting postponement are shown, the hearing will be rescheduled for the next available hearing date at the same facility after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. Notices of withdrawal must be submitted to the office of the Department of Veterans Affairs official who signed the notice of the hearing date.

(f) *Advancement of the case on the hearing docket.* A hearing may be scheduled at a time earlier than would be provided for under paragraph (a) upon written motion of the appellant or the representative showing that the appellant is seriously ill or under severe financial hardship. The motion must be filed with the Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be by the Member assigned as the presiding Member for the hearing.

(Authority: 38 U.S.C. 7107)

(Approved by the Office of Management and Budget under control number 2900–0085)

34. Section 20.705(b) and the authority citation are revised to read as follows:

§ 20.705 Rule 705. Where hearings are conducted.

* * * * *

(b) At a Department of Veterans Affairs facility having adequate physical resources and personnel for the support of such hearings.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

§ 20.706 [Amended]

35. In § 20.706, the authority citation is revised to read as follows:

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

36. Section 20.707 is revised to read as follows:

§ 20.707 Rule 707. Designation of Member or Members to conduct the hearing.

The Member or panel to whom a proceeding is assigned under § 19.3 of this part shall conduct any hearing before the Board in connection with that proceeding. Where a proceeding has been assigned to a panel, the Chairman,

or the Chairman's designee, shall designate one of the Members as the presiding Member. The Member or Members who conduct the hearing shall participate in making the final determination of the claim, subject to the exception in § 19.11(c) of this part (relating to reconsideration of a decision).

(Authority: 38 U.S.C. 7102, 7107)

37. Section 20.708 is revised to read as follows:

§ 20.708 Rule 708. Prehearing conference.

An appellant's authorized representative may request a prehearing conference with the presiding Member of a hearing to clarify the issues to be considered at a hearing on appeal, obtain rulings on the admissibility of evidence, develop stipulations of fact, establish the length of argument which will be permitted, or take other steps which will make the hearing itself more efficient and productive. With respect to hearings to be held before the Board at Washington, DC, arrangements for a prehearing conference must be made through: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Requests for prehearing conferences in cases involving hearings to be held before the Board at Department of Veterans Affairs field facilities must be addressed to the office of the Department of Veterans Affairs official who signed the letter giving notice of the time and place of the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

§ 20.709 [Amended]

38. Section 20.709 is amended by revising the authority citation to read as follows:

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

39. Section 20.710 is amended by revising the authority citation to read as follows:

§ 20.710 Rule 710. Witnesses at hearings.

* * * * *

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

40. Section 20.711 is amended by revising paragraphs (e) and (h) and the authority citation to read as follows:

§ 20.711 Rule 711. Subpoenas.

* * * * *

(e) *Ruling on motion for subpoena.* Where the Chairman has assigned the appeal to a Member or panel, the ruling on the motion will be made by that Member or panel. Where the appeal has not been assigned, the Chairman will assign the matter for the purpose of ruling on the motion. Where the moving party seeks production of documents or other tangible evidence, the Member or panel may condition the granting of the motion upon the advancement by the moving party of the reasonable cost of producing the books, paper, documents, or other tangible evidence requested.

* * * * *

(h) *Motion to quash or modify subpoena.* If an individual served with a subpoena considers the subpoena to be unreasonable or oppressive, he or she may move that the subpoena be quashed or modified. Such motions must be in writing and must explain why the subpoena is unreasonable or oppressive and what relief is sought. Such motions must be filed with the Board not more than 10 days following receipt of the subpoena. Rulings on such motions will be made by the Member or panel authorizing the subpoena, who will inform all interested parties of the ruling in writing. The quashing of any subpoena will be conditional upon the return of the check for fees and mileage to the party on whose behalf the subpoena was issued.

(Authority: 38 U.S.C. 5711, 7102(a), 7107)

41. In § 20.714, paragraph (a) introductory text is amended by revising the first sentence; paragraph (a)(1) is amended by removing ''of the hearing panel'' in the second sentence, and by removing ''Chief, Hearing Section (014B)'' in the last sentence and adding, in its place, ''Director, Administrative Service (014); and paragraph (a)(4) introductory text and the authority citation at the end of the section are revised to read as follows:

§ 20.714 Rule 714. Record of hearing.

(a) *Board of Veterans' Appeals.* A hearing before a Member or panel of Members of the Board, whether held in Washington, DC, or at a Department of Veterans Affairs field facility, will be recorded on audio tape. * * *

* * * * *

(4) With respect to hearings conducted by a Member or Members of the Board at a Department of Veterans Affairs field facility : * * *

* * * * *

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

42. In § 20.715 the last two sentences and the authority citation are revised to read as follows:

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

* * * In the case of hearings held before the Board of Veterans' Appeals in Washington, DC, arrangements must be made with the Director of the Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before the Board at Department of Veterans Affairs field facilities, arrangements must be made through the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

43. In § 20.716 the last two sentences and the authority citation are revised to read as follows:

§ 20.716 Rule 716. Correction of hearing transcripts.

* * * In the case of hearings held before the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be made by the presiding Member of the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

44. Section 20.717, paragraph (c) is amended by removing ''Chief, Hearing Section (0141F)'' and adding, in its place, ''Director, Administrative Service (014); and by revising paragraph (d) and the authority citation to read as follows:

§ 20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

* * * * *

(d) *Ruling on motion for a new hearing.* The ruling on the motion for a new hearing will be made by the Member who presided over the hearing. If the presiding Member is no longer available, the ruling on the motion may be made by the Member or Members to whom the case has been assigned for a determination. In cases in which a final Board of Veterans' Appeals decision has already been promulgated with respect to the appeal in question, the Chairman will assign the matter in accordance with § 19.3 of this title. Factors to be considered in ruling on the motion include, but will not be limited to, the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible or only a portion of a transcript has been lost or destroyed, and the extent and reasonableness of any delay in moving for a new hearing. If a new hearing is granted in a case in which a final Board of Veterans' Appeals decision has already been promulgated, a supplemental decision will be issued.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

Subpart J—Action by the Board

45. Section 20.900 is amended by revising paragraph (b) and the authority citation, and by adding a new paragraph (d) to read as follows:

§ 20.900 Rule 900. Order of consideration of appeals.

* * * * *

(b) *Appeals considered in docket order.* Appeals are considered in the order in which they are entered on the docket, except as provided in paragraphs (c) and (d).

* * * * *

(d) *Consideration of appeals remanded by the United States Court of Veterans Appeals.* A case remanded by the United States Court of Veterans Appeals for additional development or other appropriate action will be treated expeditiously by the Board without regard to its place on the Board's docket.

(Authority: 38 U.S.C. 7107, Pub. Law No. 103–446 § 302)

46. Section 20.901(e) is revised to read as follows:

§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.

* * * * *

(e) For purposes of this section, the term ''the Board'' includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of the Board before whom a case is pending.

(Authority: 38 U.S.C. 5107(a), 7104(c), 7109)

Subpart K—Reconsideration

47. Section 20.1003 is revised to read as follows:

§ 20.1003 Rule 1003. Hearings on reconsideration.

After a motion for reconsideration has been allowed, a hearing will be granted if an appellant requests a hearing before the Board. The hearing will be held by a Member or Members assigned to the reconsideration panel. A hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with Rule 700(d) (§ 20.700(d) of this part). Requests for appearances by representatives alone to personally present argument to a Member or panel of Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member.

(Authority: 38 U.S.C. 7102, 7103, 7105(a))

Subpart L—Finality

48. In section 20.1100(a), the last sentence is amended by removing ''Section'' and adding, in its place, ''Panel''; and the first sentence is revised to read as follows:

§ 20.1100 Rule 1100. Finality of decisions of the Board.

(a) *General.* All decisions of the Board will be stamped with the date of mailing on the face of the decision. * * *

* * * * *

Subpart N—Miscellaneous

§ 20.1304 [Amended]

49. In § 20.1304 paragraph (b) is amended by removing the next-to-the-last sentence reading ''The ruling on the motion will be by the Chairman.''.

[FR Doc. 96–11279 Filed 5–6–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 095–0008a; FRL–5464–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan (SIP). The revision concerns a new rule from the Santa Barbara County Air Pollution Control District (SBCAPCD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of oxides of nitrogen (NO_X), oxides of sulfur (SO_X), and volatile organic compounds (VOCs). This rule controls NO_X, SO_X, and VOC emissions from flare and thermal oxidizer stacks at oil and gas production industries. Thus, EPA is finalizing the approval of this rule into the California SIP under provisions of the Federal Clean Air Act, as amended in 1990 (CAA or the Act) regarding EPA action on SIP submittals.

DATES: This action is effective on July 8, 1996 unless adverse or critical comments are received by June 6, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rule and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

Santa Barbara County Air Pollution Control District, 26 Casitilian Drive, B–23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being approved into the California SIP is SBCAPCD Rule 359, Flares and Thermal Oxidizers. This rule was submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

Background

Rule 359 was originally adopted as part of SBCAPCD's 1991 Air Quality Attainment Plan in response to the California Clean Air Act and is not required by any specific provision of the CAA. However, SBCAPCD Rule 359 is consistent with the goals of the CAA and EPA policy. In addition, Rule 359 furthers the goals of the Act by strengthening the SIP. Section 110(a) of the CAA contains general requirements for states to submit enforceable emissions limitations and other control measures as may be necessary or appropriate to achieve the goals of the Act. Rule 359 meets these requirements by controlling NO_X, SO_X, and VOC emissions from flare and thermal oxidizer stacks at oil and gas production facilities.

The State of California submitted many rules for incorporation into its SIP on July 13, 1994, including the rule being acted on in this notice. This notice addresses EPA's direct-final action for SBCAPCD Rule 359, Flares

and Thermal Oxidizers. Santa Barbara County adopted Rule 359 on June 28, 1994. This submitted rule was found to be complete on September 12, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[1] and is being finalized for approval into the SIP.

The following is EPA's evaluation and final action for this rule.

EPA Evaluation and Action

In determining the approvability of this rule, EPA must evaluate the rule for consistency with the requirements of the CAA and with EPA policy.

SBCAPCD's submitted Rule 359, Flares and Thermal Oxidizers includes the following requirements:

- Fuel sulfur content limits
- The use of technology-based standards
- A flare minimization plan for all planned flaring activities
- Emergency events documentation
- Proposes pollutant emission limits for continuous, planned flaring at thermal oxidizers and enclosed ground flares
- Source testing
- Requires monitoring, recordkeeping, and reporting

For a detailed evaluation of SBCAPCD Rule 359, please refer to the technical support document (TSD) dated March 20, 1996.

EPA has evaluated the submitted rule and has determined that it is consistent with the goals of the Act, the requirements of 110(a), and EPA policy. Therefore, SBCAPCD Rule 359, Flares and Thermal Oxidizers is being approved into the federally approved SIP because of its beneficial effect on the air quality in the Santa Barbara County area and its strengthening of the SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 8, 1996, unless, by June 6, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 8, 1996.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

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

These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rule being approved by this action will impose no new requirements because affected sources are already subject to this regulation under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 18, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(198)(i)(K)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(198) * * *

(i) * * *

(K) * * *

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

(*2*) Rule 359, adopted on June 28, 1994.

* * * * *

[FR Doc. 96–11204 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL18–7–7024a; FRL–5436–1]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: On October 21, 1993, the Illinois Environmental Protection (IEPA) submitted to USEPA volatile organic compound (VOC) rules that were intended to satisfy part of the requirements of section 182(b)(2) of the Clean Air Act (Act) amendments of 1990. Rules submitted at that time include control requirements for certain major sources in the East St. Louis nonattainment area not covered by a Control Technique Guideline (CTG) document. These major non-CTG VOC rules apply to sources which emit (at maximum capacity) 100 tons of VOC per year. These rules provide an environmental benefit due to the imposition of additional control requirements. This rulemaking action approves, in final, Illinois' rules for major non-CTG sources in the East St. Louis nonattainment area. The rationale for the conditional approval is set forth in this final rule; additional information is available at the address indicated below. Elsewhere in this Federal Register, USEPA is proposing approval of and soliciting public comment on this requested revision to the Illinois State Implementation Plan (SIP). If adverse comments are received on this direct final rule, USEPA will withdraw the final rule and address the comments received in a new final rule. Unless this final rule is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective July 8, 1996 unless adverse comments are received by June 6, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Steven Rosenthal at (312) 886–6052 before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR–18J) (312) 886–6052.

SUPPLEMENTARY INFORMATION:

Background

Under the Act as amended in 1977, ozone nonattainment areas were required to adopt reasonably available control technology (RACT) for sources of VOC emissions. USEPA issued three sets of control technique guidelines (CTGs) documents, establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. USEPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Those areas (including the East St. Louis area) that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987, were required to adopt RACT for all CTG sources and for all major (100 tons per year or more of VOC emissions) non-CTG sources.

Section 182(b)(2) of the Act as amended in 1990 (amended Act) requires States to adopt reasonably available control technology (RACT) rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) RACT for all major sources not covered by a CTG. These section 182(b)(2) RACT requirements are referred to as the RACT ''catch-up'' requirements.

The amended Act requires USEPA to issue CTGs for 13 source categories by November 15, 1993. A CTG was published by this date for two source categories—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors and Distillation; however, the CTGs for the remaining source categories have not been completed. The amended Act requires States to submit rules for sources covered by a post-enactment CTG in accordance with a schedule specified in a CTG document. Accordingly, States must submit a RACT rule for SOCMI reactor processes and distillation operations before March 23, 1995. Illinois has submitted a rule, covering these SOCMI sources, which will be the subject of a separate rulemaking action.

The USEPA developed a CTG document as Appendix E to the *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*. (57 FR 18070, 18077, April 28, 1992). In Appendix E, USEPA interpreted the Act to allow a State either to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs USEPA expected to issue to meet the requirement in section 183. Appendix E states that if USEPA fails to issue a CTG by November 15, 1993 (which it did for 11 source categories), the responsibility shifts to the State to submit a non-CTG RACT rule for those sources by November 15, 1994. In accordance with section 182(b)(2), implementation of that RACT rule should occur by May 31, 1995. Most of these 11 categories are covered by Illinois' ''generic'' major non-CTG rules that are the subject of this document.

On October 21, 1993, IEPA submitted VOC rules for the East St. Louis ozone moderate nonattainment area [1] and a revision to these major non-CTG control requirements was submitted to USEPA on May 26, 1995. Most of those rules, including those which deal with source categories covered by CTGs, (and the related test methods, definitions and recordkeeping requirements) were approved by USEPA on September 9, 1994 (59 FR 46562). This document deals with those major non-CTG rules for the East St. Louis area which are intended to largely satisfy the major non-CTG control requirements of sections 182(a)(2)(A) and 182(b)(2). However, this October 21, 1993, submittal exempts bakeries and sewage treatment plants from these major non-CTG regulations. Major non-CTG regulations are, therefore, required for any major bakeries and industrial wastewater treatment plants in the East St. Louis area.

[1] The East St. Louis moderate ozone nonattainment area consists of Madison, Monroe, and St. Clair counties.

Evaluation of Rules

Subparts PP, QQ, RR and TT in Part 219 consist of ''generic'' major non-CTG rules for sources, in the East St. Louis ozone nonattainment area, not specifically covered by another rule. Compliance with these rules was required by May 15, 1992. These rules are generally consistent with the Chicago Federal Implementation Plan that was promulgated by USEPA on June 29, 1990 (55 FR 26818) and codified at 40 CFR § 52.741, and/or USEPA RACT guidance. The discussion below clarifies certain aspects of these non-CTG rules, including parts of these rules that differ from previously approved ''generic'' non-CTG VOC rules.

Sections 926, 946, 966, and 986 specify the control requirements for the rules. Subsection (a) of each of these Sections requires an overall 81 percent reduction from each emission unit. An (Illinois Pollution Control) Board Note has been added to each subsection to clarify what is intended by the term ''emission unit.'' A further clarification of the Board Note has been provided in a June 16, 1993, letter from Dennis Lawler, IEPA.

Subparts PP, QQ, RR and TT do not apply to sources that are not major (that is, emit less than 100 tons VOC per year at maximum capacity) and exempt emission units with less than 1 ton VOC per year or 2.5 tons VOC per year (depending upon the subpart) if the total emissions from such emission units do not exceed 5 tons VOC per year. Subpart UU contains the recordkeeping and reporting requirements for the non-CTG requirements in Subparts PP, QQ, RR, and TT and Section 219.990 (in Subpart UU) contains the recordkeeping and reporting requirements for exempt emission units. Although Section 219.990 refers to emission units which are exempt, it should be noted that the owner or operator of an emission unit which is exempt because the source is not major would need to submit records for the entire source to demonstrate that maximum theoretical emissions from all non-CTG and unregulated CTG operations are below the applicable cutoff. In those cases where one or more (but not all) emission units are exempt (as in 219.920(c), 219.940(c), 219.960(c), and 219.980(c)), records must be submitted documenting that each such emission unit is exempt.

Illinois' major non-CTG VOC rules in Subparts PP, QQ, RR, and TT require applicable sources to comply with one of the following: (1) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOC emissions of at least 81 percent from each emission unit, or (2) For coating lines, the daily-weighted average VOC content shall not exceed 3.5 pounds (lbs) VOC per gallon (gal) of coating, or (3) an equivalent alternative control plan which has been approved by the Agency and the USEPA in a federally enforceable permit or as a SIP revision.

On December 17, 1992, (57 FR 59928) USEPA approved Illinois' existing Operating Permit program as satisfying USEPA's June 28, 1989, (54 FR 27274) five criteria regarding Federal enforceability. One of the criteria is that permits may not be issued that make less stringent any SIP limitation or requirement. USEPA's December 17, 1992, notice states that operating permits issued by Illinois in conformance with the five criteria (including the prohibition against States issuing operating permit limits less stringent than the regulations in the SIP) discussed in this notice will be considered federally enforceable. This notice also states Illinois' operating permit program allows USEPA to deem an operating permit not ''federally enforceable.''

On July 21, 1992, USEPA promulgated a new part 70 of chapter 1 of title 40 of the Code of Federal Regulations. See 57 FR 32250. Part 70 contains regulations, required by Title V of the Act, that specify the minimum elements of State operating permit programs. Part 70 is, therefore, an appropriate basis for evaluating the acceptability of Illinois' use of federally enforceable State operating permits (FESOP) and Title V permits in its VOC rules.

Section 70.6(a)(1)(iii) states:

> If an applicable implementation plan allows a determination of an alternative emission limit at a part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the State elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

USEPA has therefore determined that the option for alternative control plans, submitted on October 21, 1993 (with a revision submitted on May 26, 1995), in subsections 219.926(c), 219.946(b), 219.966(b), and 219.986(c), is approvable because it requires that any alternative must be equivalent to the underlying SIP requirements (consistent with part 70) and USEPA can deem a permit containing an alternative control plan to be not ''federally enforceable'' if it determines that a permit is not quantifiable or practically enforceable or a permit relaxes the SIP. The underlying SIP, to which any equivalent alternative control plan would be compared, has federally enforceable control requirements, test methods, and recordkeeping and reporting requirements. In addition, a September 13, 1995, letter from IEPA contains the specific procedures for USEPA review and approval.

Subsections 219.620(a)(1)(B), 219.920(a)(2), 219.940(a)(2), 219.960(a)(2), and 219.980(a)(2) allow sources to avoid the applicability of specified major non-CTG rules, provided a source has a federally enforceable permit that limits emissions to below the applicable cutoff through capacity or production limitations. These subsections are approvable because USEPA can deem a permit to be ''not federally enforceable'' in a letter to IEPA. Upon issuance of such a letter, the source is no longer protected by the permit referenced in the subject subsections. The source would then be subject to the SIP requirements if its emissions exceed the applicable cutoff. This is consistent with USEPA's December 17, 1992, approval of Illinois' operating permit program which states: ''In approving the State operating program USEPA is determining that Illinois' program allows USEPA to deem an operating permit not 'federally enforceable' for purposes of limiting potential to emit and to offset creditability.'' (57 FR 59928, 59930). IEPA has agreed to this approach and specified the applicable procedures in a March 26, 1993, letter to USEPA. In summary, these subsections are approvable because USEPA can invalidate the protection provided by an operating permit by deeming such operating permit to be ''not federally enforceable'' in a letter to IEPA.

Final Rulemaking Action

For the reasons discussed above, USEPA approves the major non-CTG VOC RACT rules in Part 219 (for the East St. Louis ozone nonattainment area) that were submitted on October 21, 1993 and May 26, 1995.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on July 8, 1996. However, if we receive adverse comments by June 6, 1996, then USEPA will publish a document that withdraws this final action. If no request for a public hearing has been received, USEPA will address the public comments received in a new final rule on the requested SIP revision based on

the proposed rule located in the proposed rules section of this Federal Register. If a public hearing is requested, USEPA will publish a document announcing a public hearing and reopening the public comment period until 30 days after the public hearing. At the conclusion of this additional public comment period, USEPA will publish a final rule responding to the public comments received and announcing final action.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, former Acting Assistant Administrator for the Office of Air and Radiation. A July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for the Office of Air and Radiation explains that the authority to approve/disapprove SIPs has been delegated to the Regional Administrators for Table 3 actions. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the USEPA 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 aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less then $100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: February 7, 1996.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(127) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(127) On October 21, 1993, and May 26, 1995, Illinois submitted volatile organic compound control regulations for incorporation in the Illinois State Implementation Plan for ozone.

(i) Incorporation by reference.

(A) Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 219: Organic Material Emissions Standards and Limitations for Metro East Area, Subpart PP: 219.920, 219.923, 219.927, 219.928; Subpart QQ: 219.940, 219.943, 219.947, 219.948; Subpart RR: 219.960, 219.963, 219.967, 219.968; Subpart TT: 219.980, 219.983, 219.987, 219.988; and Subpart UU. These Subparts were adopted on September 9, 1993, Amended at 17 Ill. Reg. 16918, effective September 27, 1993.

(B) Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 219: Organic Material Emissions Standards and Limitations for Metro East Area, Subpart PP: 219.926; Subpart QQ: 219.946; Subpart RR: 219.966; and Subpart TT: 219.986. These Subparts were adopted on April 20, 1995, Amended at 19 Ill. Reg. 6958, effective May 9, 1995.

[FR Doc. 96–11202 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[OH92–1 & OH79–3; FRL–5458–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is determining that the Cleveland-Akron-Lorain (CAL) ozone nonattainment area (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit) has attained the public health-based National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of complete, quality-assured, ambient air monitoring data for the 1993 to 1995 ozone seasons that demonstrate that the ozone NAAQS has been attained in each of these areas. On the basis of this determination, USEPA is also determining that certain reasonable-further-progress (RFP) and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act (CAA) are not applicable to the Cleveland-Akron-Lorain area.

In another part of this rulemaking, the USEPA is approving the Ohio Environmental Protection Agency (OEPA) request to revise the official designation of the Cleveland-Akron-Lorain (CAL) area as an area that is meeting the ozone air quality standard. The USEPA is also approving the CAL area maintenance plan as a revision to Ohio's State Implementation Plan (SIP) for ozone. The purpose of the maintenance plan is to provide for continued good ozone air quality levels in the area over the next 10 years.

EFFECTIVE DATE: This final rule is effective on May 7, 1996.

ADDRESSES: Copies of the determination of attainment, redesignation requests, public comments on the rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone William Jones at (312) 886–6058, before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION ON THIS ACTION CONTACT: William Jones, Air Programs Branch, Regulation Development Section (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION:

Determination of Attainment

I. Background

Subpart 2 of Part D of Title I of the CAA contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. The USEPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). As described below, USEPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995, USEPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) of the CAA states that, for purposes of part D of Title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and USEPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

The USEPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, USEPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' (See 57 FR at 13564)[2]

Second, with respect to the attainment demonstration requirements of Section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act.'' As with the RFP requirements, if an area has in fact monitored attainment of the standard, USEPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by USEPA in the General Preamble to Title I. As USEPA stated in the Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum

[1] USEPA notes that paragraph (1) of subsection 182(b) is entitled ''PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS'' and that subparagraph (B) of paragraph 182(c)(2) is entitled ''REASONABLE FURTHER PROGRESS DEMONSTRATION,'' thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the ''requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard'') (hereinafter referred to as ''September 1992 Calcagni memorandum'').

at page 6). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under Section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of section 172(c)(9) of the Act. The USEPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6).

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant USEPA guidance and recorded in USEPA's—Aerometric Information Retrieval System (AIRS).

The determinations made in this notice do not shield an area from future USEPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, any other States with respect to the NAAQS (see section 110(a)(2)(D)). The USEPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the Act to require such emission reductions if necessary and appropriate to deal with transport situations.

Analysis of Air Quality Data

The USEPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) for the Cleveland-Akron-Lorain ozone nonattainment area in Ohio from the 1992 through 1995 ozone seasons. The following ozone exceedances were recorded for the period from 1993 to 1995 (and the average number of expected exceedances for this three-year period is also presented):

Cleveland-Akron-Lorain: Medina County, 6364 Deerview Lane (1994)—0.127 parts per million (ppm); average expected exceedances: 0.3. Cuyahoga County, 891 E. 152 St. (1993)—0.126 ppm, (1994) 0.127 ppm and 0.125 ppm; average expected exceedances: 1.0. Data for 1995 shows no new exceedances of the ozone NAAQS were monitored in the Cleveland-Akron-Lorain area.

On the basis of this review, USEPA determines that the area has attained the ozone standard during the 1993–95 period, which is the most recent three-year time period of air quality monitoring data, and therefore are not required to submit a 15% emissions reduction plan, attainment demonstration, and a section 172(c)(9) contingency measure plan. See the June 29, 1995, proposed rulemaking published in the Federal Register at 60 FR 31433.

Public Comment/USEPA Response

These are the comments and responses that relate to the determination of attainment for the Cleveland-Akron-Lorain area. Comments that were received in support of the determination are not summarized below; only the adverse comments are summarized and responses are provided to these comments. No further action will be taken on the determination of attainment for the Dayton and Toledo areas since those areas have already been redesignated to attainment. In a later part of this rulemaking comments and responses are provided on the ozone redesignation request for the CAL area. Because of the potential for overlap of comments received on the issue of the determination of attainment and the redesignation, USEPA hereby incorporates by reference the responses contained in the section below on redesignation to the extent that they bear on the issues involved in the determination of attainment, and vice versa. To the extent that comments can be construed to bear on both rulemaking actions, responses should be construed to pertain to both.

(1) Comment: The determination action has been inappropriately segregated from the section 110(a)(2)(D) petition submitted by the State of New York which requested the Federal government to assess the implementation plans of upwind states to determine their contribution to nonattainment in the State of New York. Regional Oxidant Modeling indicates that areas to the west of the State of New York, including the State of Ohio, contribute to violations of the ozone NAAQS in the northeast United States, including the State of New York. Therefore these areas should continue to meet the statutory reasonable further progress requirements set forth in the Clean Air Act, at least until the State of New York's section 110(a)(2)(D) request has been acted on.

(1) Response: The issue of transported emissions is not relevant to this rulemaking action. The purpose of the requirements of section 182(b)(1) concerning reasonable further progress and attainment demonstration and the contingency measure requirements of section 172(c)(9) as they apply to CAL is not to address emissions from that area that may cause or contribute to air quality problems in downwind areas. The purpose of those requirements as they apply to CAL is to achieve attainment of the standard in that area. The issue of transported emissions is dealt with by other provisions of the Act, provisions that are not the subject of this rulemaking action. USEPA has authority, and the state has an obligation, under section 110(a)(2)(A) (in the case of intrastate areas) and section 110(a)(2)(D) (in the case of interstate areas), to address transported emissions from upwind areas that significantly contribute to air quality problems in downwind areas. The determination being made in this rulemaking is that, as CAL has attained the ozone standard, certain additional Act requirements whose purpose is to achieve attainment in the area do not apply to them. That determination does not mean that the area might not have to achieve additional reductions pursuant to other provisions of the Act if it is determined in the future that such reductions are necessary to deal with transport from the CAL area to downwind areas.

Currently, the issue of transported ozone and ozone precursors is being addressed by the Ozone Transport Assessment Group (OTAG) which is composed of Industry, Environmental Groups, Federal Government, State Governments (including the State of Ohio), and Local Governments from the Midwest and Eastern Regions. OTAG is performing ozone modeling to determine how ozone transport can be addressed on a regional basis. After this assessment is completed, The United States Environmental Protection Agency (USEPA) anticipates using its authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the Act to require emissions reductions where appropriate based on this assessment and any other relevant information.

(2) Comment: The determination of attainment fails to meet the purpose, intent and spirit of the Clean Air Act by not protecting and enhancing the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population. The ozone standard has been shown to be inadequate to protect public health. The American Lung

Association has provided ample evidence and new studies continue to confirm this. It is very clear to many people living here that the air is polluted and adversely affecting people's health. Furthermore, no one has demonstrated that the bad air and high pollution levels in Ohio's nonattainment areas are not adversely affecting the health of those downwind.

(2) Response: The determination of attainment is based on ozone monitoring data collected in the Cleveland-Akron-Lorain area. These data continue to show that the area has attained the standard. In a separate part of this rulemaking the ozone redesignation request is discussed. This request contains a maintenance plan which will provide for continued maintenance of the standard into the future. The maintenance plan is unaffected by the determination of attainment that finds that the 15% plan, attainment demonstration, and section 172(c)(9) contingency measures are no longer required.

USEPA is also reviewing the current ozone standard to see whether it should be revised in order to better protect the public health. Until the current NAAQS is revised, the current NAAQS of .12 parts per million is the appropriate standard against which to assess plans and measure attainment.

(3) Comment: The piecemeal approach which USEPA is taking to ozone attainment and redesignation is promoting backsliding and encouraging doing the least possible to protect public health and actually clean up the air. A holistic approach to solving environmental problems is always needed. This is no exception. Reviewing emissions inventories in one rulemaking, NO_X in another, the SIP in another, Reasonable Further Progress in another, transportation modeling in another, etc. is a methodology which effectively puts blinders on and prevents complete analysis of interdependence aspects. Furthermore this piecemeal approach is an out-of-sequence, illogical process.

USEPA must first determine if attainment has been reached in accordance with the Clean Air Act's redesignation criteria given in section 107. Without ascertaining that attainment has actually been reached it is premature to alleviate the requirements for further controls or Reasonable Further Progress. It appears that USEPA is only applying the first redesignation requirement that the area has attained the NAAQS and ignoring the other requirements for redesignation and proceeding to relax the standards.

(3) Response: Nothing requires that all of the SIP revisions submitted by the State be reviewed together. The CAA has differing submittal dates for the SIPs and requires USEPA to act on each within a specific time period of its submittal. This would probably not allow adequate time for USEPA to process all of the submittals at once, given that some of the submittals were submitted years apart from each other. Where possible USEPA has sought to consolidate responses to submittals but the CAA is not always conducive to this approach. The determination of attainment is not the same as a redesignation to attainment, and therefore the requirements of section 107, which apply to redesignations to attainment are not applicable. See also the response to comments below. The determination of attainment is only based on the area's ozone monitoring data. USEPA has decided to address the determination of attainment and the State's ozone redesignation request for Cleveland-Akron-Lorain together in this Federal Register action. This rulemaking does not circumvent the redesignation requirements. See the discussion in the redesignation rulemaking, below, and in USEPA's Responses to Comments in its Determination of Attainment of Ozone Standard for Salt Lake and Davis Counties, Utah 60 FR 36723 (July 18, 1995). USEPA in this portion of the rulemaking, its determination of attainment, is simply making a factual determination that since CAL is attaining the standard, certain provisions of the CAA, whose express purpose is to achieve attainment of the standard, do not require SIP revisions. In the redesignation portion of this rulemaking, USEPA explains its basis for concluding that CAL has met the requirements of section 107 for redesignation to attainment.

With respect to the determination of attainment, USEPA set forth in the June 29, 1995 notices on CAL its basis for interpreting certain CAA requirements as inapplicable to an area that is attaining the ozone standard.

This interpretation is consistent with USEPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (''General Preamble''), 57 FR 13,498 (April 16, 1992), which directly addressed requirements for redesignations. *Id.* at 13,561–64. USEPA interpreted the general reasonable further progress requirement and contingency measures as not applying to redesignation requests because an area must have attained the standard before it could be redesignated to attainment, making reasonable further progress and contingency measures, unnecessary.

USEPA's May 10 memorandum set forth USEPA's interpretation of the requirements of CAA sections 172(c)(9) and 182(b)(1)(A), with respect to ozone nonattainment areas that have achieved the ozone NAAQS. USEPA explained that because the purpose of those requirements has already been fulfilled for areas that have attained the standard, the requirements do not apply to those areas for as long as they stay in attainment. It further explained that this interpretation is consistent with USEPA's interpretation of the general reasonable further progress requirements and section 172(c)(9) contingency measure requirements with respect to redesignation requests as set forth in its General Preamble, and with related USEPA guidance on the procedures to be used when USEPA is processing redesignation requests.

USEPA has concluded that Congress included the 15 percent plan as a specification of ''reasonable further progress''. Section 182(b)(1) is entitled ''Plan provisions for reasonable further progress.'' The heading's reference to ''reasonable further progress'' indicates Congress' overall intent in enacting the provision. The term ''reasonable further progress'' is defined as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by (USEPA) for the purpose of ensuring attainment of the applicable (NAAQS) by the applicable date.'' 42 U.S.C. section 7501(l). This definition applies for ''the purposes of * * * part'' D of Title I of the CAA, which includes section 182(b). *Id.* Thus, the term ''reasonable further progress'' requires only such reductions in emissions as are necessary to attain the NAAQS by the attainment date and no more. 42 U.S.C. section 7501(l). Accordingly, USEPA has interpreted section 182(b)(1)(A)(I) consistent with the statutory definition of ''reasonable further progress'' and with section 182(b)(1)(A)(I)'s express purpose of assuring progress to bring violating areas into attainment. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and USEPA does not believe that the area need submit revisions providing for the further emissions reductions described in section 182(b)(1).

The legislative history expressly supports USEPA's interpretation of section 182(b)(1)(A)(I). In describing the 15 percent plan, the House Report stated:

The emissions reductions called for in this subsection * * * provide a concrete translation of how much an area must do to achieve ''reasonable further progress'' toward attainment of the standards, as required in section 172 and defined in section 171. Areas that fail, as determined by USEPA, to achieve reasonable further progress are in violation of the Act.

H.R. Rep. no. 490, 101st Cong., 2d Sess., pt. 1 (1990) at 236. Thus, Congress contemplated that the requirements of section 182(b)(1)(A)(I) were simply a specification of the more general reasonable further progress requirements of the Act, with the same goals and definition.

Moreover, USEPA's interpretation of the requirements of section 182(b)(1)(A)(I) is consistent with its interpretation of the general reasonable further progress requirements of CAA section 172.

USEPA has also determined that section 172 (c)(9), 42 U.S.C. section 7502(c)(9) does not require a contingency measures plan for an area such as CAL, which has attained the standard. The contingency measures plan is required for an area which ''fails to make reasonable further progress, or to attain the (NAAQS) by the attainment date * * *'' 42 U.S.C. section 7502(c)(9). If, as USEPA has determined with respect to CAL, an area has already attained the standard, then by definition such an area is not one to which contingency measures apply. There simply is no failure to attain or make progress for which additional measures need be contingent. However, as with section 182(b)(1)(A)(I), USEPA interprets section 172(c)(9)'s requirements to be applicable to areas that lapse back into violation prior to redesignation, and which therefore need additional progress toward attainment. Moreover, USEPA's interpretation of 172(c)(9) is consistent with its interpretation of these requirements in the context of redesignation requests. 57 FR 13564. USEPA's interpretation also vindicates the policy objective of reducing the burden on states and sources of adopting and implementing additional control measures that are not necessary to attain the standard.

(4) Comment: The number of ''close calls'' and the use of voluntary measures to reduce ozone raises real questions about the overall air quality. Modeling would answer some of these questions and give a truer picture of what the air is really like. Some initial analysis of the weather patterns in 1995 indicates that they may be similar to 1988, a supposedly ''unusually hot, dry summer'' when numerous exceedances were recorded. In fact, the weather in Ohio in 1988 or thus far in 1995 is not all that unusual. Even higher temperature have been recorded. It can be expected that there will be more exceedances, unless there are reductions in ozone precursor emissions.

USEPA policy (September 4, 1992, procedures for processing requests to redesignate areas to attainment, from John Calcagni) states that data from the monitors be from areas of highest concentration and that modeling may be necessary to determine the representativeness of the monitor data.

(4) Response: While voluntary measures were used in Cleveland during the summer of 1995 to involve the community in keeping their air clean, the Ohio Environmental Protection Agency (OEPA) did not claim that this measure was responsible for the Cleveland area attaining the NAAQS. Ohio's request claimed that the improvement in air quality was due to permanent and enforceable measures, namely the Federal Motor Vehicle Emissions Control Program and the Federal fuel volatility requirements that reduced the emissions from gasoline. In addition, the basic automobile inspection and maintenance program, required as a part of the carbon monoxide SIP, would also have provided volatile organic compound (VOC), and oxide of nitrogen (NOx) emissions reductions in the area, as a side benefit. These measures resulted in the area's VOC emissions decreasing by about 14 percent from 1990 to 1994, enabling the area to reach attainment of the ozone NAAQS.

USEPA policy on the determination of attainment is provided in a May 10, 1995, memorandum from John S. Seitz, Director of the Office of Air Quality Planning and Standards. This memorandum sets forth USEPA's interpretation of certain requirements of subpart 2 of part D of title I of the Clean Air Act as they relate to ozone nonattainment areas that are meeting the ozone NAAQS. The USEPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with the related requirements, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is in fact attaining the ozone standard (i.e., attainment of the NAAQS is demonstrated with 3 consecutive years of complete, quality-assured air quality monitoring data). The USEPA has previously interpreted the general provisions of subpart 1 of part D of title I (section 171 and 172) so as not to require the submissions of SIP revisions concerning RFP, attainment demonstrations, or contingency measures, and USEPA believes it is appropriate to interpret the ozone-specific provisions of subpart 2 in the same manner. This is further discussed under section I covering the background on the determination of attainment.

The determination of attainment is based only on ozone monitoring data for the area. The data for at least the last four years show that the area has achieved attainment. We believe that the monitoring data is adequate and representative of the area and that modeling is not necessary to show attainment. These data show that the area is in attainment and the monitoring data for 1995 show that no exceedances were monitored in the entire Cleveland-Akron-Lorain area. This shows that the provisions related to submitting a SIP revision to bring an area into attainment of the ozone NAAQS, such as the attainment demonstration, RFP, and contingency measures requirements are not necessary since the area is already in attainment of the ozone NAAQS.

The weather in 1995 was more conducive toward forming ozone in many parts of the Country. Even though this was the case no exceedances were monitored at any of the monitors in the CAL area showing that the area has reduced its emissions to a level that has brought the CAL area into attainment of the ozone NAAQS.

(5) Comment: The Southwestern Pennsylvania Growth Alliance (Growth Alliance) is concerned that the redesignation of the Cleveland-Akron-Lorain area could adversely affect both the economy and air quality in southwestern Pennsylvania, and it feels that action on the applications from these regions should be suspended until a more comprehensive national solution to interstate transport of ozone and ozone precursors is developed and implemented. The Growth Alliance believes that Southwestern Pennsylvania is being unfairly disadvantaged compared to neighboring states by the requirements created by the Clean Air Act, by USEPA, and by the Northeast Ozone Transport Commission.

(5) Response: USEPA's proposed action to determine that the Cleveland-Akron-Lorain area has reached attainment and that it is not necessary for it to have an attainment demonstration, 15% rate of reduction plan, and a contingency plan is different from redesignating the Cleveland-Akron-Lorain area as an attainment area for ozone. In order for USEPA to make a determination concerning the 15% plan and other requirements, it is only necessary to show that the area has attained the ozone standard through

monitoring data. In order to be redesignated from nonattainment to attainment the area must meet the five redesignation requirements of section 107 of the CAA. One of the five redesignation requirements is that the area have met all of the SIP requirements applicable to the area. A determination of attainment renders some of those requirements as inapplicable, based on the area attaining the standard, but the area would still have to meet the remaining applicable SIP requirements before it could satisfy part of the requirements for redesignation. The ozone redesignation request for Cleveland-Akron-Lorain is being addressed in a separate part of this same Federal Register action. A discussion of the comments and responses received on the redesignation is given in that part of this action. In order for the CAL area to be redesignated from nonattainment to attainment it would have to meet all of the applicable redesignation requirements. If an area meets the criteria for redesignation nothing in the CAA suggests that redesignations should be delayed. Any issue regarding transport of ozone and its precursors can and is expected to be dealt with through the Ozone Transport and Assessment Group (OTAG) and USEPA's authority under section 110 (a)(2)(A) and (a)(2)(D) of the Act. See also Response to comment 2.

Determination Conclusion

The USEPA has determined that the Cleveland-Akron-Lorain (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit) has attained the ozone standard and continues to attain the standard at this time.

As a consequence of this determination that the Cleveland-Akron-Lorain ozone nonattainment area has attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the Cleveland-Akron-Lorain area. Additionally since this determination is occurring simultaneously with the ozone redesignation to attainment, the determination will not be revoked in the event of a violation. Rather, in the event of a violation, the contingency measures in the approved maintenance plan would be triggered by a violation.

Ozone Redesignation Request

I. Background

On November 14, 1994, the OEPA submitted to the USEPA a request for redesignation to attainment for ozone for the CAL area of Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage. Additional information on the State public hearing and response to comments was submitted to USEPA on February 22, 1995. The redesignation requests were supported by technical information demonstrating that the requirements of section 107(d)(3)(E) of the Clean Air Act Amendments (CAAA) were met. On June 15, 1995, a notice was published in the Federal Register (60 FR 31433) which proposed approval of the redesignation requests to attainment for ozone and the maintenance plans for the Ohio CAL moderate ozone nonattainment area counties.

II. Summary of Proposed Rulemaking

The proposed rulemaking detailed how the State submittal fulfilled the redesignation requirements of the CAAA. Specifically, section 107(d)(3)(E) provides for redesignation if: (i) The Administrator determines that the area has attained the National Ambient Air Quality Standards (NAAQS); (ii) The Administrator has fully approved the applicable implementation plan for the area under section 110(k); (iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and (v) the State containing such area has met all requirements applicable to the area under section 110 and Part D.

Included in the State submittal was a maintenance plan. A component of the maintenance plan is the maintenance demonstration which shows that the level of emissions projected out 10 years will not exceed the attainment year inventory. The proposed rulemaking presented summary tables of Volatile Organic Compounds (VOC) emissions, and NO_X emissions projections for the CAL area counties. The OEPA has revised the base year and projected year inventories numbers in response to comments made by Region 5. The VOC and NO_X point source emissions projections for the year 2000 were estimated by USEPA based on an average growth rate for the 1996 to 2006 period. These estimates show that the total emissions in the area are expected to remain below the attainment level of emissions. In addition, the NO_X point source emission projections do not account for emission reductions due to the Title IV Acid Rain requirements of the CAA, which would further reduce NO_X emissions in the area. The changes did not affect the State's ability to demonstrate maintenance. The revised tables are presented below.

SUMMARY OF VOC EMISSIONS

[Tons/day]

	1990 base	1993 attain	1996 projected	2000 projected	2006 projected
Point	82.22	75.75	78.55	82.44	88.63
Area	201.05	201.37	201.45	201.63	200.86
Mobile	248.4	181.4	131.2	78.4	48.8
Totals	531.7	458.5	411.2	362.5	338.3

SUMMARY OF NO_X EMISSIONS

[Tons/day]

	1990 base	1993 attain	1996 projected	2000 projected	2006 projected
Point	245.59	254.61	263.91	277.05	298.00

SUMMARY OF NO_X EMISSIONS—Continued

[Tons/day]

	1990 base	1993 attain	1996 projected	2000 projected	2006 projected
Area	80.46	80.56	80.51	80.61	80.18
Mobile	176.6	159.9	142.2	95.5	75.4
Totals	502.6	495.1	486.6	453.2	453.6

Additionally, the VOC and NO_X emissions projected for the year 2006 in the above tables are considered emission budgets for purposes of transportation conformity.

The proposal stated that final approval of the CAL moderate nonattainment area counties was contingent upon final approval of VOC reasonably available control technology (RACT) rules, the 1990 Base-year inventory, the section 182(f) NO_X waiver request, the 182(b)(1) reasonable further progress plan (15% plan), the 182(b)(4) inspection and maintenance plan, the attainment demonstration, and the 172(c)(9) contingency measures. All of these requirements have either been met through full approval of state submittals or have been determined in this rulemaking to be no longer applicable. The final approval of most of the VOC RACT rules were published on March 23, 1995 (60 FR 15235), and became effective on May 22, 1995. Final approval of RACT rules for major stationary sources not specifically covered by a USEPA Control Technique Guideline for RACT became effective on October 31, 1995, in a letter notice action from Regional Administrator Adamkus to the individual companies. A formal announcement of this was made in the Federal Register. The Base-year inventories were approved on December 7, 1995 (60 FR 62737) and effective on January 8, 1996. The NO_X waiver request was approved on July 13, 1995 (60 FR 36051) and became effective on August 14, 1995. The I/M plan was approved on April 4, 1995 (60 FR 16989) and became effective on June 3, 1995.

A May 10, 1995, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'', states that upon a determination made by USEPA that an area has attained the NAAQS for ozone, that area need not submit SIP revisions concerning reasonable further progress (15%) plan, 182(b)(1) attainment demonstrations, and 172(c)(9) contingency measures for as long as the area continues to meet the standard. Such a determination is made for the CAL area in a separate part of this rulemaking. Consequently, final approval of the redesignation request for the CAL counties of Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit, and Portage is no longer dependent upon approval of the 15% plan, attainment demonstration, or section 172(c)(9) contingency measures.

Public Comment/USEPA Response

In response to the request for written comments on the proposed rulemaking, USEPA received about 50 comment letters. Letters were received from concerned citizens, environmental groups, and industry. Over 30 of these letters were adverse comments on the propose rulemaking. The remaining comments were in support of the proposed rule. The following summarizes the adverse comments received and responds to them. The comments in support of the rule are not summarized below, but are available for public review in USEPA's docket. In an earlier part of this rulemaking comments and responses are provided on the determination of attainment for the CAL area. To the extent that any comments under the determination section also apply to the ozone redesignation action for the CAL area they are also incorporated into the comments/responses under this section covering the ozone redesignation action for the CAL area.

(1) Comment: Many of the commenters are opposed to the redesignation of the Cleveland-Akron-Lorain area to attainment on the grounds that they believe that more stringent emission control requirements and sanctions are needed to avoid unsafe pollution levels. These commenters believe that the benefits of health and environmental improvements to be achieved through stricter standards outweigh the increased costs of emission controls on industry and on the public. Several commenters state that the ozone standard itself should be tightened, expressing concerns over long term health impacts, impacts on children and the elderly, and impacts on smog levels still visible in the area.

(1) Response: The NAAQS were established to protect the public's health and welfare with an adequate margin of safety. Although additional reductions in VOCs may provide further health improvements, it is noted that the issue here is attainment of the ozone standard. The State of Ohio has met the requirements for the redesignation of the Cleveland-Akron-Lorain area to attainment of the ozone standard, including attainment of the ozone NAAQS. It is not clear that further reduction in ozone levels will provide significant health improvements.

With regard to a revised ozone standard, it should be noted that the USEPA along with States and science advisors, is the process of reconsidering the ozone standard. If the ozone standard is revised a number of ozone attainment and nonattainment areas may be affected. A redesignation of Cleveland-Akron-Lorain to attainment at this time will not prevent this area from being redesignated to nonattainment if it is subsequently found to be in violation of a revised ozone standard. Until the NAAQS is revised, however, the 0.12 ppm NAAQS for ozone is the only appropriate standard against which to judge attainment.

(2) Comment: People in the Cleveland-Akron-Lorain area suffer from sinus problems, and increased occurrence of asthma and other life-threatening respiratory illnesses that are directly attributable to air pollution. The air is often oppressive and really unbreathable, especially in the kind of hot, humid weather that the area has experienced this summer. Infants and the elderly are affected by the higher tolerance of ozone levels now in force. We see people who become ill from polluted air whenever the ozone level rises. The current ozone standard is not health based. We want to breathe cleaner air. We are opposed to the redesignation of Cleveland-Akron-Lorain because of the asthma epidemic and increasing number of asthma deaths. The pervasiveness of the health threat posed far outweighs the inhibition of industrial expansion and limits on smokestack pollution.

(2) Response: The current ozone standard is a health based standard. It was recently reviewed and reaffirmed, see 58 FR 13008 (March 9, 1995). However, the ozone NAAQS is currently being reviewed to see if the standard should be changed and what the new standard would be, see 59 FR 5164 (February 3, 1994). A staff report was recently released that discusses this review of the ozone NAAQS. But unless and until the ozone NAAQS is changed - it remains the standard to use for comparison against ozone monitoring data in the area. Those data indicates attainment of the ozone standard.

(3) Comment: In Cleveland-Akron-Lorain the air smells. There are also foul odors coming from factories during the early morning hours that are waking us up and making us nauseated.

(3) Response: At the Federal level the Clean Air Act (CAA) does not provide specific requirements for companies to control odors. Odor is not an issue pertinent to the ozone standard or the attainment of that standard. We have, however, made our enforcement group aware of these complaints to see what can be done. Further, existing facilities must continue to operate existing air pollution control equipment in accordance with applicable rules, regulations and permits, and sources that are problematic in terms of posing a nuisance to area residents may be referred to the State and local environmental enforcement staff for investigation.

(4) Comment: Several commenters expressed concern that trucks and buses pollute the air by blowing out black smoke and that cleaning up emissions from cars is not sufficient.

(4) Response: The USEPA agrees that cleaning up emissions from cars is not enough. Trucks and buses also produce significant pollution. The USEPA has set stringent standards for new heavy duty diesel engines beginning with the 1988 model year, with additional improvements to be made with the 1991 and 1994 model year engines. The black smoke from diesel trucks and buses is particulate matter which is a visible air pollutant. Trucks and buses also contribute to ozone air pollution because they produce hydrocarbons and NO_X. The NO_X emission standard has been tightened from 10.7 grams per brake horsepower per hour (g/bhp-hr) in 1985 to 6.0 in 1988 and 5.0 in 1991. The hydrocarbon emission rate for diesel engines is set at 1.3 g/bhp-hr. Particulate emission standards have been tightened from 0.60 g/bhp-hr in 1988 to 0.10 g/bhp-hr in 1994 for all new heavy duty engines. As the older trucks and buses are replaced by the newer, cleaner engines the pollution from these vehicles will be significantly reduced.

In October 1993, the USEPA required the use of a cleaner diesel fuel throughout the country. Diesel fuel used in on-highway compression ignition engines contains less sulphur than earlier fuels. Lower sulphur reduces the amount of indirect particulate and improves the operation of new diesel engines using particulate trap oxidizers to control direct particulate emissions. It is estimated that the use of low-sulphur diesel fuel reduces direct and indirect particulate by approximately 28 percent from the baseline fuel. Air quality impacts of fuel controls are projected to reduce particulate by 2.3 to 8.3 micrograms per cubic meter and sulphur dioxide by 7 to 16 micrograms per cubic meter in a metropolitan area the size of Cleveland-Akron-Lorain.

The State of Ohio will implement its inspection and maintenance (I/M) program beginning in 1996. The authorizing State legislation for the I/M program requires the testing of diesel powered vehicles up to 10,000 pounds for opacity (smoke). Buses are also required to meet emission standards for smoke, hydrocarbons and carbon monoxide.

The reductions in hydrocarbon, and NO_X emissions from trucks and buses will contribute to maintaining the ozone standard and protecting the public's health. Particulate issues are separate from ozone issues and are not relevant for consideration here. While the standards for particulate emissions will greatly reduce the amount of smoke emitted from trucks and busses, it is not expected to have a significant effect on ozone levels and as a result is not pertinent to an ozone redesignation request.

(5) Comment: Several commenters have expressed confusion over the relationship between the proposed redesignation and the protection of the ''ozone layer.'' One commenter in particular requests that the USEPA explain the ''whole ozone picture.''

(5) Response: At the very outset of this response, it must be noted that ''ozone'' referred to in the proposed redesignation is chemically identical to the ''ozone'' referred to in the term ''ozone layer.'' In both situations ozone refers to a gas composed of molecules with three oxygen atoms each.

In the case of the ''ozone layer'', one is referring to the layer of the Earth's stratosphere where ozone is found in relatively high concentrations. Ozone in this layer is formed through the reaction of oxygen molecules (two oxygen atoms each) and high energy electromagnetic radiation from the Sun. Oxygen atoms are freed when oxygen molecules are impacted by the high energy radiation. Some of these freed oxygen atoms combine with oxygen molecules to form ozone molecules. Within this layer of the atmosphere, ozone is a significant absorber of high energy ultraviolet radiation from the Sun. If this ultraviolet radiation reached the surface of the earth in sufficient intensity, significant, undesirable biological damage could result to surface organisms. Concerns over potential damage to the protective ozone layer has led to efforts to reduce the emissions of gasses which are believed to directly or indirectly eliminate ozone molecules.

In the case of the proposed of Cleveland-Akron-Lorain, one is dealing with ozone found in the lowest levels of the atmosphere. At this level of the atmosphere, high ozone levels are not typically found (natural processes can lead to peak ozone levels of 0.04 to 0.06 parts per million, well below the ozone standard of 0.12 parts per million). Man-made (anthropogenic) emissions of volatile organic compounds, oxides of nitrogen, and other gases, in the presence of sunlight and relatively warm temperatures, can lead to ozone formation of considerably higher concentrations. This chemical formation process involves hundreds of chemical reactions and differs significantly from the process that forms ozone in the stratosphere. There is no significant exchange of ozone between the lower atmosphere, where high ozone levels are undesirable, and the stratosphere, where high ozone levels are desirable for the protection of life on earth.

Ozone concentrations in excess of the ozone standard are shown, based on numerous health studies and correlation of health data and monitored ozone concentrations, to be damaging to human health, particularly causing problems with the human respiratory system. For this reason, ozone has been listed as a primary pollutant with a defined health-based standard.

(6) Comment: The air quality in Cleveland-Akron-Lorain is lousy and there has been no improvement in the quality of our air. If anything, I would say things are worse.

(6) Response: With respect to ozone levels in the CAL, the air quality has improved significantly since the late 1980's. During 1988 there were a number of monitored readings above .150 parts per million in the area. During the last four years the highest concentration monitored was .127 ppm. CAL achieved attainment of the ozone standard at the end of 1994, by monitoring attainment of the ozone NAAQS during the three previous years

(which are 1992, 1993, and 1994). The area continued to attain the standard since that time.

Section 107(d)(3)(E)(iii) requires that, for the USEPA to approve a redesignation, it must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions. The September Calcagni memorandum, at page 4, clarifies this requirement by stating that ''[a]ttainment resulting from temporary reductions in emission rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.'' As discussed in the June 15, 1995 Federal Register proposed rulemaking, the State of Ohio demonstrated that permanent and enforceable emission reductions are responsible for the recent improvement in air quality. This demonstration was accomplished through an estimate of the reductions (from 1990 to 1993) of VOC achieved through Federal measures such as the Federal Motor Vehicle Emissions Control Program (FMVECP) and fuel volatility rules implemented from 1990–1993, as suggested by the September Calcagni memorandum.

Volatile Organic Compound (VOC) emissions are one of the precursors that help to form ozone. The total emission reductions achieved from 1990 to 1993 were 65 tons of VOC per day. This is a 14 percent reduction in VOCs, which corresponds to the drop in ozone concentrations in the area. These emission reductions were primarily the result of the FMVECP, Automobile Inspection and Maintenance program, and Gasoline Reid Vapor Pressure (RVP) reductions from 10.5 pounds per square inch (psi) in 1989, to 9.0 psi in 1992. The VOC emissions are expected to continue to decrease in the future due to the Federal Motor Vehicle Emissions Control Program, Stage II vapor recovery program, and the Enhanced Automobile Inspection and Maintenance Program. The NO_X emissions are also expected to decrease in the future due to the Federal Motor Vehicle Emissions Control Program and the Enhanced Automobile Inspection and Maintenance Program.

(7) Comment: I am sure you are being bombarded with requests to change the designation to attainment, on the grounds that the region will be hurt economically if this is not done. To me, such arguments ignore two fundamental points. First, there is not evidence that stricter environmental regulations hurt the economy. A clean environment does not mean less jobs, it can mean more jobs. In fact, there is evidence that indicates the opposite. Second, even if this is true, we would be selling our health, and the health of our world and our children, for economic benefit. This does not seem a good trade. There is entirely too much emphasis on business economic considerations over health considerations. The cost to industry may be high, but what about the cost to pay for increased health problems? Air pollution results in hundreds of thousands of dollars worth of asthma illnesses and deaths each week. This should be spent on pollution controls instead.

It would be reprehensible if the agency charged with the protection of health and the environment capitulated to vested, self-serving interests that place the almighty dollar ahead of human health and welfare. The redesignation request should not be approved.

(7) Response: The approval of the ozone redesignation request for Cleveland-Akron-Lorain is based on the area meeting the five requirements of section 107 of the CAA. It is not based on economic grounds. The first of the five requirements of section 107 is that the area has attained the National Ambient Air Quality Standard for ozone, which it has. The NAAQS for ozone is set at a level designed to protect the public's health and monitoring data show that the area is meeting the standard.

(8) Comment: One commenter, although not expressing opposition to the proposed redesignation, does express opposition to the approach used in the Cleveland-Akron-Lorain area of trying to get the public to reduce emissions only during critical high ozone potential periods. The commenter favors a permanent curtailment of emissions so that people with related health risks, such as asthma, will not have to seek the shelter of air-conditioned places during such periods.

(8) Response: It is agreed that, where possible, permanent emission controls should be implemented to minimize ozone levels and to attain the ozone standard. It should be recognized that many permanent emission controls, such as reasonably available control technology, transportation control measures, and vehicle inspection/maintenance, have been implemented in the Cleveland-Akron-Lorain area. The maintenance plan takes into account that these emission controls will be maintained despite the redesignation of the area as an area in attainment of the ozone standard. The permanent and enforceable emissions reductions are discussed under comment number six, and in comment 4 in the determination of attainment section.

(9) Comment: A number of commenters believed the air monitoring in the area was inadequate. Several concerns were noted: Commenters stated that there is presently insufficient monitoring both in terms of what is monitored and the number of monitoring stations (specifically, a lack of ozone monitoring in Geauga County was cited by several commenters).

(9) Response: The requirements for ambient air quality monitoring are detailed in 40 CFR part 58. The federal requirements include: The use of approved air monitoring equipment; quality assurance of monitoring data; appropriate network design; operating schedule; and siting of individual monitors. In determining attainment or nonattainment status of an area for the NAAQS for ozone, only air monitors sampling for ozone are relevant. Monitoring for precursors of ozone (such as VOC_S and NO_X) can be beneficial in understanding ozone formation. For determining the air quality concentrations of ozone in an area and determining attainment of the ozone standard, ambient ozone monitors are considered.

The Cleveland-Akron-Lorain ozone monitoring network consists of ten ambient ozone monitors: three in Cuyahoga County, two in Lake County, and one each in Ashtabula, Lorain, Medina, Portage and Summit Counties. The monitoring network is reviewed by the USEPA. The individual monitoring sites meet the federal monitoring requirements. The commenters are correct in noting that Geauga County is downwind of the urban area and in a location that would be expected to receive high ozone concentrations. However, the USEPA believes that decisions on the air quality can be made with the current network because the monitors cover an adequate geographic area to be representative of the nonattainment area. Ozone monitors are located in every county that is contiguous to Geauga County. All of these monitors are in attainment of the ozone NAAQS, including Lake County which is also downwind of the main urban area and would be expected to have similar air quality to Geauga County. Based on this USEPA believes that Geauga County is also in attainment of the ozone NAAQS.

(10) Comment: One commenter believed that the original readings that brought about the ''bad rating'' were taken in an industrial area surrounded by freeways inundated with Cleveland Browns fans. The commenter believed

the monitoring readings to be unrepresentative.

(10) Response: The highest ozone readings are not typically found in industrial areas or near freeways. Industries and traffic produce hydrocarbons (also called volatile organic compounds) and NO_X pollution that react in the presence of sunlight to form ozone. This reaction takes place over a period of several hours and thus the highest ozone concentrations are typically found 20 to 40 miles in the downwind direction. The USEPA considers all valid, quality assured monitoring data in the area in assessing the air quality. The moderate ozone nonattainment designation was based on 3 years of ozone monitoring data (1987–1989) and was based on the fourth highest reading (.157 the design value) at the monitoring site in Akron, Ohio. Other ozone monitoring sites in the area also had ozone concentrations in the range of a moderate classification. For example, the site at Jefferson Elementary School in Eastlake, Ohio had a design value of .152 for the 1987–1989 time period. The ozone monitoring data now shows an improvement in air quality that demonstrates attainment of the health based ozone standard. All air monitoring data is available to the public from the national USEPA Aerometric Information and Retrieval System (AIRS) data bank.

(11) Comment: The fact that this region did not adopt reformulated, less ozone-producing gasoline with fewer VOC's for summertime use clearly demonstrates the lack of commitment to clean air.

(11) Response: While the Cleveland-Akron-Lorain area was not required to adopted reformulated gasoline in order to be redesignated, they did choose an Enhanced Automobile Inspection and Maintenance program (I/M) as a maintenance measure to be implemented in the area. This program was chosen as the most cost effective program that the area could use for maintaining the standard while still providing room for growth in the area.

(12) Comment: Several commenters expressed dissatisfaction with the inspection and maintenance program for automobiles. Some were concerned about gaps in the I/M program that reduced the effectiveness. One commenter suggested other pollution reduction measures. A commenter believed that the vehicle inspection and maintenance program was not effective. The commenter believed that the I/M funds would be better spent on enforcing the speed limit, getting rid of high polluting vehicles, doing more on ''Ozone Action Days'' or making these mandatory, and giving incentives for sharing rides. One commenter was against the more stringent I/M program.

(12) Response: The I/M program for automobiles is a very cost-effective program for reducing pollution. Studies show that a small percentage of vehicles are producing a large portion of the pollution in a metropolitan area. Automobiles that are not well-maintained or that have pollution control equipment that has been disabled emit air pollution that can increase ozone concentrations. The I/M program will identify these automobiles and require repairs. Compared to other forms of pollution control, the I/M program is a low-cost alternative. The enhanced I/M program is estimated to cost between $500 to $900 dollars per ton of VOC pollution reduced. This compares to a cost of approximately $5,000 per ton for a basic program, $5,000 to $10,000 dollars per ton of VOC reduced for additional stationary source controls beyond the current RACT required in the Cleveland-Akron-Lorain area. The USEPA agrees that an effective I/M program is important. The enhanced I/M program adopted by Ohio and which began in January 1996, is the best and most cost effective testing program recommended by the USEPA.

An additional feature of the State's enhanced I/M program, designed to improve repair-effectiveness, is the requirement that automobile technicians become certified to repair vehicles which fail the test. The auto technician training program requires technicians to undergo a training program to ensure they are able to perform repairs on current new-technology vehicles and vehicles of the future. Technicians and repair facilities will be graded on the effectiveness of repairs and this information will be available to the public in order to make informed decisions on where to take their vehicle for repairs. This technician training and certification program began implementation in October 1995, and is being supervised by the OEPA.

(13) Comment: A commenter expresses the concern that control of emissions from aircraft as they travel over the area (and over the United States in general) have not been given enough consideration. The commenter believes aircraft emissions must be considered along with emissions from industries and automobiles in the control of air pollution.

(13) Response: It should be noted that States, under the requirements of section 182(a)(1) of the Clean Air Act, have included aircraft emissions in a base year emissions inventory for each ozone nonattainment area. These aircraft emissions were projected to the 10-year maintenance period in Ohio's maintenance plan for the Cleveland-Akron-Lorain area, and were shown, along with emissions from other sources, to not cause a projected violation of the ozone standard.

(14) Comment: A number of commenters were concerned that the redesignation would affect transportation choices and transportation planning and would contribute to more pollution. Concerns were expressed about: The need for more bike paths, the need for improved public transit, the need to discourage driving. Specific concern was expressed about express lanes on I–271 which would impact the environment. Another commenter had concerns about a subway being dropped from the transportation planning, a lack of bicycle facilities, more interchanges and freeways and new lane additions. There was concern about a tollway from Toledo to Portsmouth instead of light rail that would be upwind of the populated current nonattainment areas and would add pollution to the areas. The commenter wanted pollution prevention through better transportation choices.

(14) Response: The redesignation to attainment does not negate the need for the area to make smart transportation choices. The transportation conformity requirements still apply to the area as a maintenance area. The area will need to demonstrate that emissions are not exceeding the mobile source emission budget in the maintenance plan. The Northeast Ohio Area wide Coordinating Agency (NOACA) is the local metropolitan planning organization for the Cleveland-Akron-Lorain area and performs the conformity analysis on the transportation plan. Conformity to the emission budget is designed to prevent the area from increasing mobile source emissions to the point where the air quality standards are exceeded. Conformity will also provide assurance that a project will not be done if it would cause or contribute to a violation of the ozone NAAQS in the CAL area.

The commenters are correct in noting that transportation measures such as improvements in bicycle paths and facilities and improved public transit will contribute to better air quality by reducing the number of automobiles and the number of vehicle miles of travel. The commenters are also correct in their concerns about increasing freeway capacity and tollways, as these types of projects will encourage additional vehicular traffic. The USEPA believes that the conformity requirements will allow the area to make local decisions

on transportation planning while assuring that mobile source emissions will not increase. Increases to the mobile source budget are only allowed if there is an excess in the total projected emissions for the area.

Projects such as tollways that are built in the maintenance area would also be subject to conformity. Tollways that are in attainment areas are not currently required to meet any conformity tests. It is possible that projects of this type could affect air quality downwind; however, the USEPA believes that the cleaner vehicle standards will contribute to preventing degradation of the air. See also the response to comment 18.

(15) Comment: Over Lake Erie there is a gray and yellow mass of pollution. There is also a trail of smoke that rises from the smoke stacks of the East Lake Electric Power plant, and the trucks and buses are also emitting smoke. When I am at a high point on a hill looking down at downtown Cleveland, I can barely see the buildings. It's as if they are behind a cloud of dirt, smoke, and other pollution. We need to change this.

(15) Response: USEPA has a variety of programs addressing the commenter's concerns. The ''trail of smoke'' from the East Lake power plant is particulate matter, which is regulated both by limits on the mass of particulate matter and by limits on the opacity of the plume. Smoke from trucks and buses is being limited by new emissions standards that have been made achievable by new limitations on the sulfur content of diesel fuel. USEPA is updating its visibility regulations to reduce the impairment of visibility due to air pollution. Nevertheless, USEPA evaluates attainment of the air quality standards based on quantitative measurements of air pollutant concentration. Since these measurements indicate that the ozone standard is being attained, USEPA must conclude that this criterion for redesignation is satisfied.

(16) Comment: Several commenters are opposed to the redesignation because they believe it will lead to less USEPA oversight of existing emission control regulations and, therefore, to increased air pollution.

(16) Response: All volatile organic compound emission control regulations in place at the time of the redesignation of the Cleveland-Akron-Lorain area will remain in place unless it is ultimately shown through photochemical dispersion modeling that such control measures are not necessary for continued attainment of the ozone standard. These regulations will continue to be enforced by the State and will remain federally enforceable.

(17) Comment: One commenter asserted that section 107(d)(e)(E)(v) requires that a state meet all applicable requirements under section 110 and Part D. While claiming that Cleveland satisfies all 172(c) requirements, USEPA acknowledges that some components have not yet completed regulatory review. 60 FR 31437.

(17) Response: All applicable components, including those were referred to in the proposal as pending regulatory review, have now completed regulatory review. The Clean Air Act requires that the Cleveland-Akron-Lorain area meet all applicable requirements before the area is redesignated. USEPA approved the 1990 base year emissions inventory in a final rulemaking published on December 7, 1995 (60 FR 62737). The remaining VOC RACT rules for the area were approved in letter notice rulemakings dated October 31, 1995 and announced in the Federal Register. In a separate part of this final rulemaking USEPA determined that the 15% plan and contingency measures requirements are no longer applicable to the Cleveland-Akron-Lorain area. USEPA's rational for this action is contained in the rulemakings dated August 25, 1995 (60 FR 44277), June 29, 1995 (60 FR 33742, and 60 FR 33781), and this final rulemaking. As a result of these actions the Cleveland-Akron-Lorain area has met all of the fully approved SIP requirements. These requirements were met before USEPA published this final rulemaking taking action on the redesignation requests.

In response to the comment on the protection of the public health. The public's health is protected as evidenced by the monitoring data collected in the area. The data show that the air quality levels are meeting the NAAQS for ozone. These standards were set to protect the public health and welfare.

(18) Comment: By this proposed approval, USEPA claims the redesignation request relieves Ohio from submitting SIP revisions providing transportation and general conformity criteria guidance.

(18) Response: USEPA in this notice does not relieve Ohio from conformity requirements. Rather, USEPA has determined that those requirements will continue to apply after the area is redesignated, and therefore need not be fulfilled as a condition of redesignation. Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as to all other Federal actions (''general conformity''). Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the Act required the USEPA to promulgate. Congress provided for the State revisions to be submitted one year after the date of promulgation of final USEPA conformity regulations.

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188), and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the State of Ohio is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994, and November 30, 1994, respectively. Ohio submitted transportation and general conformity SIP revisions on August 17, 1995. The USEPA has not yet approved the transportation conformity rules as part of the SIP. Final rulemaking on the general conformity rules is expected soon.

The USEPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continue to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both

nonattainment and maintenance areas. Second, USEPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, the USEPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

For the reasons just discussed, the USEPA believes that the ozone redesignation request for the CAL area may be approved notwithstanding the lack of fully approved State transportation and general conformity rules. This policy was also exercised in the Tampa, Florida ozone redesignation finalized on December 7, 1995 (60 FR 62748).

(19) Comments: A commenter argued that the submission is defective under section 107(d)(3) because of the absence of a complete and fully approved implementation plan. The commenter asserted that USEPA cannot excuse Ohio's failure to submit required SIP revisions coming due after the November 15, 1994 filing of the redesignation request. The commenter complained that USEPA in its proposal was illegally attempting to rectify gaps by waiving applicability of necessary SIP requirements, including the requirements of 15 percent RFP, attainment demonstration, and contingency measures. Under section 107(d)(3)(E)(ii), a nonattainment area may be redesignated only after USEPA has fully approved the applicable implementation plan for the area under section 110(k).

Under the APA, the Administrator may not suspend applicability of SIP requirements except by redesignation pursuant to 107(d)(e)(E). This can be done only if USEPA has fully approved the SIP under 110(k). See 107(d)(3)(E)(iii). Congress allotted USEPA no discretion in determining what constitutes the applicable plan, but directed it to look at section 110(k), which does not give the Administrator authority to decide what constitutes the ''applicable requirements of this Act.'' Under section 107(d), the Administrator can only grant a request to redesignate to attainment if the state has met all applicable requirements under section 110 and Part D, and after the state has adopted a complete implementation plan.

(19) Response: USEPA has not suspended or granted the CAL an exemption from any applicable requirements. Rather, USEPA has interpreted the requirements of section l82(b)(1)(A)(i) and l72 (c)(9) as not being applicable once an area has attained the standard, as long as it continues to do so. This is not a waiver of requirements that by their terms clearly apply; it is a determination that certain requirements are written so as to be operative only if the area is not attaining the standard.

The May 10 Policy was clear about the consequences of the policy for redesignations. First, it made plain that a determination of attainment is not tantamount to a redesignation of an area to attainment. Attainment is only one of the criteria set forth in 107(d)(3)(E). To be redesignated, the State must satisfy all of the criteria of 107(d)(3)(E), including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions, and the requirements that the area have a fully-approved SIP which meets all of the applicable section 110 and part D requirements, and a fully approved maintenance plan.

Upon a determination of attainment, however, the 182(b)(1)(A)(i) requirements of RFP and attainment plans, and the 172(c)(9) requirement of contingency plans are no longer considered applicable requirements under section 107(d)(3)(E). They would no longer be included among those measures whose approval is part of the requirement of having a fully approved SIP.

A commenter contended that, by relying upon its determination of attainment, USEPA is avoiding the redesignation requirements of 107(d). This is not the case. What USEPA has done is make a determination that since the area is attaining the standard, which is a factual determination, certain provisions of the CAA, whose express purpose is to achieve attainment of the standard, do not require SIP revisions to be made by the State for so long as the area continues to attain the standard. This has long been USEPA's policy with respect to the section 172(c)(9) contingency measures and section 172(c)(2) RFP requirement. *See* general preamble at 57 FR 13498. USEPA has also made determinations regarding section 182(f) NOx waivers at or before the redesignation of an area and therefore not required NOx RACT submissions to approve such redesignations. *See* the Bay Area redesignation at 59 FR 49361.

USEPA disagrees with the commentor's analysis of the language and structure of the CAA. USEPA's statutory analysis was explained in detail in the June 8, 1995 direct final rule and in the May 10, 1995 memorandum from John Seitz. USEPA further elaborated upon this analysis, and responded to many of the concerns raised by the plaintiffs, in its final determination of attainment of Ozone Standard for Salt Lake and Davis Counties, Utah, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements. See 60 FR 36,723 (July 18, 1995). To the extent here pertinent, such portions of that notice, including the responses to comments, are incorporated herein by reference.

Thus, USEPA disagrees with the commentors' view that USEPA is not complying with all the redesignation requirements of 107(d)(3)(E). The area has a fully approved plan for and has met all applicable requirements. USEPA has interpreted SIP submission requirements of section 182(b)(1) regarding reasonable further progress and attainment demonstration plans, and of section 172(c)(9) regarding contingency measures to be implemented in the event an area fails to make reasonable further progress or attain the standard by the attainment date, not to apply for so long as the area continues to attain the standard. Since they are not applicable, fulfillment of these requirements is not necessary to meet the redesignation criteria of 107(d)(3)(E).

The commenter challenges USEPA's authority to determine certain SIP requirements inapplicable, and then bootstraps that argument to complain that since CAL has not met these requirements, the redesignation request only partially fulfills 107(d)(E)(v). The commenter argues that this is because the state has not met all ''applicable'' requirements under section 110 and Part D; but the requirements it points to are the very ones that USEPA has determined are inapplicable.

USEPA rejects this kind of circular argument. Since USEPA has determined that the statute does not require certain submissions so long as the area is in attainment, those inapplicable requirements cannot serve as the basis for concluding that the redesignation request is defective. Under the criteria of section 107(d)(E)(3) itself, a state need only meet all *applicable* requirements, and have a fully approved plan that contains all *required* elements. Thus USEPA's interpretation is fully consistent with the criteria of section

107(d)(3). Since USEPA has determined that the 15%, attainment demonstration, and contingency plan requirements are not applicable to CAL, and has found the SIP to be fully approvable without them, the CAL area has fairly met the criteria of section 107(d)(3). Certainly USEPA, after determining that these requirements are inapplicable, could not in good faith conclude that the redesignation request is defective because it fails to meet them.

Thus USEPA concludes that, where it has made a determination of attainment that results in the suspension of requirements, it may rely on that determination and its consequences in considering the approvability of a redesignation request.

For the reasons stated above and elsewhere in this Notice, in the June 29, 1995 Federal Register notices (60 FR 3372, 33781), in the May 10, 1995 memorandum, and in the 60 FR 36,723 (July 18, 1995) Utah notice, USEPA does not believe that the rulemaking violates any section of the CAA, nor does it circumvent the redesignation requirements under section 107(d)(3)(E).

(20) Comment: Citizens Commissions for Clean Air in the Lake Michigan Area stated that USEPA's action is not a reasonable interpretation of USEPA's nondiscretionary mandate ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population[.]}. section 101(b)(1).

(20) Response: The USEPA disagrees with the commentor's statement that its action violates section 101(b)(1). Section 101(b)(1) does not establish a nondiscretionary duty; it is a statement of purpose—a purpose that USEPA is not disregarding in this action. the area has attained the primary ozone standard, a standard designed to protect public health with an adequate margin of safety. (*see* section 109(b)(1)). USEPA's action does not relax any of the requirements that have led to the attainment of the standard. Rather, its action has the effect of suspending requirements, for additional pollution reductions, above and beyond those that have resulted in the attainment of the health-based standard.

(21) Comment: A commentor asserts that USEPA's action violates the Administrative Procedure Act and the CAA through its reliance on unpublished memoranda of John Calcagni and John Seitz and the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR l3498 (April 16, 1992). According to the commentor, reliance on those documents is inappropriate and illegal since those documents were issued without opportunity for notice and comment and are not enforceable regulations.

(21) Response: USEPA's reference to and reliance on those documents, all of which are either published or publicly available and a part of the record of this rulemaking, is in no way illegal under provisions of either the CAA or the Administrative Procedures Act. (The commentor cited no specific provisions of either act). USEPA agrees that such documents do not establish enforceable regulations; they do not purport to be anything but guidance. That is precisely why USEPA has performed this rulemaking—a notice-and-comment rulemaking to take comment on its statutory interpretations and factual determinations in order to make a binding and enforceable determination regarding the CAL area. The June 29, 1995 Federal Register notice referred to USEPA's prior policy memoranda not as binding the Agency to adopt the interpretations being proposed therein, but rather as a useful description of the rationale underlying those proposed interpretations. USEPA has explained the legal and factual basis for its rulemaking in the June 29, 1995 Federal Register notice and afforded the public a full opportunity to comment on USEPA's proposed interpretation and determination fully consistent with the applicable procedural requirements of the Administrative Procedures Act. (The procedural requirements of section 307(d) of the CAA do not apply to this rulemaking since it is not among the rulemakings listed in section 307(d)(1).)

(22) Comment: USEPA claims that, in accordance with the October 1994 Nichols memorandum, ''that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation so [long] as they have an approved Prevention of Significant Deterioration (PSD) SIP or delegated PSD authority.'' 60 FR at 31439. USEPA apparently believes it can replace NSR with PSD, but the CAA does not grant the Administrator such discretion.

(22) Response: The USEPA believes that the CAL area may be redesignated to attainment notwithstanding the lack of a fully-approved NSR program meeting the requirements of the 1990 Act amendments and the absence of such an NSR program from the contingency plan. This view, while a departure from past policy, has been set forth by the USEPA as its new policy in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled *Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.*

The USEPA believes that its decision not to insist on a fully-approved NSR program as a prerequisite to redesignation is justifiable as an exercise of the Agency's general authority to establish de minimis exceptions to statutory requirements. *See Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1979). Under *Alabama Power Co.* v. *Costle,* the USEPA has the authority to establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally.

In this context, the issue presented is whether the USEPA has the authority to establish an exception to the requirements of section 107(d)(3)(E) that the USEPA have fully-approved a SIP meeting all of the requirements applicable to the area under section 110 and part D of title I of the Act. Plainly, the NSR provisions of section 110 and part D are requirements that were applicable to the Ohio area seeking redesignation at the time of the submission of the request for redesignation. Thus, on its face, section 107(d)(3)(E) would seem to require that the State have submitted and the USEPA have fully-approved a part D NSR program meeting the requirements of the Act before the areas could be redesignated to attainment.

Under the USEPA's de minimis authority, however, it may establish an exception to an otherwise plain statutory requirement if its fulfillment would be of little or no environmental value. In this context, it is necessary to determine what would be achieved by insisting that there be a fully-approved part D NSR program in place prior to the redesignation of the CAL area. For the following reasons, the USEPA believes that requiring the adoption and full-approval of a part D NSR program prior to redesignation would not be of significant environmental value in this case.

Ohio has demonstrated that maintenance of the ozone National Ambient Air Quality Standards (NAAQS) will occur even if the emission reductions expected to result from the part D NSR program do not occur. The emission projections made by Ohio to demonstrate maintenance of the NAAQS considered growth in point source emissions (along with growth for other source categories) and were premised on the assumption that the Prevention of Significant Deterioration (PSD) program, rather than the part D NSR, would be in effect, during the

maintenance period. Under NSR, significant point source emissions growth would not occur. Michigan assumed that NSR would not apply after redesignation to attainment, and therefore, assumed source growth factors based on projected growth in the economy and in the area's population. (It should be noted that the growth factors assumed may be overestimates under PSD, which would restrain source growth through the application of best available control techniques.) Thus, contrary to the assertion of the commentor, Ohio has demonstrated that there is no need to retain the part D NSR as an operative program in the SIP during the maintenance period in order to provide for continued maintenance of the NAAQS. (If this demonstration had not been made, NSR would have had to have been retained in the SIP as an operative program since it would have been needed to maintain the ozone standard.)

The other purpose that requiring the full-approval of a part D NSR program might serve would be to ensure that NSR would become a contingency provision in the maintenance plan required for these areas by section 107(d)(3)(E)(iv) and 175A(d). These provisions require that, for an area to be redesignated to attainment, it must receive full approval of a maintenance plan containing ''such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.'' Based on this language, it is apparent that whether an approved NSR program must be included as a contingency provision depends on whether it is a ''measure'' for the control of the pertinent air pollutants.

As the USEPA noted in the proposal regarding this redesignation request, the term ''measure'' is not defined in section 175A(d) and Congress utilized that term differently in different provisions of the Act with respect to the PSD and NSR permitting programs. For example, in section 110(a)(2)(A), Congress required that SIPs include ''enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of the Act.'' In section 110(a)(2)(C), Congress required that SIPs include ''a program to provide for the enforcement of the *measures* described in subparagraph (A), *and* regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.'' (Emphasis added.) If the term measures as used in section 110 (a)(2)(A) and (c) had been intended to include PSD and NSR there would have been no point to requiring that SIPs include both measures *and* preconstruction review under parts C and D (PSD or NSR). Unless ''measures'' referred to something other than preconstruction review under parts C and D, the reference to preconstruction review programs in section 110(a)(2)(C) would be rendered mere surplusage. Thus, in section 110(a)(2) (A) and (C), it is apparent that Congress distinguished ''measures'' from preconstruction review. On the other hand, in other provisions of the Act, such as section 161, Congress appeared to include PSD within the scope of the term ''measures.''

The USEPA believes that the fact that Congress used the undefined term ''measure'' differently in different sections of the Act is germane. This indicates that the term is susceptible to more than one interpretation and that the USEPA has the discretion to interpret it in a reasonable manner in the context of section 175A. Inasmuch as Congress itself has used the term in a manner that excluded PSD and NSR from its scope, the USEPA believes it is reasonable to interpret ''measure,'' as used in section 175A(d), not to include NSR. That this is a reasonable interpretation is further supported by the fact that PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR.[3] This distinguishes NSR from other required programs under the Act, such as inspection and maintenance and Reasonably Available Control Technology (RACT) programs, which have no corollary for attainment areas. Moreover, the USEPA believes that those other required programs are clearly within the scope of the term ''measure.''[4]

The USEPA's logic in treating part D NSR in this manner does not mean that other applicable part D requirements, including those that have been previously met and previously relied upon in demonstrating attainment, could be eliminated without an analysis demonstrating that maintenance would be protected. As noted above, Ohio has demonstrated that maintenance would be protected with PSD in effect, rather than part D NSR. Thus, the USEPA is not permitting part D NSR to be removed without a demonstration that maintenance of the standard will be achieved. Moreover, the USEPA has not amended its policy with respect to the conversion of other SIP elements to contingency provisions, which is that they may be converted to contingency provisions only upon a showing that maintenance will be achieved without them being in effect. Finally, as noted above, the USEPA believes that the NSR requirement differs from other requirements, and does not believe that the rationale for the NSR exception extends to other required programs.

As the USEPA has recently changed its policy, the position taken in this action is consistent with the USEPA's current national policy. That policy permits redesignation to proceed without otherwise required NSR programs having been fully approved and converted to contingency provisions provided that the area demonstrates, as has been done in this case, that maintenance will be achieved with the application of PSD rather than part D NSR.

(23) Comment: A violation does not occur until the third ''exceedance'', this is deceptive and doesn't help people get information that the air is polluted. Even though .124 ppm is above the ''standard'' of 0.12 ppm; because of rounding that terrible air wouldn't even be counted as an exceedances or violation.

[3] The USEPA is not suggesting that NSR and PSD are equivalent, but merely that they are the same type of program. The PSD program is a requirement in attainment areas and designed to allow new source permitting, yet contains adequate provisions to protect the NAAQS. If any information including preconstruction monitoring, indicates that an area is not continuing to meet the NAAQS after redesignation to attainment, 40 CFR part 51 appendix S (Interpretive Offset Rule) or a 40 CFR 51.165(b) program would apply. The USEPA believes that in any area that is designated or redesignated as attainment under section 107, but experiences violations of the NAAQS, these provisions should be interpreted as requiring major new or modified sources to obtain VOC emission offsets of at least a 1:1 ratio, and as presuming that 1:1 NO_X offsets are necessary. See October 14, 1994 memorandum from Mary Nichols entitled *Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.*

[4] The USEPA also notes that in the case of the Cleveland, Ohio area, all permits to install for major volatile organic compound (VOC) emission sources and major VOC emission source modifications issued by the State in the moderate ozone nonattainment areas since November 15, 1992 have complied with the 1.15 to 1.0 VOC emissions offset ratio. In addition, permits to install cannot be issued under the Prevention of Significant Deterioration (PSD) program unless the applicant can demonstrate that the increased emissions from the new or modified source will not result in a violation of the NAAQS.

Cleveland-Akron-Lorain's ozone monitors are not on all year. We should be monitoring year-round. We get unusual weather in northeast Ohio. We've had temperatures in the 80's during every month when we are not required by law to monitor. If we had a violation during these months (we have had extreme haze then and lots of emergency room visits from respiratory patients), we have no way of knowing, so these days don't count, either. I am against the redesignation of Cleveland-Akron-Lorain for these reasons.

(23) Response: Published guidance (*Guideline for the Interpretation of Ozone Air Quality Standards,* January 1979, EPA–450/4–79–003), which is part of the ozone standard by reference in 40 CFR part 50, appendix H, notes that the stated level of the standard is determined by defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and therefore, 0.125 ppm is the smallest three-decimal concentration value in excess of the level of the standard that is considered an exceedance.

Since ozone levels decrease significantly in the colder parts of the year in many areas, ozone is required to be monitored at monitors only during the ''ozone season'' which is listed in Appendix D to 40 CFR part 58 for Ohio as April through October. This seasonal definition was initially set in 1986 based on temperature data. Months where the monthly mean daily maximum temperature is less than 55 degrees Fahrenheit were generally excluded from the season. In Cleveland-Akron-Lorain, this occurs from November through March. In different areas of the country where months are cooler than 55 degrees Fahrenheit, ozone concentrations greater than .08 ppm are unlikely to occur. In addition actual ozone monitoring data for the Cleveland-Akron-Lorain area collected from 1987 though 1994 for the months of April and October show only three recorded concentrations above .100 parts per million. The highest monitored concentration was .109 parts per million during October 1992. The ozone NAAQS of .12 ppm was not exceeded in the Cleveland-Akron-Lorain area for the months of April and October from 1987 though 1994. Given the generally lower temperatures of the other winter months compared to April and October, it is expected that these months would not have monitored an exceedance of the ozone NAAQS.

(24) Comment: A commenter was concerned that because of the redesignation to attainment the area would become exempt from congestion mitigation and air quality (CMAQ) funds which local transit agencies relied on for new buses and expanded service thus increasing air pollution.

(24) Response: The federal CMAQ program is designed to give additional money for air quality nonattainment areas to use on transportation projects that will improve the air quality and bring the area into attainment of the air quality standards. The United States Department of Transportation (USDOT) revised their CMAQ guidance on July 13, 1995, to allow redesignated areas to have a 2 year transition period to insure continuity in CMAQ funding for projects which are programmed in the first 2 years of the transportation improvement program at the time the area is redesignated to attainment. Although Cleveland-Akron-Lorain will lose the additional CMAQ funds after the 2-year transitional period, the projects already programmed for funding will now be able to continue implementation. Air pollution is not expected to increase because the stricter standards for new cleaner cars, trucks and buses will help to decrease pollutant emissions. The USEPA believes the air pollution emissions will thus continue to decrease or at least maintain the levels that have brought the area into attainment.

(25) Comment: The 15% plan approved for Greater Cleveland-Akron-Lorain fell short of the required reduction because the area did not choose to do reformulated gasoline. The area has not met this requirement and should not be redesignated.

(25) Response: USEPA determined that, based on USEPA's determination of attainment, the requirement for a 15% reduction in volatile organic emissions in the area is no longer applicable. See the final action also contained in this final rulemaking. Since this is no longer an applicable requirement, the area is not required to meet it before the CAL area can be redesignated. The 15% reduction plan that was submitted for the CAL area did not rely on reformulated gasoline to achieve the emissions reduction.

(26) Comment: Several commenters believed there was a potential conflict of interest when the same entity (i.e. the City of Cleveland) does the monitoring and also applies for redesignation.

(26) Response: The ambient air data collected by State and local agencies are required to meet very specific quality assurance measures that are detailed in 40 CFR 58.10 and appendix A. The USEPA Quality Assurance manual gives more detailed guidance on operation of ambient air monitors. The USEPA audits the State and local agencies on a regular basis to ascertain that the appropriate quality assurance measures are being implemented. In the case of the Cleveland local agency, the State air agency (Ohio Environmental Protection Agency) is responsible for conducting accuracy audits on the air monitoring equipment being operated by the Cleveland local agency. In addition, the USEPA conducts audits of the air monitoring network. Precision and Accuracy audits are reported on a regular basis to the USEPA and recorded in the national AIRS data bank. This information is available to the public. This oversight ensures the quality of the data relied upon for redesignation.

III. Rulemaking Action

On June 29, 1995, USEPA proposed to determine that the 15% plan, attainment demonstration, and contingency measures plan for the Cleveland-Akron-Lorain area are no longer applicable requirements, since the area has attained the ozone NAAQS. The USEPA received several comments pertaining to the proposed rulemaking. These comments were considered and responses are detailed in the above section of the rulemaking on the determination of attainment. USEPA believes that the determination of attainment is still warranted and is taking final action to determine that the requirements for a 15% emissions reduction plan, attainment demonstration, and contingency measures plan are not applicable at this time.

On June 15, 1995, USEPA proposed to approve the OEPA request for redesignation to attainment and the maintenance plan for ozone for the CAL moderate nonattainment area counties of Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit, and Portage. The USEPA received about 50 comment letters pertaining to the proposed rulemaking. The comments were considered and responses are detailed in the above section of the rulemaking on the ozone redesignation request. The USEPA believes that the redesignation requirements of Section 107(d) are satisfied and is taking final action to approve the requests for redesignation to attainment and the maintenance plan for the CAL counties of Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit, and Portage.

IV. Boilerplate Regulatory Language

USEPA finds that there is good cause for this redesignation, SIP revision, and

determination of attainment to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, determination of attainment, which exempts the areas from certain Clean Air Act requirements that would other wise apply to it. The immediate effective date for this redesignation is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

Through submission of the state implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments being proposed for approval in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being proposed for approval by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, USEPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Nitrogen Oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control.

Dated: April 4, 1996.

Valdas V. Adamkus,

Regional Administrator.

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1885 is amended by adding paragraphs (b)(10) and (w) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(b) * * *

(9) Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit, and Portage Counties.

* * * * *

(w) Determination—USEPA is determining that, as of May 7, 1996, the Cleveland-Akron-Lorain ozone nonattainment area (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit) have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES—OHIO

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.336 the ozone table is amended by revising the entry for the Cleveland-Akron-Lorain Area to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Cleveland-Akron-Lorain Area	May 7, 1996	Attainment.		
Ashtabula County				
Cuyahoga County				
Geauga County				
Lake County				
Lorain County				
Medina County				
Portage County				
Summit County				
* * *	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

[FR Doc. 96–11133 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5468–7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the East Bethel Demolition Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the East Bethel Demolition Landfill site in Anoka, Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Minnesota have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further response by responsible parties under CERCLA is appropriate.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Rita Garner-Davis at (312) 886–2440, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at: EPA Region V docket room at the above address and at the East Bethel City Hall and the Minnesota Pollution Control Agency Public Library, 520 Lafayette RD. St. Paul, MN 55155–4194.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the East Bethel Demolition Landfill Site in Anoka County, Minnesota. A Notice of Intent to Delete was published March 13, 1996, (61 FR 10298) for this site. The closing date for comments on the Notice of Intent to Delete was April 12, 1996. EPA received no comments.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous Waste, Chemicals, Hazardous substances, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 22, 1996.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the East Bethel Demolition Landfill Site, East Bethel Township, Minnesota.P

[FR Doc. 96–11218 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 355

[Docket 300 PQ–R2; FRL–5468–5]

RIN 2050–AD50

Extremely Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA is implementing one of its regulatory reform commitments set forth in its June 1, 1995, Report to the President. EPA is taking final action on two proposed rules that modify the extremely hazardous substances (EHS) list and reportable quantities under section 302 of the Emergency Planning and Community Right-to-Know Act of 1986

(EPCRA), Title III of the Superfund Amendments and Reauthorization Act of 1986. EPA is raising the statutory reportable quantities (RQs) for 202 EHSs. EPA is also removing four chemicals that do not meet the listing criteria from the EHS list. Through these actions, the Agency is reducing the burden of reporting for facilities presently required to report certain releases unnecessarily. Protection of human health and the environment is maintained while better focusing attention on releases that may require a response by state and/or local authorities.

EFFECTIVE DATE: July 8, 1996.

ADDRESSES:

Docket: Copies of materials relevant to this rulemaking are contained in the U.S. Environmental Protection Agency CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202 [Docket Number 300 PQ–R2]. The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 703/603–9232. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, an administrative fee of $25 and a charge of $0.15 per page for each page after page 266 will be incurred. The docket will mail copies of materials to requestors who are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: The RCRA/UST, Superfund, and EPCRA Hotline at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/486–3323). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/553–7672 (in the Washington, DC metropolitan area, contact 703/412–9810); or John Ferris, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office (5101), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460, or at (202) 260–4043.

SUPPLEMENTARY INFORMATION:

Regulated entities. Regulated categories and entities include:

Category	Regulated entities
Industry	All facilities handling chemicals on the extremely hazardous substances list may be subject to this regulation.
Federal Government	Executive Order 12856 requires all federal agencies to comply with sections 302 and 304 of EPCRA.
State and Local Governments.	State emergency response commissions and local emergency planning committees receive the information provided under EPCRA section 304. State/local government facilities handling chemicals on the extremely hazardous substances list may be subject to this regulation.

This table is not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in section 355.40 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Contents: The contents of today's preamble are listed in the following outline:

I. Introduction
a. Statutory Authority
b. Background
c. Today's Rulemaking
II. RQ Adjustment Methodology
a. TPQ methodology
b. CERCLA RQ methodology
c. Proposed methodology
d. Alternative chosen
III. Response to Comments on the August 30, 1989 Proposal
a. Reportable Quantities and Threshold Planning Quantities
b. Sulfur Dioxide
c. Hydrogen Chloride/Hydrochloric Acid
d. Sulfur Trioxide
IV. Listing Corrections
V. Response to Comments on the October 12, 1994 Proposal
VI. Regulatory Analysis
a. Executive Order 12866
b. Regulatory Flexibility Act
c. Paperwork Reduction Act
d. Unfunded Mandates

I. Introduction

a. Statutory Authority

This regulation is issued under sections 302, 304 and 328 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

b. Background

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499 (1986). Title III of SARA, the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), established a program designed to encourage state and local planning and preparedness for spills or releases of extremely hazardous substances and to provide the public and local governments with information concerning chemical releases and the potential chemical risks in their communities.

Subtitle A of the Act establishes the framework for local emergency planning. Under section 302, a facility which has present an extremely hazardous substance (EHS) in excess of its threshold planning quantity (TPQ) must notify its state emergency response commission (SERC) and participate, as necessary, with the local emergency planning committee (LEPC) in the local emergency planning process.

Section 302 directed EPA to publish the list of extremely hazardous substances as an interim final rule within 30 days of the enactment of EPCRA. Section 302(a)(2) required that the list be identical to the list compiled by EPA in 1985 as part of EPA's Chemical Emergency Preparedness Program. Under section 302(a)(4), EPA is authorized to revise the list, but in undertaking any such revision, EPA must take into account the ''toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of a substance.'' The term ''toxicity'' is defined to include ''any short- or long-term health effects which may result from a short-term exposure to the substance.''

EPA published the list of 402 extremely hazardous substances on November 17, 1986 (51 FR 41570). On the same day, EPA proposed the deletion of 40 substances from the EHS list on the basis that their original listing was in error. On April 22, 1987, 52 FR 13388, EPA announced that it was deferring the proposed delisting of these substances, pending an evaluation of the long-term effects from short-term exposure to each of them. This deferral was in response to comments from members of the public who argued that the proposed rule was premature. On November 23, 1987, the District Court for the District of Columbia in *A.L. Laboratories, Inc.* v. *Environmental Protection Agency* issued an order requiring EPA to remove several substances from the EHS list, reasoning that Congress did not intend to include in the statutorily designated list substances listed due to ''clerical error.''

It is on the basis of this ruling that EPA proposed on October 12, 1994 (59 FR 51816), the removal of four chemicals.

Section 304 of EPCRA establishes requirements for immediate reporting of certain releases of EHSs and hazardous substances (HSs) listed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to SERCs and LEPCs, similar to the release reporting provisions of CERCLA section 103. Although similar, CERCLA section 103 and EPCRA section 304 differ somewhat in purpose. CERCLA provides generally for federal planning and coordination of entities and for federal contingency plans. CERCLA section 103 requires federal notification for any release of a hazardous substance in an amount equal to or in excess of its RQ. EPCRA is designed to protect the public in the event of dangerous chemical releases through the establishment of local and state emergency response capability. EPCRA section 304 requires, in addition to any federal notification, notification to state and local authorities for any release of an EHS in an amount equal to or in excess of its RQ. The potential hazards posed by EHSs make state and local notification critical to effective and timely emergency response. EHSs are acutely toxic chemicals which cause both severe sort- and long-term health effects after a single, brief exposure. In many cases, local and state authorities may be the first and only responders to the release of an EHS.

Notifications are required if a release of an EHS or HS is equal to or above the reportable quantity (RQ). Section 304(a) of EPCRA provides that chemicals on the EHS list which do not have an RQ assigned to them by regulation, will have a reportable quantity of 1 pound. Currently, 204 EHSs have the statutory one-pound RQ. On August 30, 1989 (54 FR 35988), EPA proposed to modify the statutory RQs for 232 EHSs using a proposed modification of the CERCLA RQ methodology.

c. Today's Rulemaking

EPA is today taking final action on the two proposed rules published in the Federal Register on August 30, 1989 and October 12, 1994. As discussed below, EPA is not yet taking final action on some aspects of the proposed rules. EPA is adjusting the reportable quantities of 204 extremely hazardous substances.[1] This rule will make the reportable quantities for these chemicals the same as their threshold planning quantities. EPA is also finalizing the proposal to remove phosphorus pentoxide, diethylcarbamazine citrate, fenitrothion and tellurium from the EHS list.

On August 30, 1989, EPA proposed the adjustment of the TPQ for isophorone diisocyanate. Today's rule reflects the current TPQ for isophorone diisocyanate. However, an adjusted TPQ and RQ will be published in a future notice.

II. RQ Adjustment Methodologies

a. TPQ Methodology

EPA's methodology for establishing threshold planning quantities for EHSs under EPCRA consists of initially determining the minimum short term exposure concentration in air that would lead to serious irreversible health effects in the general population when exposed to the substance for relatively short duration. This is the so-called ''level of concern.'' (See the Threshold Planning Quantities Technical Support Document, April 7, 1987.)

There are two ways to determine a ''level of concern.'' If it is available for a chemical, EPA may use one-tenth of the Immediately Dangerous to Life and Health (IDLH) level established by the National Institute for Occupational Safety and Health (NIOSH). The IDLH is the maximum concentration of a substance in air to which a healthy worker can be exposed for 30 minutes and escape without suffering irreversible health effects or impairing symptoms. If the IDLH value is not available, as is the case for most of the EHSs, EPA determines an IDLH equivalent value using available toxicity data with an adjustment factor.

The level of concern is then divided by a factor ''V'' which represents the extent to which the material can volatilize and become airborne and dispersed. This approach is explained in the November 17, 1986 Federal Register notice (51 FR 41580). Dividing the level of concern by ''V'' provides the index value for an EHS.

The final threshold planning quantity is then determined by a relative ranking of the index values for all of the chemicals on the EHS list. The index values and their corresponding threshold planning quantities are found in the Threshold Planning Quantity Technical Support Document. This approach is generally based on the quantity of the chemical which when released will generate the level of concern at a distance of 100 meters.

b. CERCLA RQ Methodology

The CERCLA RQ methodology uses a two step process to determine the possibility of harm from the release of a hazardous substance. The methodology begins with an evaluation of six intrinsic physical, chemical, and toxicological properties associated with each hazardous substance. These properties are known as the ''primary criteria.'' Each substance is evaluated according to the applicable ''primary criteria,'' and an RQ value is determined for each applicable criterion. The ''primary criteria'' RQ for each hazardous substance is the lowest value of all the applicable criteria. For example, if the Agency evaluates hazardous substance A under the RQ adjustment methodology, identifies both aquatic toxicity and mammalian toxicity data on the substance, and sets a tentative RQ of 100 pounds on the basis of aquatic toxicity and 1000 pounds on the basis of mammalian toxicity, the 100 pound value will be the applicable ''primary criteria'' RQ. Upon completion of the evaluation of the ''primary criteria'' RQ, secondary adjustment criteria based on the natural degradation processes of BHP (biodegradation, hydrolysis, and photolysis) are assessed. If a hazardous substance, when released into the environment, degrades (within 5 days) to a less hazardous form by one or more of the BHP processes, its primary criteria RQ is raised one level; if the substance degrades to a more hazardous form, its RQ may be lowered.

c. Proposed Methodology

For approximately 60 of the 232 chemicals proposed for adjustment on August 30, 1989, the CERCLA methodology adjusted RQs that were too high for purposes of emergency notification under EPCRA. The reportable quantities under the CERCLA methodology in these cases are higher than the substances' EPCRA threshold planning quantity. To rectify this discrepancy, the August 30, 1989, notice proposed to modify the CERCLA RQ methodology by integrating the TPQ into the CERCLA RQ methodology. As proposed, after the two-step CERCLA RQ process had been applied to the chemicals, an additional step of comparing the tentative RQ to the substances' TPQs was applied. If the TPQ was lower than the tentative RQ, the RQ would be adjusted to the TPQ level or lower.

[1] Although a total of 215 EHSs have one-pound statutory RQs, this rule is adjusting the RQs of 204 of these EHSs. The remaining 11 EHSs with one-pound statutory RQs were designated CERCLA hazardous substances in a February 9, 1995 final rule (60 FR 7824); the Agency is currently developing a rulemaking to adjust the CERCLA and EPCRA one-pound RQs for these 11 substances. The substances are identified in 40 CFR Part 355 by the footnote ''d.''

d. Alternative Chosen

In the proposed rule of August 30, 1989, the Agency was seeking comment on the various alternatives that could be used to set the reportable quantities. At the time the RQ adjustments were proposed, the Agency anticipated that the EHSs would be designated CERCLA hazardous substances as proposed on January 23, 1989 (54 *FR* 3388). The Agency, however is not finalizing at this time the proposal to designate these chemicals as CERCLA hazardous substances. Today's rule does not affect any CERCLA hazardous substances. Therefore, the Agency is not utilizing or modifying the CERCLA RQ methodology at this time. Instead, the Agency has decided to adjust the 1 pound EHS RQs to the same level as their respective TPQs.[2]

The Agency believes that it is appropriate to rely on the TPQ methodology rather than the CERCLA methodology to adjust EHS RQs for several reasons.

First, reporting of EHS releases is required because EHSs are acutely toxic and will potentially pose an immediate hazard upon release. Thus, EHS RQs should be adjusted based on substances' potential for *immediate* effects. The TPQ methodology, designed specifically for the EHSs, is based on such effects, utilizing a ''level of concern'' based upon short-term exposure concentrations that could lead to serious irreversible health effects.

Second, use of the CERCLA secondary criteria of BHP is inappropriate for adjusting EHS RQs. The BHP analysis is used to increase a substance's RQ by taking into account its natural chemical degradation. EHSs can cause severe health effects after only a single, brief exposure which may occur prior to any chemical degradation. The BHP analysis and higher RQs based on chemical degradation are not suitable in this context.

Third, as with RQs, the Agency adjusts TPQs based on the possibility of harm from the release of a specific substance. In the Threshold Planning Quantity Technical Support Document to the proposed rule of November 17, 1986 (51 FR 41570) to adjust TPQs, EPA stated that the TPQ should represent a quantity that could cause serious health consequences if an accident were to occur with that quantity. Consistent with this statement, EPA modelled a variety of release scenarios to generate the relative ranking of each EHS and to determine the six TPQ quantities (1, 10, 100, 500, 1,000, and 10,000 pounds). Since the TPQ methodology is based on the possibility of harm from release, the Agency believes that it is appropriate to rely on it to adjust RQs as well.

Finally, like CERCLA RQs, EPCRA RQs do not reflect a determination that a release of a substance will always be hazardous at the RQ level and never hazardous below that level. EPA has not attempted to make such a determination because the actual hazard will vary with the unique circumstances of the release. For this reason, EPA encourages SERCs and LEPCs to consider the RQ during their emergency planning process involving facilities with extremely hazardous substances.

III. Response to Comments on August 30, 1989 Proposal

Many of the comments received in response to the Federal Register notice of August 30, 1989, are not addressed today because they concerned the designation of EHSs as CERCLA hazardous substances and the adjustment of RQs for those substances under CERCLA. As stated above, the Agency is not taking action on modifying the CERCLA RQ methodology or listing EHSs as CERCLA hazardous substances at this time. For a complete list of comments and the Agency's responses, see the responses to comments document in the Docket of this Federal Register notice.

a. Threshold Planning Quantity Methodology

The Agency received several comments on its proposed use of the TPQ methodology to adjust RQs. These commenters believed that the use of the TPQ methodology was inappropriate because the RQ and the TPQ address different regulatory requirements.

EPA believes that the TPQ methodology is appropriate for these chemicals. Although the RQs and TPQs trigger two distinct notification requirements, both quantities are adjusted based on the possibility of harm from the release of a specific substance. Thus, even though TPQ (EPCRA § 302) notification is not triggered by an actual release, the TPQ is based upon the potential harm from an actual release. In addition, the particular concern with EHSs is that they will potentially pose an immediate hazard upon release. Notification requirements should be based on the potential for these immediate effects, and the TPQ methodology (developed specifically for the EHS list) is in fact based upon the potential for immediate effects. For these reasons, the Agency believes that the use of the TPQ methodology is appropriate to set RQs for extremely hazardous substances. However, because these chemicals are not being added to the CERCLA hazardous substance list, modification of the CERCLA RQ methodology is not warranted at this time.

b. Sulfur Dioxide

The adjusted RQ for sulfur dioxide was proposed at 100-pounds. Several commenters from the petroleum industry commented that the 100-pound RQ is too low and would require needless and excessive reporting for the petroleum sector. In the petroleum sector, sulfur dioxide is a combustion product created when hydrogen sulfide from crude oil and natural gas is flared. The commenters referenced the Federal Clean Air Act New Source Performance Standards that they state allow coal fired power plants to emit 200,000 pounds per day of sulfur dioxide.

The proposed RQ for sulfur dioxide was set at 100-pounds based on the proposed modified CERCLA RQ methodology. In the final rule of April 22, 1987 (52 FR 13378), the TPQ for sulfur dioxide was adjusted to 500-pounds. Because there is no 500-pound CERCLA RQ level, the sulfur dioxide RQ was proposed at 100-pounds. As stated earlier in this rule, EPA is not modifying the CERCLA RQ methodology at this time, but is adjusting RQs to the TPQ level. The final EPCRA RQ for sulfur dioxide is 500-pounds.

EPA does not agree that the existence of a 200,000 pounds per day standard for one sector means that the EPCRA RQ should be set at a higher RQ level. Sulfur dioxide is used in many industries other than the petroleum sector, for example, sulfuric acid production, water purification and the pulp and paper industry. While flares and stacks are designed to lift the sulfur dioxide into the atmosphere, ground level releases of sulfur dioxide, including releases from containers storing sulfur dioxide may be more hazardous to the community. Since EPA sets one RQ to incorporate all probable release scenarios, EPA believes that the 500 pound RQ based on the substance's IDLH value provides an appropriate level.

EPA notes that the release reporting requirements of EPCRA section 304 work in conjunction with the federally permitted release exemption under CERCLA section 101(10) and the continuous release reporting requirements under CERCLA section 103. Releases that are federally permitted and those that are continuous

[2] The release of EHSs which are already CERCLA hazardous substances is reportable at the RQ levels applicable under CERCLA. (EPCRA section 304 (a)(1)).

have reduced reporting requirements under EPCRA section 304.

c. Hydrogen Chloride

Several commenters correctly pointed out that the phrase ''gas only'' was omitted from the hydrogen chloride listing in the tables proposing to revise Appendices A and B to 40 CFR part 355. In today's rule, this omission is corrected.

In the final rule published in the Federal Register December 27, 1989 (54 FR 53057), EPA raised the reportable quantity for Hydrogen chloride (gas only) to 5,000 pounds. This is the same as the reportable quantity for hydrogen chloride (a synonym of hydrochloric acid) under CERCLA section 103.

d. Sulfur Trioxide

Several commenters believed that a reportable quantity for sulfur trioxide above 100 pounds is warranted. EPA, however, disagrees. The 100 pound TPQ for sulfur Trioxide is based upon acute toxicity. EPA agrees that some releases of sulfur trioxide above 100-pounds may not be hazardous based upon the conditions of the release (e.g. from a flare or stack). However, 100-pound releases of sulfur trioxide at ground level (e.g. releases during sulfuric acid and explosive manufacturing) may pose a hazard to the community. An RQ incorporates all probable release scenarios so that persons off-site can determine the level of response necessary. Therefore, the Agency believes that the 100-pound RQ for sulfur trioxide based upon its acute toxicity is appropriate.

IV. Listing Corrections

EPA is making final a rule that was originally proposed on October 30, 1994, to remove phosphorus pentoxide, diethylcarbamizine citrate, finitrothion and tellurium from the extremely hazardous substances list.[3]

Substances are listed as EHSs based on toxicity criteria. Substances are screened using acute animal toxicity data for the most sensitive mammalian species and are placed on the list if they meet one of the following criteria:

- LC_{50} [4] $\leq$ 0.5 mg/L
- Dermal LD_{50} [5] $\leq$ 50 mg/kg
- Oral $LD_{50} \leq$ 25 mg/kg

If LC_{50} or LD_{50} data are not available, then LC_{LO} or LD_{LO} data are used. Substances that meet one of these criteria have the potential for causing harm if accidently released and are, therefore, designated as EHSs.

EPA listed phosphorus pentoxide based on information presented in an abstract. This source reported an LC_{50} of 0.061 mg/L for guinea pigs and an LC_{50} of 0.271 mg/L for mice exposed for 1 hour to smoke generated from burning red phosphorus. A significant limitation of this study is that the toxic effects cannot be directly related to phosphorus pentoxide. Therefore, these data are insufficient for listing phosphorus pentoxide as an EHS. In addition, the Elemental Phosphorus Ad Hoc Solid Waste Group submitted a study that indicated that the LC_{50} for rats exposed to phosphorus pentoxide for 4 hours is greater than 0.99 mg/L, well above the .5 mg/L listing criteria. Based on the insufficient information in the original study and the information of the more recent study, EPA has decided to remove phosphorus pentoxide from the EHS list.

EPA listed diethylcarbamazine citrate based on information presented in a Russian data compilation that listed an LC_{50} for rats equal to 0.309 mg/L for a 4-hour exposure. Review of this information indicated that the toxicity values presented were unverifiable because the study details were not available. In addition, SmithKline Beecham submitted a study that reported no deaths of rats from exposure to either 1.63 mg/L or 2.38 mg/L for 1 hour. Based on the poor quality of the original study and the additional information received, EPA has decided to remove diethylcarbamazine citrate from the EHS list.

EPA listed fenitrothion based on a study that reported an LC_{50} equal to 0.378 mg/L for a 4-hour exposure. EPA's review of this study concluded that a toxic impurity had resulted in an erroneously low value for the LC_{50}. In addition, a surfactant was present that altered the permeability of the skin and cell membranes of the test animals, making them more susceptible to fenitrothion's toxic effect. Information submitted by Sumitomo Chemical America, Inc., reported an LC_{50} greater than 2.210 mg/L. Based on the Agency's review and the additional information, fenitrothion is being deleted from the EHS list.

EPA listed tellurium metal based on a study that reported an oral LD_{50} of 20 mg/kg. Review of this study indicted that sodium tellurate, which is listed as an EHS, was used in the study rather than tellurium metal. The Selenium Tellurium Development Association also submitted a study that reported an LD_{50} greater than 5000 mg/kg for tellurium metal. Based on this information, EPA is deleting tellurium from the list of EHSs.

V. Response to Comments on October 12, 1994, Proposal

EPA received one comment from the Clean Water Fund of North Carolina objecting to the removal of phosphorus pentoxide from the EHS list. The Clean Water Fund questions the validity of an unpublished 1987 toxicity study showing no toxic effects in exposed animals, at levels up to .99 mg/L of phosphorus pentoxide aerosol. That study however, did not determine the level of the chemical in question in the chamber atmosphere. The analytical method determined only total phosphorus, which was then converted to an equivalent concentration of phosphorus pentoxide in air. The Clean Water Fund argues, therefore, that the pentoxide should remain on the list because the 1980 and 1982 combustion experiments established that the pentoxide was a major component of the smoke and ''because the analytical techniques employed by the 1980 study may have actually synthesized the pentoxide from other (possibly less dangerous) phosphorus compounds actually present in the test chamber.'' The Agency assumes Clean Water Fund believes that because the pentoxide could have been synthesized from less toxic compounds, the pentoxide presented the toxic character of the test chamber gas.

EPA disagrees. The 1980 and 1982 studies show that, in burning the phosphorus, there is a potential for the production of several oxides of phosphorus. Regardless of how pentoxide was formed (as noted by the Clean Water Fund) or whether the various oxide compounds are more or less toxic, the fact still remains that the studies did not distinguish which of the various oxides caused the high toxicity of the smoke. While the 1987 study showed no toxicity of phosphorus pentoxide, it also is not conclusive because it did not indicate a direct measurement of phosphorus pentoxide in the chamber and the pentoxide could have hydrolyzed to possibly less toxic constituents. On balance, none of the studies presented show that phosphorus pentoxide meets the toxicity criteria. Accordingly, EPA is removing the chemical from the EHS list.

[3] On October 30, 1994, EPA proposed the adjustment of the TPQ for isophorone diisocyanate. The final rule on this adjustment will be published in a future notice.

[4] ''LC_{50}'' refers to that concentration of a substance in the air that is expected to cause the death of 50 percent of a defined experimental population.

[5] ''LD_{50}'' refers to that dose of a substance expected to cause the death of 50 percent of a defined experimental population.

VI. Regulatory Analyses

a. Executive Order 12866

Under Executive Order 12866, (58 FR 51,735) of October 4, 1993, the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

b. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA has examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act. It has determined that today's final rule will not have a significant economic effect on a substantial number of small entities. The overall economic effect of this regulation has been determined to equate to 6,249 hours of burden reduction (with no added burden) at a total cost saving of $355,628 per year to all regulated entities. Therefore, this regulation will have a cost savings, and not have a significant impact on small businesses.

c. Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2050–0092 (EPA Information Collection Request No. 1395.2). Copies of the information collection requests may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M Street, SW., Washington, DC 20460 or by calling (202) 260–2740.

As indicated in the Section I Introduction, the mandatory reporting requirements under EPCRA section 304 serve as a trigger for informing state and local governments of a release, so that state and local personnel can evaluate the need for any necessary action in a timely fashion. EPCRA section 304 also requires the submittal of a written follow-up notice to the same state and local entities.

The public reporting burden for the collection of information pursuant to EPCRA section 304 is estimated to take, on average, 5 hours per response. This estimate includes the time required to make the call and to develop the written follow-up notice.

Because the RQs for almost all of the substances included in today's rule are to be raised, the net reporting and recordkeeping burden associated with reporting releases of these substances under EPCRA section 304 is expected to decrease. As demonstrated in an economic impact analysis (EIA), the Agency estimates that the total burden reduction for notification to SERCs and LEPCs, and notification to 911 services in transportation-related incidents, and the completion of follow up reports will equate to 6,249 hours at a total cost savings of $355,628 per year.

Send comments on the ICR to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include ICR number 1395.2 in any correspondence.

d. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Because the RQs for almost all of the substances included in today's rule are to be raised, the net reporting and recordkeeping burden associated with reporting releases of these substances under EPCRA section 304 is expected to decrease. As demonstrated in an economic impact analysis (EIA), the Agency estimates that the total burden reduction for notification to SERCs and LEPCs, and notification to 911 services in transportation-related incidents, and the completion of follow up reports will equate to 6,249 hours at a total cost savings of $355,628 per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect

small governments. Because the RQs for almost all of the substances included in today's rule are to be raised, the net reporting and recordkeeping burden associated with reporting releases of these substances under EPCRA section 304 is expected to decrease. Small governments will no longer receive notifications and written follow-up reports from facilities that have releases of extremely hazardous substances less that the substances' TPQ.

List of Subjects in 40 CFR Part 355

Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Natural resources, Penalties, Reportable quantity, Reporting and recordkeeping requirements, Superfund Amendments and Reauthorization Act, Threshold planning quantity, Water pollution control, Water supply.

Dated: April 29, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

2. Appendices A and B in Part 355 are revised to read as follows:

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
75–86–5	Acetone Cyanohydrin		10	1,000
1752–30–3	Acetone Thiosemicarbazide		1,000	1,000/10,000
107–02–8	Acrolein		1	500
79–06–1	Acrylamide	l	5,000	1,000/10,000
107–13–1	Acrylonitrile	l	100	10,000
814–68–6	Acrylyl Chloride	h	100	100
111–69–3	Adiponitrile	l	1,000	1,000
116–06–3	Aldicarb	c	1	100/10,000
309–00–2	Aldrin		1	500/10,000
107–18–6	Allyl Alcohol		100	1,000
107–11–9	Allylamine		500	500
20859–73–8	Aluminum Phosphide	b	100	500
54–62–6	Aminopterin		500	500/10,000
78–53–5	Amiton		500	500
3734–97–2	Amiton Oxalate		100	100/10,000
7664–41–7	Ammonia	l	100	500
300–62–9	Amphetamine		1,000	1,000
62–53–3	Aniline	l	5,000	1,000
88–05–1	Aniline, 2,4,6–Trimethyl-		500	500
7783–70–2	Antimony Pentafluoride		500	500
1397–94–0	Antimycin A	c	1,000	1,000/10,000
86–88–4	ANTU		100	500/10,000
1303–28–2	Arsenic Pentoxide		1	100/10,000
1327–53–3	Arsenous Oxide	h	1	100/10,000
7784–34–1	Arsenous Trichloride		1	500
7784–42–1	Arsine		100	100
2642–71–9	Azinphos-Ethyl		100	100/10,000
86–50–0	Azinphos-Methyl		1	10/10,000
98–87–3	Benzal Chloride		5,000	500
98–16–8	Benzenamine, 3-(Trifluoromethyl)-		500	500
100–14–1	Benzene, 1-(Chloromethyl)-4–Nitro-		500	500/10,000
98–05–5	Benzenearsonic Acid		10	10/10,000
3615–21–2	Benzimidazole, 4,5–Dichloro-2-(Trifluoromethyl)-	g	500	500/10,000
98–07–7	Benzotrichloride		10	100
100–44–7	Benzyl Chloride		100	500
140–29–4	Benzyl Cyanide	h	500	500
15271–41–7	Bicyclo[2.2.1]Heptane-2-Carbonitrile, 5-Chloro-6-((((Methylamino)Carbonyl)Oxy)Imino)–, (1s-(1-alpha,2-beta,4-alpha,5-alpha,6E))–.		500	500/10,000
534–07–6	Bis(Chloromethyl) Ketone		10	10/10,000
4044–65–9	Bitoscanate		500	500/10,000
10294–34–5	Boron Trichloride		500	500
7637–07–2	Boron Trifluoride		500	500
353–42–4	Boron Trifluoride Compound With Methyl Ether (1:1)		1,000	1,000
28772–56–7	Bromadiolone		100	100/10,000
7726–95–6	Bromine	l	500	500
1306–19–0	Cadmium Oxide		100	100/10,000
2223–93–0	Cadmium Stearate	c	1,000	1,000/10,000
7778–44–1	Calcium Arsenate		1	500/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
8001–35–2	Camphechlor		1	500/10,000
56–25–7	Cantharidin		100	100/10,000
51–83–2	Carbachol Chloride		500	500/10,000
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4–Dimethyl-1, 3–Dithiolan-2-yl)Methylene)Amino)-	d	1	100/10,000
1563–66–2	Carbofuran		10	10/10,000
75–15–0	Carbon Disulfide	l	100	10,000
786–19–6	Carbophenothion		500	500
57–74–9	Chlordane		1	1,000
470–90–6	Chlorfenvinfos		500	500
7782–50–5	Chlorine		10	100
24934–91–6	Chlormephos		500	500
999–81–5	Chlormequat Chloride	h	100	100/10,000
79–11–8	Chloroacetic Acid		100	100/10,000
107–07–3	Chloroethanol		500	500
627–11–2	Chloroethyl Chloroformate		1,000	1,000
67–66–3	Chloroform	l	10	10,000
542–88–1	Chloromethyl Ether	h	10	100
107–30–2	Chloromethyl Methyl Ether	c	10	100
3691–35–8	Chlorophacinone		100	100/10,000
1982–47–4	Chloroxuron		500	500/10,000
21923–23–9	Chlorthiophos	h	500	500
10025–73–7	Chromic Chloride		1	1/10,000
62207–76–5	Cobalt, ((2,2'-(1,2–Ethanediylbis (Nitrilomethylidyne)) Bis(6–Fluorophenolato))(2-)-N,N',O,O')-.		100	100/10,000
10210–68–1	Cobalt Carbonyl	h	10	10/10,000
64–86–8	Colchicine	h	10	10/10,000
56–72–4	Coumaphos		10	100/10,000
5836–29–3	Coumatetralyl		500	500/10,000
95–48–7	Cresol, o-		100	1,000/10,000
535–89–7	Crimidine		100	100/10,000
4170–30–3	Crotonaldehyde		100	1,000
123–73–9	Crotonaldehyde, (E)-		100	1,000
506–68–3	Cyanogen Bromide		1,000	500/10,000
506–78–5	Cyanogen Iodide		1,000	1,000/10,000
2636–26–2	Cyanophos		1,000	1,000
675–14–9	Cyanuric Fluoride		100	100
66–81–9	Cycloheximide		100	100/10,000
108–91–8	Cyclohexylamine	l	10,000	10,000
17702–41–9	Decaborane(14)		500	500/10,000
8065–48–3	Demeton		500	500
919–86–8	Demeton-S-Methyl		500	500
10311–84–9	Dialifor		100	100/10,000
19287–45–7	Diborane		100	100
111–44–4	Dichloroethyl ether		10	10,000
149–74–6	Dichloromethylphenylsilane		1,000	1,000
62–73–7	Dichlorvos		10	1,000
141–66–2	Dicrotophos		100	100
1464–53–5	Diepoxybutane		10	500
814–49–3	Diethyl Chlorophosphate	h	500	500
71–63–6	Digitoxin	c	100	100/10,000
2238–07–5	Diglycidyl Ether		1,000	1,000
20830–75–5	Digoxin	h	10	10/10,000
115–26–4	Dimefox		500	500
60–51–5	Dimethoate		10	500/10,000
2524–03–0	Dimethyl Phosphorochloridothioate		500	500
77–78–1	Dimethyl sulfate		100	500
75–78–5	Dimethyldichlorosilane	h	500	500
57–14–7	Dimethylhydrazine		10	1,000
99–98–9	Dimethyl-p-Phenylenediamine		10	10/10,000
644–64–4	Dimetilan	d	1	500/10,000
534–52–1	Dinitrocresol		10	10/10,000
88–85–7	Dinoseb		1,000	100/10,000
1420–07–1	Dinoterb		500	500/10,000
78–34–2	Dioxathion		500	500
82–66–6	Diphacinone		10	10/10,000
152–16–9	Diphosphoramide, Octamethyl-		100	100
298–04–4	Disulfoton		1	500
514–73–8	Dithiazanine Iodide		500	500/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
541–53–7	Dithiobiuret		100	100/10,000
316–42–7	Emetine, Dihydrochloride	h	1	1/10,000
115–29–7	Endosulfan		1	10/10,000
2778–04–3	Endothion		500	500/10,000
72–20–8	Endrin		1	500/10,000
106–89–8	Epichlorohydrin	l	100	1,000
2104–64–5	EPN		100	100/10,000
50–14–6	Ergocalciferol	c	1,000	1,000/10,000
379–79–3	Ergotamine Tartrate		500	500/10,000
1622–32–8	Ethanesulfonyl Chloride, 2-Chloro-		500	500
10140–87–1	Ethanol, 1,2–Dichloro-, Acetate		1,000	1,000
563–12–2	Ethion		10	1,000
13194–48–4	Ethoprophos		1,000	1,000
538–07–8	Ethylbis(2-Chloroethyl)Amine	h	500	500
371–62–0	Ethylene Fluorohydrin	c, h	10	10
75–21–8	Ethylene Oxide	l	10	1,000
107–15–3	Ethylenediamine		5,000	10,000
151–56–4	Ethyleneimine		1	500
542–90–5	Ethylthiocyanate		10,000	10,000
22224–92–6	Fenamiphos		10	10/10,000
115–90–2	Fensulfothion	h	500	500
4301–50–2	Fluenetil		100	100/10,000
7782–41–4	Fluorine	k	10	500
640–19–7	Fluoroacetamide	j	100	100/10,000
144–49–0	Fluoroacetic Acid		10	10/10,000
359–06–8	Fluoroacetyl Chloride	c	10	10
51–21–8	Fluorouracil		500	500/10,000
944–22–9	Fonofos		500	500
50–00–0	Formaldehyde	l	100	500
107–16–4	Formaldehyde Cyanohydrin	h	1,000	1,000
23422–53–9	Formetanate Hydrochloride	d, h	1	500/10,000
2540–82–1	Formothion		100	100
17702–57–7	Formparanate	d	1	100/10,000
21548–32–3	Fosthietan		500	500
3878–19–1	Fuberidazole		100	100/10,000
110–00–9	Furan		100	500
13450–90–3	Gallium Trichloride		500	500/10,000
77–47–4	Hexachlorocyclopentadiene	h	10	100
4835–11–4	Hexamethylenediamine, N,N′-Dibutyl-		500	500
302–01–2	Hydrazine		1	1,000
74–90–8	Hydrocyanic Acid		10	100
7647–01–0	Hydrogen Chloride (gas only)	l	5,000	500
7664–39–3	Hydrogen Fluoride		100	100
7722–84–1	Hydrogen Peroxide (Conc > 52%)	l	1,000	1,000
7783–07–5	Hydrogen Selenide		10	10
7783–06–4	Hydrogen Sulfide	l	100	500
123–31–9	Hydroquinone	l	100	500/10,000
13463–40–6	Iron, Pentacarbonyl-		100	100
297–78–9	Isobenzan		100	100/10,000
78–82–0	Isobutyronitrile	h	1,000	1,000
102–36–3	Isocyanic Acid, 3,4–Dichlorophenyl Ester		500	500/10,000
465–73–6	Isodrin		1	100/10,000
55–91–4	Isofluorphate	c	100	100
4098–71–9	Isophorone Diisocyanate		100	100
108–23–6	Isopropyl Chloroformate		1,000	1,000
119–38–0	Isopropylmethylpyrazolyl Dimethylcarbamate	d	1	500
78–97–7	Lactonitrile		1,000	1,000
21609–90–5	Leptophos		500	500/10,000
541–25–3	Lewisite	c, h	10	10
58–89–9	Lindane		1	1,000/10,000
7580–67–8	Lithium Hydride	b	100	100
109–77–3	Malononitrile		1,000	500/10,000
12108–13–3	Manganese, Tricarbonyl Methylcyclopentadienyl	h	100	100
51–75–2	Mechlorethamine	c	10	10
950–10–7	Mephosfolan		500	500
1600–27–7	Mercuric Acetate		500	500/10,000
7487–94–7	Mercuric Chloride		500	500/10,000
21908–53–2	Mercuric Oxide		500	500/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
10476–95–6	Methacrolein Diacetate		1,000	1,000
760–93–0	Methacrylic Anhydride		500	500
126–98–7	Methacrylonitrile	h	1,000	500
920–46–7	Methacryloyl Chloride		100	100
30674–80–7	Methacryloyloxyethyl Isocyanate	h	100	100
10265–92–6	Methamidophos		100	100/10,000
558–25–8	Methanesulfonyl Fluoride		1,000	1,000
950–37–8	Methidathion		500	500/10,000
2032–65–7	Methiocarb		10	500/10,000
16752–77–5	Methomyl	h	100	500/10,000
151–38–2	Methoxyethylmercuric Acetate		500	500/10,000
80–63–7	Methyl 2–Chloroacrylate		500	500
74–83–9	Methyl Bromide	l	1,000	1,000
79–22–1	Methyl Chloroformate	h	1,000	500
60–34–4	Methyl Hydrazine		10	500
624–83–9	Methyl Isocyanate		10	500
556–61–6	Methyl Isothiocyanate	b	500	500
74–93–1	Methyl Mercaptan	l	100	500
3735–23–7	Methyl Phenkapton		500	500
676–97–1	Methyl Phosphonic Dichloride	b	100	100
556–64–9	Methyl Thiocyanate		10,000	10,000
78–94–4	Methyl Vinyl Ketone		10	10
502–39–6	Methylmercuric Dicyanamide		500	500/10,000
75–79–6	Methyltrichlorosilane	h	500	500
1129–41–5	Metolcarb	d	1	100/10,000
7786–34–7	Mevinphos		10	500
315–18–4	Mexacarbate		1,000	500/10,000
50–07–7	Mitomycin C		10	500/10,000
6923–22–4	Monocrotophos		10	10/10,000
2763–96–4	Muscimol		1,000	500/10,000
505–60–2	Mustard Gas	h	500	500
13463–39–3	Nickel Carbonyl		10	1
54–11–5	Nicotine	c	100	100
65–30–5	Nicotine Sulfate		100	100/10,000
7697–37–2	Nitric Acid		1,000	1,000
10102–43–9	Nitric Oxide	c	10	100
98–95–3	Nitrobenzene	l	1,000	10,000
1122–60–7	Nitrocyclohexane		500	500
10102–44–0	Nitrogen Dioxide		10	100
62–75–9	Nitrosodimethylamine	h	10	1,000
991–42–4	Norbormide		100	100/10,000
0	Organorhodium Complex (PMN–82–147)		10	10/10,000
630–60–4	Ouabain	c	100	100/10,000
23135–22–0	Oxamyl	d	1	100/10,000
78–71–7	Oxetane, 3,3–Bis(Chloromethyl)-		500	500
2497–07–6	Oxydisulfoton	h	500	500
10028–15–6	Ozone		100	100
1910–42–5	Paraquat Dichloride		10	10/10,000
2074–50–2	Paraquat Methosulfate		10	10/10,000
56–38–2	Parathion	c	10	100
298–00–0	Parathion-Methyl	c	100	100/10,000
12002–03–8	Paris Green		1	500/10,000
19624–22–7	Pentaborane		500	500
2570–26–5	Pentadecylamine		100	100/10,000
79–21–0	Peracetic Acid		500	500
594–42–3	Perchloromethylmercaptan		100	500
108–95–2	Phenol		1,000	500/10,000
4418–66–0	Phenol, 2,2'-Thiobis(4–Chloro-6–Methyl)-		100	100/10,000
64–00–6	Phenol, 3-(1–Methylethyl)-, Methylcarbamate	d	1	500/10,000
58–36–6	Phenoxarsine, 10,10'-Oxydi-		500	500/10,000
696–28–6	Phenyl Dichloroarsine	h	1	500
59–88–1	Phenylhydrazine Hydrochloride		1,000	1,000/10,000
62–38–4	Phenylmercury Acetate		100	500/10,000
2097–19–0	Phenylsilatrane	h	100	100/10,000
103–85–5	Phenylthiourea		100	100/10,000
298–02–2	Phorate		10	10
4104–14–7	Phosacetim		100	100/10,000
947–02–4	Phosfolan		100	100/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
75–44–5	Phosgene	l	10	10
732–11–6	Phosmet		10	10/10,000
13171–21–6	Phosphamidon		100	100
7803–51–2	Phosphine		100	500
2703–13–1	Phosphonothioic Acid, Methyl-, O-Ethyl O-(4- (Methylthio) Phenyl) Ester		500	500
50782–69–9	Phosphonothioic Acid, Methyl-, S-(2-(Bis(1–Methylethyl)Amino)Ethyl) O-Ethyl Ester		100	100
2665–30–7	Phosphonothioic Acid, Methyl-, O-(4–Nitrophenyl) O-Phenyl Ester		500	500
3254–63–5	Phosphoric Acid, Dimethyl 4-(Methylthio)Phenyl Ester		500	500
2587–90–8	Phosphorothioic Acid, O,O-Dimethyl-S-(2–Methylthio) Ethyl Ester	c, g	500	500
7723–14–0	Phosphorus	b, h	1	100
10025–87–3	Phosphorus Oxychloride		1,000	500
10026–13–8	Phosphorus Pentachloride	b	500	500
7719–12–2	Phosphorus Trichloride		1,000	1,000
57–47–6	Physostigmine	d	1	100/10,000
57–64–7	Physostigmine, Salicylate (1:1)	d	1	100/10,000
124–87–8	Picrotoxin		500	500/10,000
110–89–4	Piperidine		1,000	1,000
23505–41–1	Pirimifos-Ethyl		1,000	1,000
10124–50–2	Potassium Arsenite		1	500/10,000
151–50–8	Potassium Cyanide	b	10	100
506–61–6	Potassium Silver Cyanide	b	1	500
2631–37–0	Promecarb	d, h	1	500/10,000
106–96–7	Propargyl Bromide		10	10
57–57–8	Propiolactone, Beta-		10	500
107–12–0	Propionitrile		10	500
542–76–7	Propionitrile, 3–Chloro-		1,000	1,000
70–69–9	Propiophenone, 4–Amino-	g	100	100/10,000
109–61–5	Propyl Chloroformate		500	500
75–56–9	Propylene Oxide	l	100	10,000
75–55–8	Propyleneimine		1	10,000
2275–18–5	Prothoate		100	100/10,000
129–00–0	Pyrene	c	5,000	1,000/10,000
140–76–1	Pyridine, 2–Methyl-5–Vinyl-		500	500
504–24–5	Pyridine, 4–Amino-	h	1,000	500/10,000
1124–33–0	Pyridine, 4–Nitro-,l-Oxide		500	500/10,000
53558–25–1	Pyriminil	h	100	100/10,000
14167–18–1	Salcomine		500	500/10,000
107–44–8	Sarin	h	10	10
7783–00–8	Selenious Acid		10	1,000/10,000
7791–23–3	Selenium Oxychloride		500	500
563–41–7	Semicarbazide Hydrochloride		1,000	1,000/10,000
3037–72–7	Silane, (4–Aminobutyl)Diethoxymethyl-		1,000	1,000
7631–89–2	Sodium Arsenate		1	1,000/10,000
7784–46–5	Sodium Arsenite		1	500/10,000
26628–22–8	Sodium Azide ($Na(N_3)$)	b	1,000	500
124–65–2	Sodium Cacodylate		100	100/10,000
143–33–9	Sodium Cyanide (Na(CN))	b	10	100
62–74–8	Sodium Fluoroacetate		10	10/10,000
13410–01–0	Sodium Selenate		100	100/10,000
10102–18–8	Sodium Selenite	h	100	100/10,000
10102–20–2	Sodium Tellurite		500	500/10,000
900–95–8	Stannane, Acetoxytriphenyl-	g	500	500/10,000
57–24–9	Strychnine	c	10	100/10,000
60–41–3	Strychnine Sulfate		10	100/10,000
3689–24–5	Sulfotep		100	500
3569–57–1	Sulfoxide, 3–Chloropropyl Octyl		500	500
7446–09–5	Sulfur Dioxide	1	500	500
7783–60–0	Sulfur Tetrafluoride		100	100
7446–11–9	Sulfur Trioxide	b	100	100
7664–93–9	Sulfuric Acid		1,000	1,000
77–81–6	Tabun	c, h	10	10
7783–80–4	Tellurium Hexafluoride	k	100	100
107–49–3	TEPP		10	100
13071–79–9	Terbufos	h	100	100
78–00–2	Tetraethyllead	c	10	100
597–64–8	Tetraethyltin	c	100	100
75–74–1	Tetramethyllead	c, 1	100	100
509–14–8	Tetranitromethane		10	500

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
10031–59–1	Thallium Sulfate	h	100	100/10,000
6533–73–9	Thallous Carbonate	c, h	100	100/10,000
7791–12–0	Thallous Chloride	c, h	100	100/10,000
2757–18–8	Thallous Malonate	c, h	100	100/10,000
7446–18–6	Thallous Sulfate		100	100/10,000
2231–57–4	Thiocarbazide		1,000	1,000/10,000
39196–18–4	Thiofanox		100	100/10,000
297–97–2	Thionazin		100	500
108–98–5	Thiophenol		100	500
79–19–6	Thiosemicarbazide		100	100/10,000
5344–82–1	Thiourea, (2–Chlorophenyl)-		100	100/10,000
614–78–8	Thiourea, (2–Methylphenyl)-		500	500/10,000
7550–45–0	Titanium Tetrachloride		1,000	100
584–84–9	Toluene 2,4–Diisocyanate		100	500
91–08–7	Toluene 2,6–Diisocyanate		100	100
110–57–6	Trans-1,4–Dichlorobutene		500	500
1031–47–6	Triamiphos		500	500/10,000
24017–47–8	Triazofos		500	500
76–02–8	Trichloroacetyl Chloride		500	500
115–21–9	Trichloroethylsilane	h	500	500
327–98–0	Trichloronate	k	500	500
98–13–5	Trichlorophenylsilane	h	500	500
1558–25–4	Trichloro(Chloromethyl)Silane		100	100
27137–85–5	Trichloro(Dichlorophenyl) Silane		500	500
998–30–1	Triethoxysilane		500	500
75–77–4	Trimethylchlorosilane		1,000	1,000
824–11–3	Trimethylolpropane Phosphite	h	100	100/10,000
1066–45–1	Trimethyltin Chloride		500	500/10,000
639–58–7	Triphenyltin Chloride		500	500/10,000
555–77–1	Tris(2–Chloroethyl)Amine	h	100	100
2001–95–8	Valinomycin	c	1,000	1,000/10,000
1314–62–1	Vanadium Pentoxide		1,000	100/10,000
108–05–4	Vinyl Acetate Monomer	1	5,000	1,000
81–81–2	Warfarin		100	500/10,000
129–06–6	Warfarin Sodium	h	100	100/10,000
28347–13–9	Xylylene Dichloride		100	100/10,000
58270–08–9	Zinc, Dichloro(4,4– Dimethyl-5((((Methylamino)Carbonyl) Oxy)Imino)Pentanenitrile)-, (T–4)-.		100	100/10,000
1314–84–7	Zinc Phosphide	b	100	500

* Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4.

NOTES:

a This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.

b This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, nonsolution form.

c The calculated TPQ changed after technical review as described in the technical support document.

d Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.

e Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).

f [Reserved]

g New chemicals added that were not part of the original list of 402 substances.

h Revised TPQ based on new or re-evaluated toxicity data.

j TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.

k The TPQ was revised after proposal due to calculation error.

l Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern (''Other chemicals'').

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
0	Organorhodium Complex (PMN–82–147)		10	10/10,000
50–00–0	Formaldehyde	l	100	500
50–07–7	Mitomycin C		10	500/10,000
50–14–6	Ergocalciferol	c	1,000	1,000/10,000
51–21–8	Fluorouracil		500	500/10,000
51–75–2	Mechlorethaminec	c	10	10

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
51–83–2	Carbachol Chloride		500	500/10,000
54–11–5	Nicotine	c	100	100
54–62–6	Aminopterin		500	500/10,000
55–91–4	Isofluorphate	c	100	100
56–25–7	Cantharidin		100	100/10,000
56–38–2	Parathion	c	10	100
56–72–4	Coumaphos		10	100/10,000
57–14–7	Dimethylhydrazine		10	1,000
57–24–9	Strychnine	c	10	100/10,000
57–47–6	Physostigmine	d	1	100/10,000
57–57–8	Propiolactone, Beta-		10	500
57–64–7	Physostigmine, Salicylate (1:1)	d	1	100/10,000
57–74–9	Chlordane		1	1,000
58–36–6	Phenoxarsine, 10,10'-Oxydi-		500	500/10,000
58–89–9	Lindane		1	1,000/10,000
59–88–1	Phenylhydrazine Hydrochloride		1,000	1,000/10,000
60–34–4	Methyl Hydrazine		10	500
60–41–3	Strychnine sulfate		10	100/10,000
60–51–5	Dimethoate		10	500/10,000
62–38–4	Phenylmercury Acetate		100	500/10,000
62–53–3	Aniline	l	5,000	1,000
62–73–7	Dichlorvos		10	1,000
62–74–8	Sodium Fluoroacetate		10	10/10,000
62–75–9	Nitrosodimethylamine	h	10	1,000
64–00–6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate	d	1	500/10,000
64–86–8	Colchicine	h	10	10/10,000
65–30–5	Nicotine sulfate		100	100/10,000
66–81–9	Cycloheximide		100	100/10,000
67–66–3	Chloroform	l	10	10,000
70–69–9	Propiophenone, 4-Amino-	g	100	100/10,000
71–63–6	Digitoxin	c	100	100/10,000
72–20–8	Endrin		1	500/10,000
74–83–9	Methyl Bromide	l	1,000	1,000
74–90–8	Hydrocyanic Acid		10	100
74–93–1	Methyl Mercaptan	l	100	500
75–15–0	Carbon Disulfide	l	100	10,000
75–21–8	Ethylene Oxide	l	10	1,000
75–44–5	Phosgene	l	10	10
75–55–8	Propyleneimine		1	10,000
75–56–9	Propylene Oxide	l	100	10,000
75–74–1	Tetramethyllead	c, l	100	100
75–77–4	Trimethylchlorosilane		1,000	1,000
75–78–5	Dimethyldichlorosilane	h	500	500
75–79–6	Methyltrichlorosilane	h	500	500
75–86–5	Acetone Cyanohydrin		10	1,000
76–02–8	Trichloroacetyl Chloride		500	500
77–47–4	Hexachlorocyclopentadiene	h	10	100
77–78–1	Dimethyl Sulfate		100	500
77–81–6	Tabun	c, h	10	10
78–00–2	Tetraethyllead	c	10	100
78–34–2	Dioxathion		500	500
78–53–5	Amiton		500	500
78–71–7	Oxetane, 3,3-Bis(Chloromethyl)-		500	500
78–82–0	Isobutyronitrile	h	1,000	1,000
78–94–4	Methyl Vinyl Ketone		10	10
78–97–7	Lactonitrile		1,000	1,000
79–06–1	Acrylamide	l	5,000	1,000/10,000
79–11–8	Chloroacetic Acid		100	100/10,000
79–19–6	Thiosemicarbazide		100	100/10,000
79–21–0	Peracetic Acid		500	500
79–22–1	Methyl Chloroformate	h	1,000	500
80–63–7	Methyl 2-Chloroacrylate		500	500
81–81–2	Warfarin		100	500/10,000
82–66–6	Diphacinone		10	10/10,000
86–50–0	Azinphos-Methyl		1	10/10,000
86–88–4	ANTU		100	500/10,000
88–05–1	Aniline, 2,4,6-Trimethyl-		500	500
88–85–7	Dinoseb		1,000	100/10,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
91–08–7	Toluene 2,6-Diisocyanate		100	100
95–48–7	Cresol, o-		100	1,000/10,000
98–05–5	Benzenearsonic Acid		10	10/10,000
98–07–7	Benzotrichloride		10	100
98–13–5	Trichlorophenylsilane	h	500	500
98–16–8	Benzenamine, 3-(Trifluoromethyl)-		500	500
98–87–3	Benzal Chloride		5,000	500
98–95–3	Nitrobenzene	l	1,000	10,000
99–98–9	Dimethyl-p-Phenylenediamine		10	10/10,000
100–14–1	Benzene, 1-(Chloromethyl)-4-Nitro-		500	500/10,000
100–44–7	Benzyl Chloride		100	500
102–36–3	Isocyanic Acid, 3,4-Dichlorophenyl Ester		500	500/10,000
103–85–5	Phenylthiourea		100	100/10,000
106–89–8	Epichlorohydrin	l	100	1,000
106–96–7	Propargyl Bromide		10	10
107–02–8	Acrolein		1	500
107–07–3	Chloroethanol		500	500
107–11–9	Allylamine		500	500
107–12–0	Propionitrile		10	500
107–13–1	Acrylonitrile	l	100	10,000
107–15–3	Ethylenediamine		5,000	10,000
107–16–4	Formaldehyde Cyanohydrin	h	1,000	1,000
107–18–6	Allyl Alcohol		100	1,000
107–30–2	Chloromethyl Methyl Ether	c	10	100
107–44–8	Sarin	h	10	10
107–49–3	TEPP		10	100
108–05–4	Vinyl Acetate Monomer	l	5,000	1,000
108–23–6	Isopropyl Chloroformate		1,000	1,000
108–91–8	Cyclohexylamine	l	10,000	10,000
108–95–2	Phenol		1,000	500/10,000
108–98–5	Thiophenol		100	500
109–61–5	Propyl Chloroformate		500	500
109–77–3	Malononitrile		1,000	500/10,000
110–00–9	Furan		100	500
110–57–6	Trans-1,4-Dichlorobutene		500	500
110–89–4	Piperidine		1,000	1,000
111–44–4	Dichloroethyl Ether		10	10,000
111–69–3	Adiponitrile	l	1,000	1,000
115–21–9	Trichloroethylsilane	h	500	500
115–26–4	Dimefox		500	500
115–29–7	Endosulfan		1	10/10,000
115–90–2	Fensulfothion	h	500	500
116–06–3	Aldicarb	c	1	100/10,000
119–38–0	Isopropylmethylpyrazolyl Dimethylcarbamate	d	1	500
123–31–9	Hydroquinone	l	100	500/10,000
123–73–9	Crotonaldehyde, (E)-		100	1,000
124–65–2	Sodium Cacodylate		100	100/10,000
124–87–8	Picrotoxin		500	500/10,000
126–98–7	Methacrylonitrile	h	1,000	500
129–00–0	Pyrene	c	5,000	1,000/10,000
129–06–6	Warfarin Sodium	h	100	100/10,000
140–29–4	Benzyl Cyanide	h	500	500
140–76–1	Pyridine, 2-Methyl-5-Vinyl-		500	500
141–66–2	Dicrotophos		100	100
143–33–9	Sodium Cyanide (Na(CN))	b	10	100
144–49–0	Fluoroacetic Acid		10	10/10,000
149–74–6	Dichloromethylphenylsilane		1,000	1,000
151–38–2	Methoxyethylmercuric Acetate		500	500/10,000
151–50–8	Potassium Cyanide	b	10	100
151–56–4	Ethyleneimine		1	500
152–16–9	Diphosphoramide, Octamethyl-		100	100
297–78–9	Isobenzan		100	100/10,000
297–97–2	Thionazin		100	500
298–00–0	Parathion-Methyl	c	100	100/10,000
298–02–2	Phorate		10	10
298–04–4	Disulfoton		1	500
300–62–9	Amphetamine		1,000	1,000
302–01–2	Hydrazine		1	1,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
309–00–2	Aldrin		1	500/10,000
315–18–4	Mexacarbate		1,000	500/10,000
316–42–7	Emetine, Dihydrochloride	h	1	1/10,000
327–98–0	Trichloronate	k	500	500
353–42–4	Boron Trifluoride Compound With Methyl Ether (1:1)		1,000	1,000
359–06–8	Fluoroacetyl Chloride	c	10	10
371–62–0	Ethylene Fluorohydrin	c, h	10	10
379–79–3	Ergotamine Tartrate		500	500/10,000
465–73–6	Isodrin		1	100/10,000
470–90–6	Chlorfenvinfos		500	500
502–39–6	Methylmercuric Dicyanamide		500	500/10,000
504–24–5	Pyridine, 4-Amino-	h	1,000	500/10,000
505–60–2	Mustard Gas	h	500	500
506–61–6	Potassium Silver Cyanide	b	1	500
506–68–3	Cyanogen Bromide		1,000	500/10,000
506–78–5	Cyanogen Iodide		1,000	1,000/10,000
509–14–8	Tetranitromethane		10	500
514–73–8	Dithiazanine Iodide		500	500/10,000
534–07–6	Bis(Chloromethyl) Ketone		10	10/10,000
534–52–1	Dinitrocresol		10	10/10,000
535–89–7	Crimidine		100	100/10,000
538–07–8	Ethylbis(2-Chloroethyl)Amine	h	500	500
541–25–3	Lewisite	c, h	10	10
541–53–7	Dithiobiuret		100	100/10,000
542–76–7	Propionitrile, 3-Chloro-		1,000	1,000
542–88–1	Chloromethyl Ether	h	10	100
542–90–5	Ethylthiocyanate		10,000	10,000
555–77–1	Tris(2-Chloroethyl)Amine	h	100	100
556–61–6	Methyl Isothiocyanate	b	500	500
556–64–9	Methyl Thiocyanate		10,000	10,000
558–25–8	Methanesulfonyl Fluoride		1,000	1,000
563–12–2	Ethion		10	1,000
563–41–7	Semicarbazide Hydrochloride		1,000	1,000/10,000
584–84–9	Toluene 2,4-Diisocyanate		100	500
594–42–3	Perchloromethylmercaptan		100	500
597–64–8	Tetraethyltin	c	100	100
614–78–8	Thiourea, (2-Methylphenyl)-		500	500/10,000
624–83–9	Methyl Isocyanate		10	500
627–11–2	Chloroethyl Chloroformate		1,000	1,000
630–60–4	Ouabain	c	100	100/10,000
639–58–7	Triphenyltin Chloride		500	500/10,000
640–19–7	Fluoroacetamide	j	100	100/10,000
644–64–4	Dimetilan	d	1	500/10,000
675–14–9	Cyanuric Fluoride		100	100
676–97–1	Methyl Phosphonic Dichloride	b	100	100
696–28–6	Phenyl Dichloroarsine	h	1	500
732–11–6	Phosmet		10	10/10,000
760–93–0	Methacrylic Anhydride		500	500
786–19–6	Carbophenothion		500	500
814–49–3	Diethyl Chlorophosphate	h	500	500
814–68–6	Acrylyl Chloride	h	100	100
824–11–3	Trimethylolpropane Phosphite	h	100	100/10,000
900–95–8	Stannane, Acetoxytriphenyl-	g	500	500/10,000
919–86–8	Demeton-S-Methyl		500	500
920–46–7	Methacryloyl Chloride		100	100
944–22–9	Fonofos		500	500
947–02–4	Phosfolan		100	100/10,000
950–10–7	Mephosfolan		500	500
950–37–8	Methidathion		500	500/10,000
991–42–4	Norbormide		100	100/10,000
998–30–1	Triethoxysilane		500	500
999–81–5	Chlormequat Chloride	h	100	100/10,000
1031–47–6	Triamiphos		500	500/10,000
1066–45–1	Trimethyltin Chloride		500	500/10,000
1122–60–7	Nitrocyclohexane		500	500
1124–33–0	Pyridine, 4-Nitro-,1-Oxide		500	500/10,000
1129–41–5	Metolcarb	d	1	100/10,000
1303–28–2	Arsenic Pentoxide		1	100/10,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
1306–19–0	Cadmium Oxide		100	100/10,000
1314–62–1	Vanadium Pentoxide		1,000	100/10,000
1314–84–7	Zinc Phosphide	b	100	500
1327–53–3	Arsenous Oxide	h	1	100/10,000
1397–94–0	Antimycin A	c	1,000	1,000/10,000
1420–07–1	Dinoterb		500	500/10,000
1464–53–5	Diepoxybutane		10	500
1558–25–4	Trichloro(Chloromethyl)Silane		100	100
1563–66–2	Carbofuran		10	10/10,000
1600–27–7	Mercuric Acetate		500	500/10,000
1622–32–8	Ethanesulfonyl Chloride, 2-Chloro-		500	500
1752–30–3	Acetone Thiosemicarbazide		1,000	1,000/10,000
1910–42–5	Paraquat Dichloride		10	10/10,000
1982–47–4	Chloroxuron		500	500/10,000
2001–95–8	Valinomycin	c	1,000	1,000/10,000
2032–65–7	Methiocarb		10	500/10,000
2074–50–2	Paraquat Methosulfate		10	10/10,000
2097–19–0	Phenylsilatrane	h	100	100/10,000
2104–64–5	EPN		100	100/10,000
2223–93–0	Cadmium Stearate	c	1,000	1,000/10,000
2231–57–4	Thiocarbazide		1,000	1,000/10,000
2238–07–5	Diglycidyl Ether		1,000	1,000
2275–18–5	Prothoate		100	100/10,000
2497–07–6	Oxydisulfoton	h	500	500
2524–03–0	Dimethyl Phosphorochloridothioate		500	500
2540–82–1	Formothion		100	100
2570–26–5	Pentadecylamine		100	100/10,000
2587–90–8	Phosphorothioic Acid, O,O-Dimethyl-S-(2-Methylthio) Ethyl Ester	c, g	500	500
2631–37–0	Promecarb	d, h	1	500/10,000
2636–26–2	Cyanophos		1,000	1,000
2642–71–9	Azinphos-Ethyl		100	100/10,000
2665–30–7	Phosphonothioic Acid, Methyl-, O-(4-Nitrophenyl) O-Phenyl Ester		500	500
2703–13–1	Phosphonothioic Acid, Methyl-, O-Ethyl O-(4-(Methylthio)Phenyl) Ester		500	500
2757–18–8	Thallous Malonate	c, h	100	100/10,000
2763–96–4	Muscimol		1,000	500/10,000
2778–04–3	Endothion		500	500/10,000
3037–72–7	Silane, (4-Aminobutyl)Diethoxymethyl-		1,000	1,000
3254–63–5	Phosphoric Acid, Dimethyl 4-(Methylthio)Phenyl Ester		500	500
3569–57–1	Sulfoxide, 3-Chloropropyl Octyl		500	500
3615–21–2	Benzimidazole, 4,5-Dichloro-2-(Trifluoromethyl)-	g	500	500/10,000
3689–24–5	Sulfotep		100	500
3691–35–8	Chlorophacinone		100	100/10,000
3734–97–2	Amiton Oxalate		100	100/10,000
3735–23–7	Methyl Phenkapton		500	500
3878–19–1	Fuberidazole		100	100/10,000
4044–65–9	Bitoscanate		500	500/10,000
4098–71–9	Isophorone Diisocyanate		100	100
4104–14–7	Phosacetim		100	100/10,000
4170–30–3	Crotonaldehyde		100	1,000
4301–50–2	Fluenetil		100	100/10,000
4418–66–0	Phenol, 2,2'-Thiobis(4-Chloro-6-Methyl)-		100	100/10,000
4835–11–4	Hexamethylenediamine, N,N'-Dibutyl-		500	500
5344–82–1	Thiourea, (2-Chlorophenyl)-		100	100/10,000
5836–29–3	Coumatetralyl		500	500/10,000
6533–73–9	Thallous Carbonate	c, h	100	100/10,000
6923–22–4	Monocrotophos		10	10/10,000
7446–09–5	Sulfur Dioxide	l	500	500
7446–11–9	Sulfur Trioxide	b	100	100
7446–18–6	Thallous Sulfate		100	100/10,000
7487–94–7	Mercuric Chloride		500	500/10,000
7550–45–0	Titanium Tetrachloride		1,000	100
7580–67–8	Lithium Hydride	b	100	100
7631–89–2	Sodium Arsenate		1	1,000/10,000
7637–07–2	Boron Trifluoride		500	500
7647–01–0	Hydrogen Chloride (gas only)	l	5,000	500
7664–39–3	Hydrogen Fluoride		100	100
7664–41–7	Ammonia	l	100	500
7664–93–9	Sulfuric Acid		1,000	1,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
7697–37–2	Nitric Acid		1,000	1,000
7719–12–2	Phosphorus Trichloride		1,000	1,000
7722–84–1	Hydrogen Peroxide (Conc > 52%)	l	1,000	1,000
7723–14–0	Phosphorus	b, h	1	100
7726–95–6	Bromine	l	500	500
7778–44–1	Calcium Arsenate		1	500/10,000
7782–41–4	Fluorine	k	10	500
7782–50–5	Chlorine		10	100
7783–00–8	Selenious Acid		10	1,000/10,000
7783–06–4	Hydrogen Sulfide	l	100	500
7783–07–5	Hydrogen Selenide		10	10
7783–60–0	Sulfur Tetrafluoride		100	100
7783–70–2	Antimony Pentafluoride		500	500
7783–80–4	Tellurium Hexafluoride	k	100	100
7784–34–1	Arsenous Trichloride		1	500
7784–42–1	Arsine		100	100
7784–46–5	Sodium Arsenite		1	500/10,000
7786–34–7	Mevinphos		10	500
7791–12–0	Thallous Chloride	c, h	100	100/10,000
7791–23–3	Selenium Oxychloride		500	500
7803–51–2	Phosphine		100	500
8001–35–2	Camphechlor		1	500/10,000
8065–48–3	Demeton		500	500
10025–73–7	Chromic Chloride		1	1/10,000
10025–87–3	Phosphorus Oxychloride		1,000	500
10026–13–8	Phosphorus Pentachloride	b	500	500
10028–15–6	Ozone		100	100
10031–59–1	Thallium Sulfate	h	100	100/10,000
10102–18–8	Sodium Selenite	h	100	100/10,000
10102–20–2	Sodium Tellurite		500	500/10,000
10102–43–9	Nitric Oxide	c	10	100
10102–44–0	Nitrogen Dioxide		10	100
10124–50–2	Potassium Arsenite		1	500/10,000
10140–87–1	Ethanol, 1,2-Dichloro-, Acetate		1,000	1,000
10210–68–1	Cobalt Carbonyl	h	10	10/10,000
10265–92–6	Methamidophos		100	100/10,000
10294–34–5	Boron Trichloride		500	500
10311–84–9	Dialifor		100	100/10,000
10476–95–6	Methacrolein Diacetate		1,000	1,000
12002–03–8	Paris Green		1	500/10,000
12108–13–3	Manganese, Tricarbonyl Methylcyclopentadienyl	h	100	100
13071–79–9	Terbufosh	h	100	100
13171–21–6	Phosphamidon		100	100
13194–48–4	Ethoprophos		1,000	1,000
13410–01–0	Sodium Selenate		100	100/10,000
13450–90–3	Gallium Trichloride		500	500/10,000
13463–39–3	Nickel Carbonyl		10	1
13463–40–6	Iron, Pentacarbonyl-		100	100
14167–18–1	Salcomine		500	500/10,000
15271–41–7	Bicyclo[2.2.1]Heptane-2-Carbonitrile, 5-Chloro-6-((((Methylamino)Carbonyl)Oxy)Imino)-, (1s-(1-alpha,2-beta,4-alpha,5-alpha,6E))-.		500	500/10,000
16752–77–5	Methomyl	h	100	500/10,000
17702–41–9	Decaborane(14)		500	500/10,000
17702–57–7	Formparanated	d	1	100/10,000
19287–45–7	Diborane		100	100
19624–22–7	Pentaborane		500	500
20830–75–5	Digoxin	h	10	10/10,000
20859–73–8	Aluminum Phosphide	b	100	500
21548–32–3	Fosthietan		500	500
21609–90–5	Leptophos		500	500/10,000
21908–53–2	Mercuric Oxide		500	500/10,000
21923–23–9	Chlorthiophos	h	500	500
22224–92–6	Fenamiphos		10	10/10,000
23135–22–0	Oxamyl	d	1	100/10,000
23422–53–9	Formetanate Hydrochloride	d, h	1	500/10,000
23505–41–1	Pirimifos-Ethyl		1,000	1,000
24017–47–8	Triazofos		500	500
24934–91–6	Chlormephos		500	500

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-	d	1	100/10,000
26628–22–8	Sodium Azide ($Na(N_3)$)	b	1,000	500
27137–85–5	Trichloro(Dichlorophenyl)Silane		500	500
28347–13–9	Xylylene Dichloride		100	100/10,000
28772–56–7	Bromadiolone		100	100/10,000
30674–80–7	Methacryloyloxyethyl Isocyanateh		100	100
39196–18–4	Thiofanox		100	100/10,000
50782–69–9	Phosphonothioic Acid, Methyl-, S-(2-(Bis(1-Methylethyl)Amino)Ethyl) O-Ethyl Ester		100	100
53558–25–1	Pyriminil	h	100	100/10,000
58270–08–9	Zinc, Dichloro(4,4-Dimethyl-5((((Methylamino) Carbonyl)Oxy)Imino)Pentanenitrile)-, (T–4)-.		100	100/10,000
62207–76–5	Cobalt, ((2,2'-(1,2-Ethanediylbis (Nitrilomethylidyne)) Bis(6-Fluorophenolato)) (2-)-N,N',O,O')-.		100	100/10,000

*Only the statutory or final RQ is shown. For more information, *see* 40 CFR Table 302.4.

NOTES:

a. This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.
b. This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.
c. The calculated TPQ changed after technical review as described in the technical support document.
d. Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.
e. Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).
f. [Reserved]
g. New chemicals added that were not part of the original list of 402 substances.
h. Revised TPQ based on new or re-evaluated toxicity data.
j. TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.
k. The TPQ was revised after proposal due to calculation error.
l. Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern (''Other chemicals'').

[FR Doc. 96–11209 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–61; RM–8464]

Radio Broadcasting Services; Garberville and Hydesville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231C1 to Hydesville, California. This document also dismisses a proposal by Brett E. Miller to reallot Channel 279C1 from Garberville, California, to Hydesville, California. *See* 59 FR 35081, July 8, 1996. The reference coordinates for Channel 231C1 are 40–27–58 and 124–04–28. With this action, the proceeding is terminated.

DATES: Effective June 14, 1996. The window period for filing applications will open on June 14, 1996, and close on July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 94–61, adopted April 16, 1996, and released April 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Hydesville, Channel 231C1.

Federal Communications Commission.

John A Karousos,

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

[FR Doc. 96–11325 Filed 5–6–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 91–137, RM–7494]

Radio Broadcasting Services; Saltville, VA and Jefferson, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of reconsideration.

SUMMARY: The Chief, Policy and Rules Division denied the petition for reconsideration, filed by Smith Communications, Inc., of the *Report and Order* in this proceeding, 56 FR 23260, published May 21, 1991. The Chief also affirmed the *Report and Order* and its use of the Commission's standard propagation prediction methodology. The *Report and Order* had granted the petition (RM–7494) of 106.1, Inc. to upgrade the construction permit at Saltville from Channel 291A to Channel 291C3, to reallot it to Jefferson, and to modify its permit to specify Jefferson as the new community of license. With

this action, the proceeding is terminated.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 91–137, adopted April 19, 1996 and released April 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–11326 Filed 5–6–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 803, 804, 805, 806, 808, 810, 812, 813, 815, 816, 820, 822, 828, 833, 834, 836, 837, and 846

RIN 2900–AI02

VA Acquisition Regulations: Miscellaneous Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulations (VAAR) to eliminate restatements of the Federal Acquisition Regulation (FAR), to eliminate provisions duplicative of other provisions in the VAAR, to eliminate internal procedures not required to be included in regulations, to eliminate provisions that refer to activities that no longer can occur (such as regulations concerning VA depots which no longer exist), to make corrections, and to make clarifications.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Sherry Patton for parts 801, 803, 804, 805, 834, 836 and 837; Don Kaliher for parts 806, 808, 810, 812, 828 and 833; Wanza Lewis for parts 813, 815, 816, 820 and 822; and Ramona Jones for part 846; Acquisition Policy Division (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 565–4424.

SUPPLEMENTARY INFORMATION: This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553. Also, this final rule is not a significant revision as defined in FAR 1.501–1.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. This final rule would not cause a significant effect on any entities since it does not contain any substantive provisions. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects

48 CFR Parts 801 and 836

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 803

Antitrust, Conflict of interest, Government procurement.

48 CFR Parts 804, 805, 806, 810, 812, 813, 815, 816, , 834, 837 and 846.

Government procurement.

48 CFR Part 808

Government procurement, Utilities.

48 CFR Parts 820 and 822

Government procurement, Labor.

48 CFR Part 828

Government procurement, Insurance, Surety bonds.

48 CFR Part 833

Administrative practice and procedure, Government procurement.

Approved: April 29, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 48 CFR Chapter 8 is amended as follows:

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

1. The authority citation for parts 801, 803, 804, 805, 806, 808, 810, 812, 813, 815, 816, 822, 828, 833, 836, 837, and 846 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

801.104 [Removed]

2. Section 801.104 is removed.

801.104–1 [Removed]

3. Section 801.104–1 is removed.

801.104–3 [Removed]

4. Section 801.104–3 is removed.

801.201 [Removed]

5. Section 801.201 is removed.

801.301 [Amended]

6. In § 801.301, paragraph (c) is removed.

801.403 [Amended]

7. In § 801.403, paragraph (b) is amended by removing the last sentence.

801.470 [Removed]

8. Section 801.470 is removed.

801.602–72 [Amended]

9. In § 801.602–72, paragraph (e)(5) is amended by removing ''806.303'' and adding, in its place, ''FAR 6.303''.

801.670–6 [Removed]

10. Section 801.670–6 is removed.

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

803.101–3 [Amended]

11. In § 803.101–3, paragraph (a) is amended by removing the second and third sentences; paragraph (c) is removed; and paragraph (d) is redesignated as a new paragraph (c).

803.104–5 [Removed]

12. Section 803.104–5 is removed.

803.104–9 [Removed]

13. Section 803.104–9 is removed.

803.104–11 [Removed]

14. Section 803.104–11 is removed.

803.104–12 [Removed]

15. Section 803.104–12 is removed.

803.3 [Amended]

16. In subpart 803.3, the subpart heading is amended by removing ''IDENTICAL BIDS AND''.

803.301 [Removed]

17. Section 803.301 is removed.

803.408 [Removed]

18. Section 803.408 is removed.

803.408–1 [Removed]

19. Section 803.408–1 is removed.

803.409 [Amended]

20. In § 803.409, paragraph (a) is removed and the paragraph designation ''(b)'' is removed.

803.603 [Removed]

21. Subpart 803.6 consisting of § 803.603 is removed.

PART 804—ADMINISTRATIVE MATTERS

804.101 [Amended]

22. In § 804.101, paragraph (a) is removed and the paragraph designation ''(b)'' is removed.

PART 805—PUBLICIZING CONTRACT ACTIONS

805.202 [Amended]

23. Section 805.202 is amended by removing the second and third sentences.

805.207 [Amended]

24. In § 805.207, paragraphs (a), (b)(1), (b)(2) and (b)(3) are removed and the paragraph designation ''(b)'' is removed.

PART 806—COMPETITION REQUIREMENTS

806.302–3 [Amended]

25. Section 806.302–3 is amended by removing ''sections 806.303 and'' and adding, in its place, ''FAR 6.303 and 48 CFR''.

806.302–5 [Amended]

26. Section 806.302–5 is amended by removing ''806.303'' each of the three times it appears and adding, in its place, each time ''FAR 6.303''.

806.302–7 [Amended]

27. Section 806.302–7(b) is amended by removing ''806.303'' and adding, in its place, ''FAR 6.303''.

806.303 [Removed]

28. Section 806.303 is removed.

806.303–1 [Removed]

29. Section 806.303–1 is removed.

806.304 [Amended]

30. In § 806.304, paragraph (a) is amended by removing ''6.303 and 806.303'' and adding, in its place, ''6.303,''.

806.502 [Amended]

31. Section 806.502 is amended by removing paragraphs (d) and (e).

806.570 [Amended]

32. In § 806.570, paragraphs (a) and (c) are removed, the paragraph designation ''(b)'' is removed, and paragraphs (b) (1) through (5) are redesignated as paragraphs (a) through (e), respectively.

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

808.001 [Amended]

33. In § 808.001, paragraph (a)(2) is removed and paragraphs (a)(3) through (a)(10) are redesignated as paragraphs (a)(2) through (a)(9), respectively.

808.304–1–808.304–5, 808.307–2, 808.304–70 [Removed]

34. Subpart 808.3 consisting of §§ 808.304–1 through 808.304–5, § 808.307–2 and § 808.304–70 are is removed.

808.405–5 [Removed]

35. Section 808.405–5 is removed.

PART 810—SPECIFICATIONS, STANDARDS, AND PURCHASE ORDER DESCRIPTIONS

§ 810.007 [Amended]

36. In § 810.007, paragraph (a)(2)(i) is removed, paragraph (a)(2)(ii) is amended by removing ''When the deviation specified in paragraph (a)(2)(i) of this section is for an item that is not being purchased for depot stock, document'' and adding, in its place, ''Document''; and paragraphs (a)(2)(ii) and (a)(2)(iii) are redesignated as paragraphs (a)(2)(i) and (a)(2)(ii), respectively.

PART 812—CONTRACT DELIVERY OR PERFORMANCE

§ 812.503 [Removed]

37. Subpart 812.5 consisting of § 812.503 is removed.

PART 813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

§ 813.103 [Removed]

38. Subpart 813.1 consisting of § 813.103 is removed.

PART 815—CONTRACTING BY NEGOTIATION

§ 815.502 [Removed]

39. Section 815.502 is removed.

§ 815.800 [Removed]

40. Section 815.800 is removed.

§ 815.7001–815.7002 [Removed]

41. Subpart 815.70 consisting of §§ 815.7001 through 815.7002 is removed.

PART 816—TYPES OF CONTRACTS

§ 816.102 [Amended]

42. In § 816.102, paragraphs (a) and (c) are removed, paragraph (b) is amended by removing ''of the type specified in paragraph (a)(3) of this section''; paragraphs (b), (d), and (e) are redesignated as paragraphs (a), (b), and (c), respectively, and the new redesignated paragraph (c) is amended by removing the reference to paragraph ''(d)'' and adding, in its place, ''(b)''.

§ 816.306 [Removed]

43. Subpart 816.3 consisting of § 816.606 is removed.

§ 816.603 [Removed]

44. Subpart 816.6 consisting of § 816.603 is removed.

PART 820—[REMOVED]

45. Part 820 is removed.

PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

§ 822.471 [Removed]

46. Section 822.471 is removed.

PART 828—BONDS AND INSURANCE

§ 828.307–1 [Removed]

47. Section 828.307–1 is removed.

PART 833—PROTESTS, DISPUTES, APPEALS

§ 833.103 [Amended]

48. In § 833.103, paragraphs (a), (b)(1), (b)(4), and (b)(7)(vii) are removed; paragraph (b) is redesignated as paragraph (a), the new designated paragraphs (a)(2), (a)(3), (a)(5), (a)(6) and (a)(7) are redesignated as paragraphs (a)(1) through (a)(5), respectively; the new designated paragraphs (a)(5)(viii) through (a)(5)(x) are redesignated as paragraphs (a)(5)(vii) through (a)(5)(ix), respectively; and paragraphs (c), (d), (e), and (f) are redesignated as paragraphs (b), (c), (d), and (e), respectively.

§ 833.211 [Amended]

49. In § 833.211, paragraphs (d) and (e) are removed.

PART 834—[REMOVED]

50. Part 834 is removed.

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

§ 836.202 [Amended]

51. In § 836.202, paragraph (a) is removed and the introductory text is redesignated as new paragraph (a).

§ 836.211 [Amended]

52. In § 836.211, paragraphs (a), (b), and (d) are removed, and the paragraph designation ''(c)'' is removed.

§ 836.371 [Amended]

53. In § 836.371, paragraph (a) is amended by removing the second and third sentences.

§ 836.601 [Removed]

54. Section 836.601 is removed.

§ 836.602–1 [Amended]

55. In § 836.602–1, paragraph (c) is removed and paragraph (d) is redesignated as new paragraph (c).

§ 836.602–3 [Removed]

56. Section 836.602–3 is removed.

§ 836.606–70 [Amended]

57. In § 836.606–70, the first 5 sentences are removed.

§ 836.606–71 [Amended]

58. In § 836.606–71, the second and fourth sentences are removed.

§ 836.606–73 [Amended]

59. In § 836.606–73, paragraph (a) is amended by removing ''fee limitation on architect or engineer services set forth in section 304(b) of the Federal Property and Administration Services Act of 1949, as amended, and referred to in FAR 15.903(d)(1)(ii), applies to those services generally required in preparing working drawings and specifications which form the basis for bidding and for the award of construction contract. The fixed''.

PART 837—SERVICE CONTRACTING

§ 837.104 [Amended]

60. In § 837.104, paragraph (a) is amended by removing '', except to the extent indicated in 815.204 and subpart 837.2,''.

§ 837.200 [Removed]

61. Section 837.200 is removed.

§ 837.204 [Removed]

62. Section 837.204 is removed.

§ 837.205 [Removed]

63. Section 837.205 is removed.

§ 837.271–5 [Amended]

64. Section 837.271–5 and Appendices A and B to subpart 837.2 are removed.

§ 837.7002–7002 [Amended]

65. In § 837.7002, the last sentence is removed.

PART 846—QUALITY ASSURANCE

§ 846.302 [Removed]

66. Section 846.302 is removed.

§ 846.403 [Removed]

67. Section 846.403 is removed.

§ 846.408–72 [Removed]

68. Section 846.408–72 is removed.

[FR Doc. 96–11276 Filed 5–6–96; 8:45 am]

BILLING CODE 8320–01–P

48 CFR Part 871

RIN 2900–AG65

VA Acquisition Regulations: Loan Guaranty and Vocational Rehabilitation and Counseling Programs

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule without substantive change the provisions of a proposed rule to amend the Department of Veterans Affairs (VA) acquisition regulations (VAAR). This final rule increases to $500 the blanket advance authority of management brokers to incur routine charges in connection with the management of properties acquired by VA under VA's housing and small business loan programs (38 U.S.C. Chapter 37). It also increases to $500 the property holders' emergency repair threshold. In addition, Regional Office Directors, Loan Guaranty Officers, and Assistant Loan Guaranty Officers are authorized to approve repair programs where the estimated cost (i.e., the aggregate amount of the proposed contracts to purchase supplies and services as contemplated in a property analysis by the Loan Guaranty activity) does not exceed $25,000. Further, nonsubstantive changes are made for purposes of clarity and to reflect organizational changes. These changes are intended to promote the efficient management of VA's acquired property inventory.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Wanza E. Lewis, Acquisition Policy Division (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–4424.

SUPPLEMENTARY INFORMATION: On February 14, 1994, we published in the Federal Register (59 FR 6942) a proposal to amend provisions of the VAAR captioned ''LOAN GUARANTY AND VOCATIONAL REHABILITATION AND COUNSELING PROGRAMS''. We solicited comments concerning the proposal for 60 days ending April 15, 1994. We did not receive any comments. The information presented in the proposal still provides a basis for this final rule. We are making several nonsubstantive changes, but otherwise, based on the rationale set forth in the proposal, we are adopting the provisions of the proposed rule as a final rule without change.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would not cause a significant effect on any entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This document is made effective on the date of publication. It restates statutory provisions and relieves restrictions.

List of Subjects in 48 CFR Part 871

Government procurement, Loan programs-social programs, Loan programs-veterans, Reporting and recordkeeping requirements, Vocational rehabilitation.

Approved: March 18, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR part 871 is amended as set forth below:

PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND COUNSELING PROGRAMS

1. The authority citation for part 871 is revised to read as follows:

Authority: 10 U.S.C. ch. 106, 107, 1606; 38 U.S.C. 501, ch. 30, 31, 32, 35, 36, 37; 40 U.S.C. 486(c).

Subpart 871.1—Loan Guaranty Program

2. Section 871.101 is revised to read as follows:

871.101 Policy.

All acquisitions for the repair and maintenance of VA property acquired under 38 U.S.C. Chapter 37 shall be made in accordance with FAR Parts 14, 15, and 16; (VAAR) 48 CFR Parts 814, 815, and 816; and (VAAR) 48 CFR subpart 871.1.

(Authority: 10 U.S.C. ch. 106, 107, 1606; 38 U.S.C. 501, ch. 37; 40 U.S.C. 486(c))

871.102 [Amended]

3. In § 871.102, paragraph (a) is amended by adding '', Loan Guaranty Officers, and Assistant Loan Guaranty Officers'' after ''Directors''; by removing ''purchase supplies and services for the repair to'' and adding, in its place, ''approve a repair program for''; and by removing ''$5,000 on any single transaction'' and adding in its place ''$25,000. A repair program means the aggregate amount of the proposed contracts which are contemplated in a property analysis by the Loan Guaranty activity''.

4. In § 871.102, paragraph (b) is amended by removing ''$5,000'' and adding in its place ''$25,000'' and by removing ''Chief Benefits Director'' and adding in its place ''Under Secretary for Benefits''.

5. In § 871.102, in paragraph (c) the second sentence is amended by removing ''Chief Benefits Director'' and adding in its place ''Under Secretary for Benefits''.

6. In § 871.102, paragraph (d) is amended by removing ''$200'' and adding in its place ''$500''.

7. In § 871.102, in paragraph (e) the first sentence is amended by removing ''listed with him/her'' and adding in its place ''assigned''; the second sentence is amended by removing ''$200'' and adding in its place ''$500'' and by removing ''his/her'' and adding in its place ''the''; and the third sentence is amended by removing ''$200'' and adding in its place ''$500''.

871.103 [Removed]

8. Section 871.103 is removed.

871.105 [Removed]

9. Section 871.105 is removed.

871.106 [Amended]

10. In § 871.106, in paragraph (b) the second sentence is amended by removing ''or material men'' and is amended by removing ''his/her'' and adding in its place ''the subcontractor's''.

Subpart 871.2—Vocational Rehabilitation and Counseling Program

11. Section 871.200 is revised to read as follows:

871.200 Scope of subpart.

This subpart establishes policy and procedures for the vocational rehabilitation and counseling program as it pertains to contracts for training and rehabilitation services, approval of institutions (including rehabilitation facilities), training establishments, and employers under 38 U.S.C. Chapter 31, and contracts for counseling services under 38 U.S.C. Chapters 30, 31, 32, 35, and 36 and 10 U.S.C. Chapters 106, 107, and 1606.

(Authority: 10 U.S.C. ch. 106, 107, 1606; 38 U.S.C. 501, ch. 30, 31, 32, 35, 36; 40 U.S.C. 486(c))

871.201–3 [Amended]

12. Section 871.201–3 is amended by removing ''Veterans Health Services and Research Administration'' and adding in its place ''Veterans Health Administration''.

871.207 [Amended]

13. In § 871.207, paragraph (b)(2) is amended by removing ''Veterans Administration'' and adding in its place ''Department of Veterans Affairs''.

[FR Doc. 96–11277 Filed 5–6–96; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 228

Decision of the United States Supreme Court Concerning an Agency Interpretation of the Federal Hours of Service Laws; Change in Agency Interpretation; Enforcement Policy Regarding Violations of Laws as Previously Interpreted

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Statement of agency policy and interpretation.

SUMMARY: Notice is hereby given that, in accordance with the decision of the United States Supreme Court in *Brotherhood of Locomotive Engineers* v. *Atchison, Topeka and Santa Fe R.R.*, all time spent awaiting the arrival of a deadhead vehicle for transportation to the point of final release, when no additional services are required of railroad carrier employees, shall be treated by FRA as time neither on nor off duty for purposes of the Federal hours of service laws (''HSL''), throughout the entire nation. FRA is amending its current interpretive statement to reflect this Supreme Court decision.

EFFECTIVE DATE: January 8, 1996.

FOR FURTHER INFORMATION CONTACT: Edward R. English, Director, Office of Safety Assurance and Compliance, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–366–9252); or David H. Kasminoff, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–366–0628).

SUPPLEMENTARY INFORMATION:

Public Participation

In this notice FRA is announcing that it has changed its interpretation of the HSL (49 U.S.C. 20102, 21101–21108, 21303, and 21304), consistent with a unanimous decision of the United States Supreme Court, concerning the treatment of time spent awaiting the arrival of deadhead transportation to the point of final release. Notice and comment procedures are unnecessary with regard to the general statement of policy and interpretation issued by this notice because such a statement is excepted from notice and comment procedure by virtue of 5 U.S.C. 553(b)(3)(A). Statements of policy are also an exception to the general requirement of publication at least 30 days prior to the effective date. *See* 5 U.S.C. 553(d)(2).

Effect of this Notice

On January 8, 1996, the United States Supreme Court issued its decision in the case of *Brotherhood of Locomotive Engineers* v. *Atchison, Topeka and Santa Fe R.R.*,____ U.S. ____, 116 S.Ct. 595, affirming the decision of the United States Court of Appeals for the Seventh Circuit in the case of *Atchison, Topeka, and Santa Fe Railway Co.* v. *Peña*, 44 F.3d 437 (1994). Both cases concern FRA's interpretation of the HSL as they pertain to the status of train crewmembers waiting for the arrival of deadhead transportation to their point of final release. The Supreme Court unanimously held that such time, when no additional services are required of railroad carrier employees, should be classified as limbo time (*i.e.*, neither on- nor off-duty time) for HSL purposes.

The Supreme Court's holding coincided with the position that FRA had traditionally taken until the agency changed its interpretation of the HSL in late 1992. Prior to that change, FRA had considered an employee to be on duty during the time spent waiting for the arrival of deadhead transportation to the employee's point of final release *only* if the employee actually had duties to perform. If the railroad carrier had relieved the employee of all responsibility, FRA had considered such time spent merely waiting for the deadhead vehicle to arrive as limbo time.

However, on September 22, 1992, in response to lawsuits filed by the United Transportation Union and the Brotherhood of Locomotive Engineers, a three-judge panel of the United States Court of Appeals for the Ninth Circuit held that such time spent waiting for transportation was to be considered on-duty time. *United Transportation Union* v. *Skinner*, 975 F.2d 1421 (9th Cir. 1992). The Ninth Circuit includes Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. Although FRA disagreed with the Ninth Circuit's legal rationale, FRA recognized both the ambiguity of the HSL's pertinent provisions and the reasonableness of the court's ultimate conclusion as to the

proper reading of those provisions. Accordingly, in the interest of uniform application of the HSL and to promote the safety of railroad operations, FRA decided to treat the Ninth's Circuit opinion as binding throughout the entire nation. That shift in agency policy was announced in an October 28, 1992 letter to the Association of American Railroads (AAR), and was later published in the Federal Register. 58 Fed. Reg. 18,193 (1993).

FRA had always believed that both the Ninth Circuit's interpretation of the relevant HSL provisions, and what became the Seventh Circuit's interpretation, were reasonable. While FRA adopted the Ninth Circuit's interpretation in 1992 primarily to achieve national uniformity, the contrary decision of the Seventh Circuit in 1994 made that goal impossible to achieve until the Supreme Court finally resolved the split between the circuit courts. Moreover, upon review of the Seventh Circuit's unanimous, *en banc* decision, FRA concluded that the Seventh Circuit's reading of the pertinent HSL provisions was better reasoned than the decision of the Ninth Circuit. Accordingly, FRA stated in a March 1, 1995 letter to AAR that, effective March 6, 1995, with respect to locations outside of the territory of the Ninth Circuit, FRA would revert to its prior view that all time spent merely waiting on a train for the arrival of deadhead transportation to the employee's point of final release would be treated as limbo time.

Now that the Supreme Court has resolved the split in the circuits, this means that effective January 8, 1996, FRA treats an employee merely required to remain on a train—*at a location in any state in the nation*—while awaiting the arrival of deadhead transportation to the employee's point of final release, as neither on nor off duty; the employee's status most closely resembles, and is part and parcel of, deadheading from duty.

However, as FRA has long maintained, if an employee is required to perform service of any kind during that period (*e.g.*, protecting the train against vandalism, observing passing trains for any defects or unsafe conditions, flagging, shutting down locomotives, checking fluid levels, or communicating train consist information via radio), he or she will be considered as on duty until all such service is completed. Moreover, the Supreme Court's decision addressed the situation in which a crew that has expired under the laws is called upon to perform nonoperational duties (*i.e.*, commingled duties) while it waits for the arrival of the deadhead vehicle after the expiration of the maximum 12 hours. The Court made clear that the laws account for that circumstance by treating such time as time on duty pursuant to 49 U.S.C. 21103(b)(3) (commingled service provision). Of course, where a railroad carrier's operating rules clearly relieve an employee of all duties during the waiting period and no duties are specifically assigned, the employee's waiting time will be considered limbo time.

Consistent with the Supreme Court's holding, FRA is ceasing all enforcement activity concerning alleged violations of the HSL and hours of duty records and reporting regulations (49 CFR Part 228, Subpart B) occurring anywhere in the United States involving only the awaiting deadhead issue. Allegations of excess service involving only this issue are no longer being investigated by FRA. Moreover, all case files containing violation reports involving only this issue, regardless of the location or the date of the alleged violation, will soon be terminated. FRA's Office of Chief Counsel will provide the legal department of each railroad impacted by the Supreme Court's decision with a complete list of the case files that are affected by this policy change.

Although time spent awaiting the arrival of deadhead transportation to the employee's point of final release will now constitute limbo time and FRA will enforce the laws accordingly, FRA remains concerned about instances in which employees are held on trains for long periods of time while awaiting the arrival of deadhead transportation in the absence of any valid emergency that might explain such an occurrence. To the extent that the waiting periods are extremely lengthy, current scientific information concerning sleep cycles and the effects of fatigue on safety-sensitive performance indicates that the waiting periods could contribute to the cumulative exhaustion of the employee. This cumulative exhaustion could occur even though the employee receives the legally required rest period upon arrival at the point of final release. Accordingly, it is FRA's expectation that the railroad carriers will voluntarily employ their best efforts to minimize the time that employees spend waiting for the arrival of deadhead transportation. FRA also urges the railroad carriers to devise pilot projects under the laws, pursuant to 49 U.S.C. 21108, that might reduce the awaiting-deadhead time in return for flexibility on other hours of service issues.

FRA is amending its current interpretive statement in Appendix A to 49 CFR Part 228 to reflect the fact that, in addition to computing time spent in deadhead transportation from the final duty assignment of the work tour to the point of final release as limbo time (time neither on- nor off- duty), all time spent awaiting the arrival of a deadhead vehicle for transportation to the point of final release, when no additional services are required of the railroad employee, shall also be treated by FRA as limbo time for purposes of the laws.

List of Subjects in 49 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 228 is amended as follows:

PART 228—[AMENDED]

1. The authority citation for 49 CFR Part 228 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107–20108, 20111, 20112, 21101–21108, 21303–21304, as amended; 49 U.S.C. App. 1655(e), as amended; 49 CFR 1.49(d), (m).

2. Appendix A to Part 228 is amended: By revising the second paragraph of *Deadheading*, under the undesignated centerheading ''Train and Engine Service,'' to read as follows:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

Train and Engine Service

* * * * *

Deadheading. * * *

All time spent awaiting the arrival of a deadhead vehicle for transportation from the final duty assignment of the work tour to the point of final release is considered limbo time, *i.e.*, neither time on duty nor time off duty, provided that the employee is given no specific responsibilities to perform during this time. However, if an employee is required to perform service of any kind during that period (*e.g.*, protecting the train against vandalism, observing passing trains for any defects or unsafe conditions, flagging, shutting down locomotives, checking fluid levels, or communicating train consist information via radio), he or she will be considered as on duty until all such service is completed. Of course, where a railroad carrier's operating rules clearly relieve the employee of all duties during the waiting period and no duties are specifically assigned, the waiting

time is not computed as either time on duty or time off duty.

* * * * *

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 96–11224 Filed 5–6–96; 8:45 am]

BILLING CODE 4910–06–P

Federal Highway Administration

49 CFR Part 397

RIN 2125–AD90

Transportation of Hazardous Materials Regulations; Technical Amendment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document makes a technical amendment to correct the authority citation for 49 CFR part 397. A citation which was erroneously deleted will be reinserted, and other specific references will be added to update this authority citation.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Nathan C. Root, Office of Motor Carrier Research and Standards, (202) 366–4009 or Raymond W. Cuprill, Office of Chief Counsel, (202) 366–0834. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In 1988, in the course of making other changes to part 397, the Federal Highway Administration (FHWA) inadvertently eliminated from the authority citation the reference to section 204 of the Interstate Commerce Act, as amended (formerly found at 49 U.S.C. 304). The FHWA did not intend to eliminate this reference, and with this rulemaking, the FHWA is simply reinserting into the authority citation this reference (now codified at 49 U.S.C. 31502). The FHWA is also adding to the authority a reference to 49 U.S.C. 31136 (formerly section 206 of the Motor Carrier Safety Act of 1984). This citation refers to the authority of the Secretary of Transportation to prescribe regulations on commercial motor vehicle safety. In addition, the FHWA is amending in the authority section the current reference to 49 U.S.C. 5101 *et seq.* in order to reflect the specific sections of the law—49 U.S.C. 5112 and 5125—that provide the authority for the regulations found in subparts C through E of 49 CFR part 397.

Rulemaking Analyses and Notices

This final rule simply revises the authority citation for the FHWA's Transportation of Hazardous Materials regulations to remove an incorrect reference and to insert several references, one of which was used previously but was then erroneously removed. Thus, the FHWA believes that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B). Similarly, due to the editorial nature of this final rule, the FHWA has determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures. It is not anticipated that provision of a comment period would result in the receipt of useful information. In this final rule, the FHWA is not exercising discretion in a way that could be meaningfully affected by public comment.

In addition, the FHWA finds that good cause exists to dispense with the 30-day delay in the effective date required by 5 U.S.C. 553(d) due to the minor and technical nature of these amendments. Thus, the FHWA is proceeding directly with a final rule which will be effective on its date of publication.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Because this rule simply makes minor, technical corrections to the authority citation for 49 CFR part 397, this rulemaking is not likely to have an annual effect on the economy of $100 million or more. It is also not expected to cause an adverse effect on any sector of the economy. In addition, no serious inconsistency or interference with another agency's actions or plans will result. Thus, the FHWA has determined that this action is not a significant regulatory action under Executive Order 12866. Neither is it a significant rulemaking under the Department of Transportation's regulatory policies and procedures because it also does not concern a matter about which there is substantial public interest or controversy; it will not have a substantial effect on State and local governments or raise a major transportation safety problem; in addition, it will not initiate a substantial regulatory program or change in policy. Therefore, a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based upon this evaluation, the FHWA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

The FHWA has reviewed this action to ensure its compliance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not raise sufficient federalism issues to warrant the preparation of a separate Federalism Assessment. This final rule will not preempt any State law or State regulation, and no additional costs or burdens will be imposed on the States. In addition, this rule will have no effect on the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has reviewed this action to ensure compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will have no effect on the quality of the environment. Thus, an environmental impact statement is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 397

Hazardous materials transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: April 29, 1996.

Rodney E. Slater,

Federal Highway Administrator.

The FHWA hereby amends 49 CFR part 397 by revising the authority citation to read as follows:

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES—[AMENDED]

Authority: 49 U.S.C. 322; 49 CFR 1.48. Subpart A also issued under 49 U.S.C. 31136, 31502. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

[FR Doc. 96–11373 Filed 5–6–96; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

49 CFR Parts 564 and 571

[Docket No. 95–47; Notice 2]

RIN 2127–AF65

Replaceable Light Source Information; Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the Federal motor vehicle safety standard on lighting to allow high intensity discharge (HID) light sources to be used in replaceable bulb headlamp systems, in addition to their presently allowed use in integral beam headlamp systems. Adoption of this amendment requires corresponding amendments to part 564, the regulation under which Docket No. 93–11 was established as a depository for replaceable light source information. However, if the life of the light source approaches that of the vehicle, as is the case with HIDs, interchangeability will no longer be so important. Therefore, NHTSA is adding Appendix B to part 564 which allows a manufacturer to submit fewer items of dimensional information if it can demonstrate that the rated laboratory life of its light source is not less than 2,000 hours.

DATES: *Effective Date:* The amendments to the Code of Federal Regulations, and the requirements of the amendments, are effective June 6, 1996.

Petition Date: Petitions for reconsideration must be received not later than June 21, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Rulemaking (202–366–6987).

SUPPLEMENTARY INFORMATION: On June 19, 1995, NHTSA published a notice in the Federal Register to initiate rulemaking that would amend Standard No. 108 so as to allow replaceable bulb headlamps to incorporate short arc discharge light sources (60 FR 31939).

As NHTSA noted in the NPRM, short arc discharge headlamp systems are commonly referred to as ''high intensity discharge'' (HID) systems. Presently, the only HID application in production for lamps covered by Standard No. 108 is in headlamps, and the only way HID headlamps can be used under Standard No. 108 is in an ''integral beam headlighting system'' (Section S7.4). Thus, today, HID headlamps are comprised of a headlamp body (including reflector and lens), a small transparent envelope containing a specific mixture of gases under high pressure (the discharge bulb), and an electronic ballast to convert low voltage direct current to a controlled output high voltage direct or alternating current to drive the discharge bulb.

However, by definition (S4), an integral beam headlamp (including those with HID light sources) is one with an ''integral and indivisible optical assembly'', and a headlamp that is ''not a replaceable bulb headlamp * * *.'' In the event of damage to one component, such as the lens, the entire unit, ballast and all, must be replaced. The cost to replace an integral beam HID headlamp is substantially higher than the cost of replacing a more conventional headlamp. The initial HID headlamp permitted (as a result of NHTSA-initiated amendments to Standard No. 108 to facilitate their introduction) was an integral-type design. At the time, it was unknown how to define HID sources as replaceable bulb light sources. The agency is now furthering HID headlamp technology by defining HID's as ''replaceable light sources'', so that headlamp components may be individually replaced. This amendment to Standard No. 108 means that a vehicle manufacturer wishing to offer HID headlamps now has a choice between two types, integral and replaceable light source.

Comments in support of the NPRM were received from the American Automobile Manufacturers Association (AAMA), Ford Motor Co., Hella, Inc., Koito Manufacturing Co. Ltd., OSRAM Sylvania, Inc. (OSI), and Stanley Electronic Co., Inc. Comments opposing the proposal were received from the Insurance Institute for Highway Safety (IIHS) and Advocates for Highway and Auto Safety (Advocates).

Proposed Amendments to Standard No. 108

S4 *Definitions.* NHTSA proposed to add a definition of ''filament'' to read:

> Filament means that part of the light source or light emitting element(s), such as a resistive element, the excited portion of a specific mixture of gases under pressure, or any part of other energy conversion sources, that generates radiant energy which can be seen.

No comments were received on this issue and the proposed definition is adopted.

Paragraph S7.7(i). The NPRM proposed amendments to paragraph S7.7(i). Under the final rule published on November 28, 1995 (60 FR 58522), transferring HB type light sources to part 564, paragraph S7.7(i) became paragraph S7.7(b). Under the final rule published today, paragraph S7.7(b) becomes S7.7(d). The following summary of the proposal adopts the nomenclature of the final rule, which does not significantly differ from the proposal.

Paragraph S7.7(d) discusses the procedures for measuring maximum power and luminous flux. This is followed by two new subparagraphs, the first of which, S7.7(d)(1), applies specifically to seasoning requirements for light sources with resistive element type filaments and luminous flux measurement requirements for HB Type bulbs. The second, S7.7(d)(2), applies to seasoning requirements for light sources using excited gas mixtures as filaments or discharge arcs and associated luminous flux measurement. As for seasoning of light sources using other energy conversion sources, NHTSA will address this issue when industry has identified such sources.

OSI recommended that the seasoning for resistive and excited-gas light sources (including ballasts) should be one percent of rated life, as set forth in SAE Recommended Practice J2009 FEB93 *Discharge Forward Lighting Systems* (hereafter ''SAE J2009''). Ford also recommended that seasoning for excited gas light sources (including ballast) be in accordance with SAE J2009. Additionally, Ford recommended that seasoning for resistive element type filaments be in accordance with SAE J1383 APR85. NHTSA notes that its proposed amendments affecting ''seasoning'' are consistent with the OSI and Ford recommendations.

Ford found proposed paragraph S7.7(i) confusing and it suggested changes which it felt would clarify NHTSA's intent. NHTSA concurs, and has rewritten the provision as S7.7(b) (In addition to recommending specific

requirements for the measurement of luminous flux for a light source with a resistive element type filament, Ford did not object to the NHTSA proposal to specifically cite seasoning requirements for light sources using an excited gas mixture).

Regarding proposed paragraph S7.7(l)(7) which would require the date of manufacture to be placed on the light source, Ford asked that it not be adopted as it provides no safety benefit and because Standard No. 108 does not require date of manufacture marking for any other lamps or lighting equipment. NHTSA concurs, and the proposal is not adopted.

Readers should note that proposed new paragraph S7.7(l) is adopted as paragraph S7.7(e). New section S7.7(f) is added to state that, for light sources that use light generated by gaseous discharge lighting sources, seasoning shall be in accordance with section 4.0, and the ''rated laboratory life'' shall be determined in accordance with sections 4.3 and 4.9 of SAE J2009.

S8 Tests and Procedures for Integral Beam and Replaceable Bulb Headlighting Systems. In the NPRM, NHTSA proposed adding ''specific gas mixture'' type light sources in the tests specified in S8 to replace ''non-filament type.'' There was no objection and S8 is amended as proposed.

Other Issues Associated with Short Arc Discharge Lighting Systems. The only regulatory requirement that NHTSA proposed that addressed the issue of electrical shock was the marking of the ballast with an appropriate warning. Stanley recommended the adoption of a universally agreed upon marking system such as specified by the International Standards Organization (ISO). However, NHTSA wishes to allow manufacturers wide latitude in choosing their warnings regarding electrical shock and has not followed Stanley's suggestion in the final rule.

Proposed Amendments to Part 564

General. Ford would replace all references to ''filament'' with ''filament or discharge arc.'' NHTSA agrees, and this has been done when the text could specifically refer to either. Also as indicated previously, the definition of ''filament'' that was proposed to be added to Standard No. 108, and it applies to part 564 by virtue of Section 564.4 which incorporates definitions used in other NHTSA regulations.

Section 564.2 Purpose. Ford recommended that this section not be revised because both Appendix A and Appendix B have a common purpose; ''they merely accomplish it by requiring varying degrees of information detail dependent upon the rated laboratory life of the light source.'' NHTSA disagrees; the intended purposes of Appendix A and Appendix B are different. One purpose of the former is to assure that replacement light sources are available and interchangeable. This is not a purpose of Appendix B because long-life light sources need not be manufactured for interchangeability purposes by many different aftermarket suppliers. Because light sources with specifications filed under Appendix B are expected to last the life of the vehicle, component replacement would be necessitated primarily by damage. Thus it is unlikely that the low demand for replacement components would be met by other than manufacturers of the original equipment devices. This distinction from Appendix A requires two different statements of regulatory purposes in section 564.2.

Finally, Appendix B allows manufacturers to retain ballast design parameters that may include proprietary manufacturing specifications, whereas Appendix A requires disclosure of such aspects as they relate to interchangeability.

Paragraph 564.5(a). Under the proposal, relevant manufacturers must ''furnish the information specified in appendix A or appendix B.'' Ford suggested that this implied that manufacturers could file under either Appendix when filing under Appendix B is allowable only for long-life light sources. NHTSA has made an editorial change to clarify that Appendix B is available only for long-life light sources, while both Appendices are available for long- life light source information.

Appendix B. Commenters concurred with NHTSA's proposed benchmark that not less than 2,000 hours of rated laboratory life is a suitable designation of a long-life light source. In accordance with the proposal, in the final rule the manufacturer of such a light source may provide the lesser amount of information that will be required by Appendix B, but, at its option, can make its submission under Appendix A. In either event, a replaceable light source which is the subject of information submitted to Docket No. 93–11 is required to comply with Standard No. 108.

Stanley commented that a clear definition of ''life'' was not provided in the NPRM, and recommended that ''life'' of a light source be defined in terms of luminous flux maintenance. NHTSA concurs that an explanation is desirable, since Standard No. 108 and Part 564 both indicate that manufacturers may optionally furnish the information specified in Appendix B, if the ''rated average laboratory life'' is not less than 2,000 hours. The SAE has addressed this issue in sections 4.3 and 4.9 of SAE J2009. These sections specify procedures and tests to determine life of the total HID system measured in both hours and starting cycles. NHTSA is adopting the term used there, ''rated laboratory life.'' In so doing, it also examined the definition of ''rated average laboratory life'' which appears in SAE Standard J1383 JUN90. It found that SAE J1383 JUN90 was suitable for incandescent light sources where lumen drop off occurs at a relatively steady rate over life, but that HID system lumens drop rapidly during the initial burning hours and then, later, tend toward a more level rate of drop.

In Koito's view, Appendix B is not necessary. It believes that all light source submittals to part 564, including HIDs, and regardless of the rated laboratory life, should contain the information required in Appendix A. It indicated that the life in hours of an HID light source will vary with the ballasts combined with it. Therefore, life in hours for an HID light source is essentially meaningless if the original ballast is changed to another type of ballast. NHTSA understands this. It is for this reason that NHTSA is adopting the language proposed in the NPRM that Item III of Appendix B specifies the rated laboratory life of the light source/ ballast combination instead of that of the light source alone. Item IV of Appendix B of this final rule reflects this requirement. Appendix B was specifically intended to accommodate all ballasts that are functionally interchangeable with a light source but different in design. New paragraph S7.7(e)(4) of Standard No. 108, adopted in this final rule, requires that each ballast filed with a light source bear permanent markings that indicate the rated laboratory life of the combination. Any part 564 submittal for a light source requiring ballasts for operation must include information that specifically identifies all ballasts that will be used with the light source. Substitution of a ballast other than that identified with the light source in part 564 is not permitted.

It is important that ballast information be submitted. NHTSA considers the electronic ballast along with the transparent envelope containing a specific mixture of gases under pressure (the discharge bulb) to be an integral part of the light source system, although the bulb and ballast may be separate components. Furthermore, in determining compliance with Standard No. 108, testing of the light source

without a designated ballast would be difficult if not impossible.

NHTSA has decided not to act upon Koito's recommendation that all light source submittals (including HID) be required to fulfill all informational requirements of Appendix A. The intent of Appendix A is to ensure that sufficient technical information is available to replacement light source manufacturers so that they may manufacture identical replacement light sources. NHTSA has decided that requiring the Appendix B submitter to provide all the information required in Appendix A is unnecessary if the manufacturer provides rated laboratory life data supporting a light source and ballast life of 2,000 hours or more.

Ford recommended that Section I of Appendix A be added to Appendix B (''Filament Position Dimensions and Tolerances Using Either Direct Filament Dimensions or the Three Dimensional Filament Tolerance Box''). Ford also recommended that Appendix B require specification of the electrode position dimensions and tolerances for light sources using excited gas mixtures as filaments. Ford stated that the mid-point of the electrode separation distance would provide a comparable dimension ''A'' of Figure 8 to be utilized in Standard No. 108's section S9 *Deflection test for replaceable light sources.* NHTSA concurs with this recommendation since, as Ford stated, the mid-point of the electrode separation distance would provide a comparable dimension ''A'' which is required to support the bulb deflection test for replaceable light sources (S9). NHTSA has accordingly amended Section I of Appendix B as adopted.

Finally, the reader should note that the conforming amendments to paragraphs 564.5(a) and (c) reflect the agency's recent amendment of paragraph S7.7 of Standard No. 108 and 564.5(a) and (c) to transfer HB type replaceable light sources to Docket No. 93–11 (November 28, 1995; 60 FR 58522).

Comments in Opposition

IIHS opposed the rulemaking action because HID light sources are more expensive to replace than other light sources and recommended that the agency not permit the use of increasingly expensive lighting systems on motor vehicles without conducting a parallel rulemaking to reinstate a no-damage 5 mph bumper standard. Advocates, too, believed that the replacement cost for HID headlamp systems ought to be a central consideration of this rulemaking. NHTSA notes that HID light sources are permitted in integral beam lighting systems, and will continue to be so used even if they are not permitted in replaceable bulb systems. However, the proposal to allow them in such systems is being adopted because there are no safety disbenefits in allowing them. The use of replaceable light source HID lighting systems as an alternative to non-replaceable ones or to resistive element type filament lighting systems is an issue of the marketplace, not of safety.

Advocates disagreed with NHTSA that this rulemaking would reduce costs both to manufacturers and consumers. In its view, NHTSA's rationale for cost reduction is based upon the fact that HID headlamps might not have to be replaced for the life of the vehicle and consequently is not an adequate evaluation of the costs and benefits accruing to consumers from the institution of HID headlamp systems.

NHTSA's rationale for cost reduction is intended in the context of HID headlamp systems. In an integral beam system using HIDs, all headlamp parts must be replaced when a component fails or is damaged, even for something as simple as a cracked lens. Allowing HID's to be used in replaceable bulb headlamp systems would permit separability and the replacement of individual components at significant cost savings to the consumer. Repair costs for damaged HID headlamps ought to be significantly reduced if lamp bodies, discharge bulbs and ballasts can be individually serviced, instead of being replaced as part of a headlamp assembly. In addition, it is probable that minor damage would be repaired (such as a cracked lens) that could degrade headlamp performance if there is an economic incentive not to defer correction until required to do so, either by failing performance or state motor vehicle inspection.

Advocates also argued that the rulemaking was mischaracterized as ''non-significant.'' The rulemaking is properly characterized under DOT policies and procedures. The final rule prescribes an alternative, optional, headlighting system, and results in no additional costs or burdens upon any regulated person or upon the public.

Finally, Advocates disagreed with the agency's decision not to regulate ultraviolet radiation (UV) and electric shock, and recommended that a supplementary NPRM be issued addressing the possible threat to human health and safety through UV emissions and high voltages.

There appears to be no current need to do so, other than requiring a warning marking on the ballast. NHTSA addressed these concerns in the preamble to the proposal (see 60 FR at 31942). In that discussion, NHTSA noted that SAE J2009 recognizes UV radiation and electric shock as potential safety hazards. To address the hazard of UV radiation, the lighting community has developed HID bulbs that include an additional transparent envelope which is a UV filter. Other innovative design solutions are being considered to prevent UV emissions. The need for high voltage shock safety is also recognized by the SAE document. These are design and testing issues for the manufacturer. NHTSA will monitor them and propose rulemaking if it appears to be required for health and safety.

Effective Date

Since the final rule does not impose any additional burden and is intended to afford an alternative to existing requirements, it is hereby found that an effective date earlier than 180 days after issuance of the final rule is in the public interest. The final rule (i.e., the amendments to the Code of Federal Regulations and the requirements specified therein) is effective 30 days after its publication in the Federal Register.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The effect of the rulemaking action is to allow an alternative headlighting system. It will not impose any additional burden upon any person. The final rule will reduce costs both to manufacturers and consumers. Because ballasts will no longer have to be integral with the light source, manufacturers may use a simpler, less expensive connector. Consumers may replace separate elements of an HID-replaceable light source headlamp system as compared with the present regulation which requires replacement of the whole unit. Impacts of the rule are, therefore, so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic

effect upon a substantial number of small entities. Motor vehicle and lighting equipment manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of new motor vehicles will not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on ''Federalism.'' It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action will not have a significant effect upon the environment as it does not affect the present method of manufacturing motor vehicle lighting equipment.

Civil Justice Reform

This rulemaking action will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Under 49 U.S.C. 30163, a procedure is set forth for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

The reporting and record keeping requirement associated with part 564 have been approved by the Office and Management and Budget in accordance with 44 U.S.C. chapter 35. The OMB control number is 2127- 0563.

List of Subjects in 49 CFR Parts 564 and 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR parts 564 and 571 are amended as follows:

PART 564—REPLACEABLE LIGHT SOURCE INFORMATION

1. The authority citation for part 564 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

2. Section 564.1 is revised to read as set forth below.

§ 564.1 Scope.

This part requires the submission of dimensional, electrical specification, and marking/designation information, as specified in Appendix A and Appendix B of this part, for original equipment replaceable light sources used in motor vehicle headlighting systems.

3. Section 564.2 is revised to read as set forth below.

§ 564.2 Purposes.

The purposes of this part are achieved through its Appendices:

(a) The purposes of Appendix A of this part are to ensure

(1) The availability to replacement light source manufacturers of the manufacturing specifications of original equipment light sources so that replacement light sources are interchangeable with original equipment light sources and provide equivalent performance, and

(2) That redesigned or newly developed light sources are designated as distinct, different, and noninterchangeable with previously existing light sources.

(b) The purposes of Appendix B of this part are to ensure

(1) That original equipment light sources are replaceable and that replacement light sources provide equivalent performance, and

(2) That redesignated or newly developed light sources are designated as distinct, different, and noninterchangeable with previously existing light sources.

4. Section 564.5 (a), (b), (c), (d) introductory text and (d)(1) are revised to read as set forth below.

§ 564.5 Information filing; agency processing of filings.

(a) Each manufacturer of a motor vehicle, original equipment headlamp, or original equipment headlamp replaceable light source, which intends to manufacture a replaceable light source as original equipment or to incorporate a replaceable light source in its headlamps or motor vehicles, shall furnish the information specified in Appendix A. If the rated laboratory life of the light source is not less than 2,000 hours, the manufacturer shall furnish the information specified in either Appendix A or Appendix B of this part. Information shall be furnished to: Associate Administrator for Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, D.C. 20590. Attn: *Replaceable Light Source Information* Docket No. 93–11 (unless the agency has already filed such information in Docket No. 93–11).

(b) The manufacturer shall submit such information not later than 60 days before it intends to begin the manufacture of the replaceable light source to which the information applies, or to incorporate the light source into a headlamp or motor vehicle of its manufacture. Each submission shall consist of one original set of information and 10 legible reproduced copies, all on 8½ by 11-inch paper.

(c) The Associate Administrator promptly reviews each submission and informs the manufacturer not later than 30 days after its receipt whether the submission has been accepted. Upon acceptance, the Associate Administrator files the information in Docket No. 93–11. The Associate Administrator does not accept any submission that does not contain all the information specified in Appendix A or Appendix B of this part, or whose accompanying information indicates that any new light source which is the subject of a submission is interchangeable with any replaceable light source for which the agency has previously filed information in Docket No. 93–11.

(d) A manufacturer may request modification of a light source for which information has previously been filed in Docket No. 93–11, and the submission shall be processed in the manner provided by § 564.5(c). A request for modification shall contain the following:

(1) All the information specified in Appendix A or Appendix B of this part that is relevant to the modification requested,

* * * * *

5. Part 564 is amended by revising the heading for section I and adding Paragraph D to Section I of Appendix A to read as set forth below.

Appendix A—Information to be Submitted for Replaceable Light Sources

I. Filament or Discharge Arc Position Dimensions and Tolerances Using Either Direct Filament or Discharge Arc Dimensions or the Three Dimensional Filament or Discharge Arc Tolerance Box.

* * * * *

D. For a light source using excited gas mixtures as a filament, necessary fiducial information and specifications including electrode position dimensions and tolerance information that provide similar location and characteristics information required by paragraphs A, B, and C of this section I for light sources using a resistive type filament.

* * * * *

6. Part 564 is amended by revising Section IX of Appendix A to read as set forth below.

Appendix A—Information to be Submitted For Replaceable Light Sources

* * * * *

IX. All other information, dimensions or performance specifications necessary for interchangeability, replaceability, or system test purposes not listed in sections I through VIII. If a ballast is required for operation, a complete listing of the requirements and parameters between the light source and ballast, and ballast and the vehicle shall also be provided.

7. Part 564 is amended by adding Appendix B to read as set forth below.

Appendix B—Information to be Submitted for Long Life Replaceable Light Sources of Limited Definition

I. Filament or Discharge Arc Position Dimensions and Tolerances Using Either Direct Filament or Discharge Arc Dimensions or the Three Dimensional Filament Discharge Arc Tolerance Box.

A. Lower beam filament or discharge arc dimensions or filament or discharge arc tolerance box dimensions and relation of these to the bulb base reference plane and centerline.

1. Axial location of the filament or discharge arc centerline or the filament or discharge arc tolerance box relative to the bulb base reference plane.

2. Vertical location of the filament or discharge arc centerline or the filament or discharge arc tolerance box relative to the bulb base centerline.

3. Transverse location of the filament or discharge arc centerline or the filament or discharge arc tolerance box relative to the bulb base centerline.

4. Filament or discharge arc tolerance box dimensions, if used.

B. Upper beam filament or discharge arc dimensions or the filament or discharge arc tolerance box dimensions and relation of these to the bulb base reference plane and centerline.

1. Axial location of the filament or discharge arc centerline or the filament or discharge arc tolerance box relative to the bulb base reference plane.

2. Vertical location of the filament or discharge arc centerline or the filament or discharge arc tolerance box relative to the bulb base centerline.

3. Transverse location of the filament or discharge arc centerline or the filament or discharge arc tolerance box relative to the bulb base centerline.

4. Filament or discharge arc tolerance box dimensions, if used.

C. If the replaceable light source has both a lower beam and upper beam filament or discharge arc, the dimensional relationship between the two filament or discharge arc centerlines or the filament or discharge arc tolerance boxes may be provided instead of referencing the upper beam filament or discharge arc centerline or filament or discharge arc tolerance box to the bulb base centerline or reference plane.

D. For a light source using excited gas mixtures as a filament, necessary fiducial information and specifications including electrode position dimensions, and tolerance information that provide similar location and characteristics information required by paragraphs A, B, and C of this section I for light sources using a resistive type filament.

II. Bulb Base Interchangeability Dimensions and Tolerance.

A. Angular locations, diameters, key/keyway sizes, and any other interchangeability dimensions for indexing the bulb base in the bulb holder.

B. Diameter, width, depth, and surface finish of seal groove, surface, or other pertinent sealing features.

C. Diameter of the bulb base at the interface of the base and its perpendicular reference surface.

D. Dimensions of features related to retention of the bulb base in the bulb holder such as tabs, keys, keyways, surface, etc.

III. Bulb Holder Interchangeability Dimensions and Tolerances.

A. Mating angular locations, diameters, key/keyway sizes, any other interchangeability dimensions for indexing the bulb base in the bulb holder.

B. Mating diameter, width, depth, and surface, or other pertinent sealing features.

C. Mating diameter of the bulb holder at the interface of the bulb base aperture and its perpendicular reference surface.

D. Mating dimensions of features related to retention of the bulb base in the bulb holder such as tabs, keys, keyways, surface, or any other characteristics necessary for mating dimensions.

IV. Electrical Specifications for Each Light Source that Operates With a Ballast and Rated Life of the Light Source/Ballast Combination.

A. Maximum power (in watts).

B. Luminous Flux (in lumens).

C. Rated laboratory life of the light source/ballast combination (not less than 2,000 hours).

V. Applicable to Light Sources that Operate With a Source Voltage Other Than 12.8 Volts Direct Current, and When a Proprietary Ballast Must Be Used With the Light Source.

A. Manufacturer's part number for the ballast.

B. Any other characteristics necessary for system operation.

VI. Bulb Markings/Designation—ANSI Number, ECE Identifier, Manufacturer's Part Number, Individual or in Any Combination.

VII. All other identification, dimensions or performance specifications necessary for replaceability or systems test not listed in sections I through VI.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by:

(a) adding a definition of ''Filament'' in alphabetical order to section S4, deleting the definition of ''Seasoning'' in Section S4, and revising the definition of ''Replaceable light source'' in section S4 to read as set forth below,

(b) revising paragraph S7.7 (a), (b), (c), and (d), and adding new paragraphs S7.7 (e), (f), and (g) to read as set forth below, and

(c) revising section S8 to read as set forth below:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

* * * * *

54. * * *

Filament means that part of the light source or light emitting element(s), such as a resistive element, the excited portion of a specific mixture of gases under pressure, or any part of other energy conversion sources, that generates radiant energy which can be seen.

* * * * *

Replaceable light source means an assembly of a capsule, base, and terminals that is designed to conform to the requirements of Appendix A or Appendix B of part 564 *Replaceable Light Source Information* of this Chapter.

* * * * *

S7.7 * * *

(a) If other than an HB Type, the light source shall be marked with the bulb marking designation specified for it in compliance with Appendix A or Appendix B of part 564 of this chapter. The base of each HB Type shall be marked with its HB Type designation. Each replaceable light source shall also be marked with the symbol DOT and with a name or trademark in accordance with paragraph S7.2.

(b) The measurement of maximum power and luminous flux that is submitted in compliance with Appendix A or Appendix B of part 564 of this chapter shall be made in accordance with this paragraph. The filament or discharge arc shall be seasoned before measurement of either. Measurement shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be 12.8v. The measurement of luminous flux shall be in accordance with the Illuminating Engineering Society of North America, LM–45, *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980); shall be made with the black cap installed on Type HB1, Type HB2, Type HB4, and Type HB5, and on any other replaceable light source so designed; and shall be made with the electrical conductor and light source base shrouded with an opaque white cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for the Types HB3 and HB4 shall be made with the base covered with a white cover as shown in the drawings for Types HB3 and HB4 filed in Docket No. 93–11. (The white cover is used to eliminate the likelihood of incorrect lumen measurement that will occur should the reflectance of the light source base and electrical connector be low).

(c) The capsule, lead wires and/or terminals, and seal on each Type HB1, Type HB3, Type HB4, and Type HB5 light source, and on any other replaceable light source which uses a seal, shall be installed in a pressure chamber as shown in Figure 25 so as to provide an airtight seal. The diameter of the aperture in Figure 25 on a replaceable light source (other than an HB Type) shall be that dimension furnished for such light source in compliance with Appendix A or Appendix B of part 564 of this chapter. An airtight seal exists when no air bubbles appear on the low pressure (connector) side after the light source has been immersed in water for one minute while inserted in a cylindrical aperture specified for the light source, and subjected to an air pressure of 70kPa (10 P.S.I.G.) on the glass capsule side.

(d) The measurement of maximum power and luminous flux that is submitted in compliance with section VII of Appendix A of part 564 of this chapter, or section IV of Appendix B of part 564 of this chapter, shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be 12.8v. The measurement of luminous flux shall be in accordance with the Illuminating Engineering Society of North America, LM 45; *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980). The filament of a replaceable light source shall be seasoned before such measurement. The white covers are used to eliminate the likelihood of incorrect lumens measurement that will occur should the reflectance of the light source base and electrical connector be low.

(1) For a light source with a resistive element type filament, seasoning of the light source shall be made in accordance with section 2.9 of SAE Standard J1383 APR85 *Performance Requirements for Motor Vehicle Headlamps.* The measurement of luminous flux shall be made with the black cap installed on Type HB1, Type HB2, Type HB4, and Type HB5 light sources, and on any other replaceable light source so designed, and shall be made with the electrical conductor and light source base shrouded with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for Type HB3 and Type HB4 shall be made with the base covered with the white cover shown in the drawings for Types HB3 and HB4 filed in Docket No. 93–11.

(2) For a light source using excited gas mixtures as a filament or discharge arc, seasoning of the light source system, including any ballast required for its operation, shall be made in accordance with section 4.0 of SAE Recommended Practice J2009 FEB93 *Discharge Forward Lighting Systems.* With the test voltage applied to the ballast input terminals, the measurement of luminous flux shall be made with the black cap installed, if so designed, and shall be made with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing.

(e) If a ballast is required for operation, each ballast shall bear the following permanent markings:

(1) Name or logo of ballast manufacturer;

(2) Ballast part number or unique identification;

(3) Part number or other unique identification of the light source for which the ballast is designed;

(4) Rated laboratory life of the light source/ballast combination, if the information for the light source has been filed in Appendix B of part 564 of this chapter;

(5) A warning that ballast output voltage presents the potential for severe electrical shock that could lead to permanent injury or death;

(6) Ballast output power in watts and output voltage in rms volts AC or DC; and

(7) The symbol 'DOT'.''

(f) For light sources that use excited gas mixtures as a filament or discharge arc, the ''rated laboratory life'' shall be determined in accordance with sections 4.3 and 4.9 of SAE Recommended Practice J2009 FEB93 *Forward Discharge Lighting Systems.*

(g) After the force deflection test conducted in accordance with S9, the permanent deflection of the glass envelope shall not exceed 0.13 mm in the direction of the applied force.

* * * * *

S8 *Tests and Procedures for Integral Beam and Replaceable Bulb Headlighting Systems.* When tested in accordance with the following procedures, each integral beam headlamp shall meet the requirements of paragraph S7.4, and each replaceable bulb headlamp shall meet the requirements of paragraph S7.5. Ballasts required to operate specific gas mixture light sources shall be included in the tests specified in paragraphs S8.1 and S8.4 though S8.7.

* * * * *

Issued on: April 25, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–11113 Filed 5–06–96; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 61, No. 89
Tuesday, May 7, 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.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1210

Petition CP 96–1 Requesting a Child-Resistance Standard for Multi-Purpose Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Petition for rulemaking.

SUMMARY: Judy L. Carr has petitioned the Commission to begin a rulemaking proceeding to amend the Safety Standard for Cigarette Lighters, 16 CFR part 1210, so it would apply to a ''multi-purpose'' lighter. The Commission solicits written comments concerning the petition from all interested parties.

DATES: Comments on the petition should be received in the Office of the Secretary by July 8, 1996.

ADDRESSES: Comments on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East-West Highway, Bethesda Maryland 20814. Comments should be captioned ''Petition CP 96–1 for Child-Resistant Multi-Purpose Lighters.'' Copies of the petition are available by writing or calling the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Rockelle S. Hammond, Docket Control Specialist, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0800 ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has docketed correspondence from Judy L. Carr as a petition for rulemaking under the Consumer Product Safety Act (''CPSA''). Ms. Carr asks that the Commission begin a rulemaking proceeding to amend the Safety Standard for Cigarette Lighters, 16 C.F.R. § 1210, so that the standard would apply to a particular ''multi-purpose'' lighter.

This type of product is commonly purchased for lighting charcoal or gas grills and fireplaces. The particular product referred to by the petitioner is a butane-fueled lighter with a handle, a trigger for actuating the lighting mechanism and fuel flow, and a long nose from which the flame extends. The device has a ''safety'' that can be manually moved to the ''off'' position to block actuation of the trigger. If the Commission grants the petition, the rulemaking would develop a generic description of the product to be regulated, in order to cover similar products made by others. For the purposes of this notice, the product category will be referred to as ''multi-purpose lighters.''

The cigarette lighter safety standard requires that lighters subject to the standard have child-resistant features to prevent operation by most children under age 5. The child-resistant mechanism must reset itself automatically after each operation of the lighter's ignition mechanism. 16 CFR 1210.3(b)(1). However, multi-purpose lighters are currently excluded from the cigarette lighter regulation. See 16 CFR 1210.2(c).

The petition sets forth facts in the form of petitioner's personal knowledge of an incident involving her children. Petitioner asserts that her children started a fire while playing with the lighter, resulting in burns to a 4-year-old girl on over 60% of her body. The petition also contains information concerning other incidents where young children started fires using a multi-purpose lighter. That information was obtained by the petitioner through discovery in litigation with the product's manufacturer.

The Commission solicits comments on the issues raised by the petition. The Commission is particularly interested in comments on the following topics:

1. The types and numbers of multi-purpose lighters currently sold to consumers;
2. The manufacturers and distributors of the product;
3. The number of persons injured or killed in fires started by children under the age of 5 years using multi-purpose lighters;
4. The circumstances under which these injuries and deaths occur, including the ages of the children who started the fires, the ages of the victims, the locations from which the children obtained the lighters, and physical descriptions of the products involved (including identification of the manufacturers and models, if available);
5. Ways in which the products could be modified to be child resistant;
6. Characteristics of the product that could or should not be used to define which products might be subject to the requested rule;
7. Other information on the potential costs and benefits of the requested rule; and
8. Steps that have been taken by industry or others to reduce the risk of injuries from the product.

Comments on the petition should be received in the Commission's Office of the Secretary by July 8, 1996. Comments should be captioned ''Petition CP 96–1 for Child-Resistant Multi-Purpose Lighters.''

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, room 502, 4330 East-West Highway, Bethesda Maryland 20814.

Dated: April 29, 1996.

Sayde E. Dunn,

Secretary of the Commission.

[FR Doc. 96–11121 Filed 5–6–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[IA–41–93]

RIN 1545–AS04

Automatic Extension of Time for Filing Individual Income Tax Returns; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public

hearing on proposed regulations that reflect the new procedures for obtaining an automatic extension of time to file an individual income tax return.

DATES: The public hearing originally scheduled for May 8, 1996, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 6081 and 6651 of the Internal Revenue Code. A notice of proposed rulemaking by cross reference to temporary regulations and notice of public hearing appearing in the Federal Register for Thursday, January 4, 1996 (61 FR 338), announced that a pubic hearing on the proposed regulations would be held on Wednesday, May 8, 1996, beginning at 10:00 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C.

The public hearing scheduled for Wednesday, May 8, 1996, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–11404 Filed 5–3–96; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 095–0008b; FRL–5464–3]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions, oxides of nitrogen (NO_X), and oxides of sulfur (SO_X) from flare and thermal oxidizers.

The intended effect of proposing approval of this rule is to regulate emissions of VOC, NO_X, and SO_X in accordance with the goals of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 6, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION: This document concerns Santa Barbara County Air Pollution Control District Rule 359, Flare and Thermal Oxidizers, submitted to EPA on July 13, 1994 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 18, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–11207 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL–18–7–7024b; FRL–5436–2]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On October 21, 1993, the Illinois Environmental Protection Agency (IEPA) submitted to the USEPA volatile organic compound (VOC) rules that were intended to satisfy part of the requirements of section 182(b)(2) of the Clean Air Act (Act) amendments of 1990. Specifically, these rules provide control requirements for certain major sources not covered by a Control Technique Guideline (CTG) document. These non-CTG VOC rules apply to sources in the East St. Louis ozone nonattainment area which emit (at maximum capacity) 100 tons of VOC per year. These rules therefore provide an environmental benefit due to the imposition of control requirements on sources emitting greater than 100 tons of VOC per year that belong to certain source categories. The USEPA proposes to approve these VOC rules for major non-CTG sources. This action lists the State implementation plan revision that USEPA is proposing to approve and provides an opportunity for public comment. A rationale for approving this request is presented in the final rules section of this Federal Register, where USEPA is approving the revision request as a direct final rule without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments the direct final rule will be withdrawn. Any parties interested in commenting on this document should do so at this time. The final rule on this proposed action will address all comments received.

DATES: Comments on this document must be received by June 6, 1996.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulatory Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments should be strictly limited to the subject matter of this proposal.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development

Section, Air Programs Branch (AR–18J) Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch, U.S. Environmental Protection Agency, Region 5, (312) 886–6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: February 7, 1996.

David A. Ullrich,

Acting, Regional Administrator.

[FR Doc. 96–11203 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 92–237; DA 96–678]

Carrier Identification Codes

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On April 30, 1996, the Commission released a public notice seeking further comments to the Commission's Notice of Proposed Rulemaking (Administration of the North American Numbering Plan), CC Docket No. 92–237 specifically on the issue of the appropriate length of the transition period for the expansion of carrier identification codes (CICs) from three to four digits. The intended effect of this action is to seek further comments because the record on the NPRM is two years old, and significant events have occurred since the record closed.

DATES: Comments must be filed on or before May 21, 1996, and reply comments must be filed on or before May 28, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Ward, (202) 418–2336, Elizabeth Nightingale, (202) 418–2352, or Mary DeLuca, (202) 418–2334, all of the Common Carrier Bureau, Network Services Division.

SUPPLEMENTARY INFORMATION:

Released: April 30, 1996.

1. On April 4, 1994, the Commission adopted a Notice of Proposed Rulemaking (CC Docket No. 92–237) addressing various issues relating to administration of the North American Numbering Plan and tentatively concluding, regarding carrier identification codes (CICs), that the industry's plan to expand Feature Group D (FGD) CICs from three to four digits, in the event of exhaust of the three digit codes, was reasonable to ensure that the demand for CICs could be met. Administration of the North American Numbering Plan, Notice of Proposed Rulemaking, 9 FCC Rcd 2068 (1994) (NPRM)(59 FR 24103 (05/10/94)). The NPRM also tentatively concluded that the transition or permissive dialing period for the expansion, during which both three and four digit CICs would be recognized, should last six years. The pleading cycle in response to the NPRM closed on June 30, 1994.

2. The record on the NPRM is two years old, and significant events have occurred since the record closed: (1) The assignment of exclusively four digit FGD CICs has begun, and in turn the transition period has begun; (2) there has been an unexpected increase in the demand for CICs, due to new uses for the codes recently discovered by the industry; (3) we now expect an even greater demand for CICs, with the anticipated increase in carriers entering the market as a result of the Telecommunications Act of 1996, Pub.L. 104–104, 110 Stat. 56 (1996) (1996 Act); and (4) the local exchange carriers are now obligated to provide dialing parity under Section 251 of the 1996 Act, see 47 U.S.C. 251(b)(3).

3. We seek, therefore, to refresh the record in CC Docket No. 92–237 specifically on the issue of the appropriate length of the transition period. Commenters should limit their comments to updated factual information in light of the recent events described above. We ask that parties neither simply reiterate their previous comments nor raise any new issues, but confine their discussion to how the length of the transition period has been affected, if at all.

4. Comments and reply comments in response to this Notice should be no more than 10 pages, and otherwise in compliance with Sections 1.415 and 1.419 of the Commission's rules. Comments must be filed on or before May 21, 1996, and reply comments must be filed on or before May 28, 1996. Comments and reply comments must be sent to the Office of the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. Two copies should also be sent to the Network Services Division, Common Carrier Bureau, FCC, Room 235, 2000 M Street, N.W., Washington, D.C. 20554. One copy should also be sent to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Copies can also be obtained from ITS at (202) 857–3800.

5. We will continue to treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. See generally 47 CFR §§ 1.1200–1.1216. For further information contact, David Ward (202/418–2336), Elizabeth Nightingale (202/418–2352), or Mary DeLuca (202/418–2334) of the Network Services Division, Common Carrier Bureau.

Federal Communications Commission

Geraldine Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 96–11438 Filed 5–6–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–100; RM–8789]

Radio Broadcasting Services; Amherst and Lynchburg, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Greater Lynchburg Stereo Broadcasters proposing the allotment of Channel 294A to Amherst, Virginia, and the allotment Channel 229A to Lynchburg, Virginia. Channels 294A and 229A can be allotted to Amherst and Lynchburg, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 294A can be allotted to Amherst with a site restriction of 12.8 kilometers (8.0 miles) northeast to avoid short-spacing conflicts with the licensed site of Station WLQE(FM), Channel 295A, Bedford, Virginia, and with Station WPXX(FM)'s construction permit for Channel 294A at Semora, North Carolina. The coordinates for Channel 294A are 37–40–36 and 78–57–19. Channel 229A can be allotted to Lynchburg without a site restriction. The coordinates for Channel 229A at Lynchburg are 37–24–49 and 79–08–33.

DATES: Comments must be filed on or before June 24, 1996, and reply comments on or before July 9, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–100, adopted April 22, 1996, and released May 1, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–11327 Filed 5–6–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[I.D. 042696A]

Summer Flounder and Scup Fishery; Notice of Availability of Amendment 8

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS issues this document to advise that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 8 to the Fishery Management Plan for the Summer Flounder and Scup Fisheries (FMP) for Secretarial review and is requesting comments from the public. Amendment 8 would initiate management measures for the scup fishery.

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Send comments to Dr. Andrew A. Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope ''Comments on Summer Flounder and Scup Plan.''

Copies of proposed Amendment 8, its Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis contained within the RIR, and the Final Environmental Impact Statement are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508-281-9221.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires that each regional fishery management council submit any fishery management plan or amendment it prepares to NMFS for review. The Magnuson Act also requires that NMFS, upon receiving the plan or amendment for review, immediately make a preliminary evaluation of whether the amendment is sufficient to warrant continued review, and publish a document that the plan or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the plan or amendment.

Amendment 8, if approved, would revise the Summer Flounder FMP to institute management measures that would allow the scup (*Stenotomus chrysops*) resource to rebuild over a 7-year period. Scup are currently overexploited and at a low biomass level.

Proposed management measures for scup in Year 1 of management include: Dealer, charter/party (c/p) vessel, and operator permits; moratorium vessel permits for the directed commercial fishery; a requirement that permitted vessels may sell only to permitted dealers; mandatory reporting for permitted vessels and dealers; escape vents on scup pots or traps; degradable hinges and fasteners in scup pots or traps; and maximum size for rollers used in roller rig trawl gear; minimum fish sizes for the commercial and recreational fisheries; and minimum codend mesh requirements when possessing more than a threshold level of scup on board. In Year 2 and beyond, a coastwide quota would also be implemented with Federal commercial permit holders being prohibited from landing after the quota had been attained, as well as a framework to allow time/area closures in order to reduce bycatch and prevent quota overruns. The proposed amendment also includes a framework measure to allow future adjustments to minimum fish sizes, mesh size, and the threshold level of fish on board that triggers the mesh size, and to implement a recreational possession limit and season.

NMFS disapproved six measures in Amendment 8 before publishing this notice of availability as authorized under section 304(a)(1)(A) of the Magnuson Act. These disapproved measures would: (1) Confer moratorium permit eligibility upon vessels that were re-rigging on January 26, 1993, and land scup prior to the implementation of the FMP; (2) require vessels to keep scup catches of less than 4,000 lb (1,814 kg) (the level at which the minimum mesh requirement is triggered) in 100–lb boxes to enhance enforcement; (3) accept state dealer permits in lieu of the required Federal permit; (4) deny access to the exclusive economic zone to vessels from states that do not implement recreational measures equivalent to those specified in the Federal plan; (5) use state regulations to define scup pots for the residents of that state; and (6) establish annual recreational harvest limits and deduct catches in excess of those limits from the limits for the following year.

Day 1 for this amendment is April 26, 1996. Proposed regulations to implement this amendment are scheduled to be published within 15 days of this date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 1, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–11271 Filed 5–2–96; 11:10 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 89
Tuesday, May 7, 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

Animal and Plant Health Inspection Service

[Docket No. 96–022–1]

National Animal Damage Control Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Animal Damage Control Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held at the Holiday Inn, 3836 East Mulberry, Fort Collins, CO, (970) 484–4660. The Committee will meet on May 22, 1996, from 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William Clay, Director, Operational Support Staff, ADC, APHIS, Suite 6B02, 4700 River Road Unit 87, Riverdale, MD 20737–1234, (301) 734–7921.

SUPPLEMENTARY INFORMATION: The National Animal Damage Control Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Animal Damage Control (ADC) program. The Committee also serves as a public forum enabling those affected by the ADC program to have a voice in the program's policies.

The meeting will focus on research and research priorities and will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mr. William Clay at the address listed under **FOR FURTHER INFORMATION CONTACT,** or may be filed at the meeting. Please refer to Docket No. 96–022–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 2nd day of May 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–11354 Filed 5–6–96; 8:45 am]

BILLING CODE 3410–34–P

Economic Research Service

Notice of Intent To Extend a Currently Approved Information Collection

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Economic Research Service's (ERS) intention to extend a currently approved information collection in support of the annual ERS report on cotton ginning charges, harvesting practices, and selected marketing costs.

DATES: Comments on this notice must be received by no later than July 11, 1996.

ADDITIONAL INFORMATION OR COMMENTS: Contact Fred Hoff, Associate Director, Information Services Division, Economic Research Service, U.S. Department of Agriculture, 1301 New York Avenue, NW., Washington, DC 20005–4788, (202) 219–0511.

SUPPLEMENTARY INFORMATION:

Title: Cotton Ginning Charges, Harvesting Practices and Selected Marketing Costs.

OMB Number: 0536–0001.

Expiration Date of Approval: August 31, 1996.

Type of Request: Intent to extend currently approved information collection.

Abstract: Information on cotton ginning charges and harvesting practices has been collected annually from U.S. cotton gins by the United States Department of Agriculture (USDA) since 1957. This information is used by the USDA and cotton industry participants as a primary source of data for planning and analysis, and is not available in any form elsewhere. Results are shown for each cotton growing state detailing charges paid by producers for ginning services, the proportion of the crop harvested by different harvesting technologies, and the average volume of seed cotton needed to yield a standard 480-pound net-weight bale. Also, information is provided on the methods of temporary seed cotton storage used in each state. All required information is collected from cotton gins on a simple one-page questionnaire with a postage-paid return envelope enclosed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Private owned or cooperative cotton ginning facilities located in 14 states.

Estimated Number of Respondents: 1,300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 217 hours.

Copies of this information collection can be obtained from Edward H. Glade, Jr., Commercial Agriculture Division, ERS, (202) 219–1286.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Fred Hoff, Associate Director, Information Services Division, Economic Research Service, U.S. Department of Agriculture, 1301 New York Avenue, NW., Washington, DC 20005–4788, (202) 219–0511.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, DC., April 18, 1996.

Susan Offutt,

Administrator, Economic Research Service.

[FR Doc. 96–11298 Filed 5–6–96; 8:45 am]

BILLING CODE 3410–18–M

Food Safety and Inspection Service

[Docket No. 96–012N]

Interstate Shipment of State-inspected Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; request for public comments.

SUMMARY: The 1996 Farm Bill requires the Secretary of Agriculture to submit to Congress, by July 3, 1996, recommendations concerning the steps necessary to achieve interstate shipment of State-inspected meat and poultry products. Under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA), products inspected under State programs ''at least equal to'' the Federal inspection program may be distributed only within State boundaries. FSIS is requesting comment from the public on which issues need to be addressed in responding to the Congressional directive to make recommendations concerning the interstate shipment of State-inspected products. Possible issues include, but are not limited to: the safety, wholesomeness, and labeling of State-inspected products; recall responsibilities; the administration of State programs; the funding of Federal oversight of State inspection programs; the funding of Federal assistance to State inspection programs; jurisdictional complications; eligibility of such products for export; and economic effects. The Agency plans to use these comments in formulating its recommendations to Congress concerning State-inspected meat and poultry products.

DATES: Comments must be received on or before June 6, 1996.

ADDRESSES: Please send an original and two copies of written comments to Policy, Evaluation and Planning Staff, Attn: FSIS Docket Clerk, DOCKET No. 96–012N, Room 4352 South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Clerkin, Office of the Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Code (202) 205–0700.

SUPPLEMENTARY INFORMATION:

1996 Farm Bill Provision

Section 918(b) of the Federal Agriculture Improvement and Reform Act of 1996 (PL 104–127; known as the 1996 Farm Bill), which was signed into law April 4, 1996, requires that, not later than 90 days after enactment of the Farm Bill, or by July 3, 1996, the Secretary of Agriculture submit a report to Congress concerning the steps necessary to achieve interstate shipment of meat and poultry products inspected under State programs that are ''at least equal to'' the Federal inspection programs. Under the current Federal meat and poultry inspection laws, such products may be distributed solely within the States in which they are prepared.

Background

Under the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*), FSIS is responsible for ensuring that meat, meat food, and poultry products distributed in interstate and foreign commerce are safe, wholesome, not adulterated, and properly marked, labeled, and packaged.

FSIS currently conducts antemortem and postmortem inspection of livestock and poultry at slaughtering establishments, inspects further-processed meat and poultry products, inspects the sanitary conditions of facilities where meat and poultry products are produced, and certifies U.S. products for export to foreign countries. FSIS investigates violations of the inspection laws and violative products are controlled through detentions, civil seizures and voluntary recalls.

FSIS inspection is supported by laboratory services in the fields of chemistry, microbiology, serology, and pathology. An important laboratory-supported function is the National Residue Program, which is designed to help prevent the distribution in commerce of products containing illegal concentrations of drugs, pesticides, and other chemicals. FSIS also carries out microbiological surveys to determine pathogen levels in raw meat and poultry and special microbiological studies and surveillance of raw and processed products. An example of this is the testing of raw ground beef for the presence of *E. coli* O157:H7.

FSIS operates a compliance program aimed at ensuring that meat and poultry products in commerce are not adulterated or misbranded. Through this program, the Agency exercises regulatory authority over businesses that transport, store, or distribute meat and poultry products in interstate commerce after those products leave federally inspected establishments. The Agency also registers meat or poultry brokers, renderers, manufacturers, or wholesalers, or others dealing in meat or poultry products that are not intended for human consumption.

FSIS also maintains a comprehensive import inspection system. That system involves two major activities, the first being oversight to ensure that exporting countries have in place appropriate controls over their meat and poultry inspection systems. Such countries (1) must undergo a rigorous review process before they can become eligible to export meat and poultry to the United States and (2) must receive periodic reviews by FSIS to maintain such eligibility. Only plants operating under FSIS approved national inspection programs may qualify to export meat and poultry products into the United States. Meat and poultry products inspected under regional or provincial (i.e., state) inspection programs in foreign countries are *not* eligible for export to the United States.

The second part of our import control program is reinspection at the port of entry, on a sample basis, of meat and poultry products as they enter the United States. Reinspection is a check to make sure that the foreign country's inspection system is working. Seventy-four import inspection personnel carry out import reinspection at approximately 160 official import establishments.

The program for determining the eligibility of a foreign country to export to the United States is based on a systems approach. FSIS focuses on a country's overall inspection system as a means of ensuring consumer protection. For instance, the Agency examines whether the country has the legal authority to impose requirements equivalent to those of the United States in areas such as sanitation and antemortem and postmortem inspection. We examine the organizational structure and staffing of its inspection program. We also conduct on-site reviews of the country's inspection operations to evaluate the effectiveness of all aspects of the country's program.

Once a country becomes eligible, FSIS conducts on-site reviews of its inspection system—usually one or more times a year. The frequency of the reviews is determined by a country's performance history, including previous plant reviews as well as product reinspection at United States ports-of-entry. If a country does not continue to operate an inspection system that

complies with all FSIS requirements, it is removed from the list of countries eligible to export to the United States.

FSIS port-of-entry inspection is a further check on the effectiveness of the foreign country's inspection system. It should be emphasized that reinspection is carried out on products that have already passed the foreign country's inspection and been certified as meeting all U.S. requirements by the exporting country.

USDA import inspectors, using an automated system, examine each lot of product for general condition, proper labeling, and proper certification that the products comply with all U.S. regulatory requirements. In addition, based on a plant's history of compliance with inspection requirements, the nature of the product, and the size of the shipment, the automated system generates an inspection plan for each shipment that may identify additional inspection tasks. The system applies a statistical sampling plan to each lot of product presented for reinspection. Selected reinspection tasks could include detailed product examination; net weight verification; container condition review; product label examination; species testing; and laboratory analyses for food chemistry, residues, and microbial contamination. In addition, import inspectors can take additional samples whenever they suspect a problem. Daily reinspection results from all ports-of-entry are entered and stored in the system, continuously updating the compliance histories for every foreign establishment exporting to the United States.

The FMIA (at 7 U.S.C. 661) and the PPIA (at 7 U.S.C. 454) authorize the Secretary of Agriculture to cooperate with the States in their development and administration of meat and poultry inspection programs that impose requirements for mandatory antemortem and postmortem inspection and establishment sanitation, and requirements governing the preparation of further-processed products, that are ''at least equal to'' the corresponding Federal requirements. Products produced for human food and inspected under ''equal-to'' State programs are limited by Federal law to intrastate distribution. The Acts further authorize the Secretary to cooperate with the States in administering compliance programs under authorities that are ''at least equal to'' those provided by Title II of the FMIA (21 U.S.C. 641–645) or Section 11 of the PPIA (21 U.S.C. 460).

FSIS has signed State-Federal cooperative agreements with States that have chosen to operate their own inspection programs; with separate agreements on compliance-related matters. Under these agreements, FSIS provides advice and technical assistance to the States and funds up to 50 percent of the cost of operating the State programs. Technical assistance activities include providing routine training of State inspection personnel at the FSIS training center, providing special training when new inspection systems are introduced, and helping State laboratories with problems requiring specialized expertise. Federal and State compliance personnel are trained together at the Federal Law Enforcement Training Center.

If, for any reason, a State fails to develop or maintain and enforce effective inspection requirements that are ''at least equal to'' those of the Federal program, USDA is required to designate the State for Federal inspection. In designated States, all establishments wishing to engage in commercial activities requiring inspection must apply to, and be approved by, FSIS for Federal inspection. Designation may also be applied to individual establishments, the meat portion of a State program, the poultry portion, or the entire program.

The FMIA and PPIA provisions for ''equal-to'' State inspection programs were introduced by the 1967 Wholesome Meat Act (WMA) and the 1968 Wholesome Poultry Products Act (WPPA), which provided numerous amendments to the Meat Inspection Act of 1906 and the Poultry Products Inspection Act of 1957. The amendments relating to State programs were prompted mainly by concern over the potential for distribution to the consumer of unwholesome or adulterated meat and poultry products because of the absence of mandatory inspection for products produced and sold within States and localities. The original inspection laws had provided for mandatory Federal inspection of products in interstate commerce but not of products distributed solely within a State. At the time the WMA and WPPA were passed, up to 25 percent of meat food products and 13 percent of poultry products were produced without Federal inspection coverage and, if inspected at all, were subject to widely varying State and local standards.

The WMA and WPPA extended inspection coverage to thousands of establishments that had not been previously subject to Federal standards or ''equal-to'' State standards. Many of the establishments affected were smaller facilities, some located in remote areas, which produced small quantities of meat, meat food, or poultry products. In presenting the WMA to the Senate, the Senate Committee on Agriculture and Forestry (Senate Report No. 799, Nov. 21, 1967) expressed the view that some of the Federal standards for plant construction were unrealistic for some small facilities, and encouraged USDA to consider basing the eligibility of an establishment for inspection on a combined evaluation of the operating procedures used by the establishment and the building construction and physical facilities rather than upon a separate evaluation of these factors. If the operating procedures were patterned so as to ensure the sanitary handling of products within the establishment and result in wholesome food, the establishment could be declared eligible for Federal inspection. However, the Senate report emphasized that State requirements concerning wholesomeness, additives, labeling, and other regulations were not to be compromised and had to be at least equal to Federal standards. The WPPA accommodated small establishments by authorizing USDA to exempt from inspection establishments handling 20,000 or fewer birds per year to be distributed solely within a State and by providing other exemptions.

Growth and Development of the State-Federal Cooperative Inspection Program

Following the enactment of the WMA and the WPPA, many States opted for designation rather than fund the necessary improvements to meet the ''equal-to'' provisions of the Acts. From 1971 to 1981, 23 States and four Territories were designated, primarily because of an inability to fund the programs. Four States chose to designate the poultry inspection branches of their programs, but retained the meat inspection branches. USDA monitored and reviewed the remaining 27 meat or meat and poultry inspection programs, and issued annual certifications that the programs were meeting the ''equal-to'' requirements, as provided in the Acts. At present, 26 States have active programs, 24 covering both meat and poultry inspection and 2 covering meat only.

During the 1970's and 1980's, the Federal approach to oversight of State programs changed. Initially, FSIS provided training and guidance to assist the States in applying the national standards. Once the various State programs were able to demonstrate their ability to administer and maintain ''equal-to'' programs without Federal guidance, FSIS changed its oversight approach to one of monitoring and verification.

In exercising its oversight function, FSIS conducts a system review of each State's program. A system review involves a combined evaluation of the State's requirements, operations, and enforcement of its meat and poultry inspection laws. Each State maintaining an inspection program must keep on file with USDA an up-to-date State Performance Plan (SPP)[1]. The SPP, which is required by an FSIS directive and not by regulation, documents the existence of State laws, regulations, funding, workforce, laboratories, and other resources necessary for the State to operate an ''equal-to'' program. The SPP also describes operations and enforcement and how the State's program works in the particular environment of the State to ensure the integrity of meat and poultry products intended for intrastate sale, transportation, and use. The head of each State program must certify annually, in writing, that the program meets ''equal-to'' requirements.

Teams of subject matter experts from FSIS conduct comprehensive reviews of each State program every three-to-five years to verify adherence to SPP's. These reviews include random sampling of in-plant records and conditions. On a continuing basis, FSIS field officials work directly with State officials providing advice and assistance. When information from Federal officials in the field or from other sources leads FSIS to suspect deficiencies in State programs, FSIS conducts special reviews.

FSIS also exercises oversight of State compliance programs covering intrastate commerce in meat and poultry products intended for human food or other purposes to ensure that these programs are ''at least equal to'' the Federal compliance program. FSIS verifies that the laws and regulations covering compliance-related matters provide the State with authorities ''at least equal to'' those provided FSIS under the FMIA and PPIA. FSIS also ensures that State agencies have resources adequate to carry out effective compliance programs, including qualified personnel and adequate funding. State compliance programs must be effective in controlling products that are suspected of being adulterated or misbranded; in enforcing recordkeeping requirements and providing for necessary access to establishment facilities, records, and inventory; and in ensuring proper registration of meat or poultry brokers, renderers, manufacturers, wholesalers, or others dealing in meat or poultry products not intended for human consumption.

In addition, FSIS reviews State procedures for reporting violations of State meat and poultry inspection laws, initiating civil or criminal proceedings, documenting breakdowns in the State inspection system, and ensuring that the requirements for products not to be used for human food are observed.

External Reviews of FSIS Oversight of State Programs

The efficacy of FSIS reviews of State ''equal-to'' status has been questioned periodically by external reviewers. In 1983, the General Accounting Office (GAO) audited USDA's State oversight procedures to determine whether FSIS certification of State ''equal-to'' status conformed to the authorizing legislation. At the time, FSIS was basing its certification on a quarterly review and rating of individual State-inspected establishments. GAO reported that USDA's procedures were reasonable, but that the certification process lacked uniformity across regions.[2] GAO also noted that FSIS's internal reviews did not include regular assessments of State program oversight.

In response to the GAO Report, FSIS adopted a systems approach to reviewing and evaluating State inspection programs. This change resulted in the SPP requirement and the comprehensive reviews described above. FSIS chose this approach because it provided for long-range improvement, allowed States to assume more responsibility for program controls, broadened the scope of Federal oversight, and reduced Federal costs.

In January 1994, the Department's Office of Inspector General (OIG) reported, among other findings, that the Agency's comprehensive reviews did not address State program weaknesses in a number of areas, including establishment sanitation, inspection scheduling, and procedures for obtaining and handling laboratory samples.[3] OIG also questioned the consistency of FSIS reviews from region to region and the adequacy of follow-ups to verify that State corrective action plans resulting from FSIS comprehensive reviews were carried out. FSIS has taken some steps to address the deficiencies noted in the OIG report and continues to work on improvements.

The Interstate Shipment Issue

As stated above, the FMIA and PPIA, as amended by the WMA and the WPPA, permit State-inspected products to be shipped only in intrastate commerce. The Acts would have to be amended before State-inspected products could be distributed in interstate commerce.

In 1968, when Congress was deliberating on the WPPA, the issue of interstate shipment of State poultry products was debated at length. Congress rejected the proposal at that time. One reason was that allowing interstate shipment of State inspected poultry but not of red meat would create an unacceptable disparity between the red meat and poultry inspection programs. Congress left open the possibility of future consideration of the interstate shipment issue after State meat and poultry inspection programs had been firmly established. Congress has considered amending the Acts to allow the interstate shipment of State-inspected products on a number of occasions since that time.

Issues to be Addressed

FSIS is requesting comments to be used in preparing its report to Congress on the interstate shipment issue as required by the 1996 Farm Bill. FSIS is, regrettably, setting a short time limit for submitting comments on this issue. However, the Farm Bill has set a 90-day timeframe within which the Agency must submit its recommendations to Congress.

In the view of FSIS, reporting on ''the steps necessary to achieve interstate shipment'' of State-inspected meat and poultry products, means, in part, addressing any issues arising from the States' Performance Plans. Concerning these issues, commenters should identify the factors that might weigh for or against permitting State-inspected products into interstate commerce and what steps would be necessary to address those factors. Commenters should specify whether such factors are generic to all establishment types or specific to slaughter establishments or to processing establishments. Some specific aspects of the current SPP's that may warrant focus include:

- Food safety
- Laboratory services and sampling
- Facility and equipment requirements
- Labeling
- Recall procedures

[1] Members of the public who are interested in reviewing a State's SPP may contact Dr. Robert Fetzner, Director, Federal-State Relations Staff, at (202) 720–6313, to arrange an appointment.

[2] A copy of the GAO report is on file in the FSIS Docket Room, Room 4352 South Agriculture Building, Washington DC 20250.

[3] A copy of the OIG report is on file in the FSIS Docket Room, Room 4352 South Agriculture Building, Washington, DC 20250.

Food Safety Issues: Current Inspection System

• What additional steps, if any, should be taken to provide full assurance to the Nation's consumers that State-inspected products produced under the current system of inspection meet the same standards of food safety and wholesomeness as Federal or foreign-inspected products?

• What modifications to the SPP's would be necessary to provide for the monitoring of each State's product in interstate commerce and for feedback to the State program?

Laboratory Services

• What improvements, if any, need to be made in State laboratory standards, sampling programs, or performance?

Establishment facility and equipment requirements

• What issues relating to establishments' facilities, equipment, and sanitation need to be considered, and how?

Marking and Labeling; Product Identification

• How should State-inspected product be identified in commerce? Should special marking or labeling requirements be imposed?

• What effect would permitting interstate shipment of State-inspected product have on the consumer's ability to determine whether a product or its ingredients had been inspected and would consumer confidence in the safety and quality of meat and poultry products be in any way affected?

Recall Procedures

• Which agency or agencies should exercise jurisdiction in cases involving the recall of a State-inspected product that may have been distributed to several other States?

• Could confusion over jurisdiction arise that could impede timely action to prevent the consumption of unsafe, adulterated products?

In addition to the issues arising from the SPP's, FSIS welcomes comments on other issues that could have a bearing on interstate shipment of State-inspected products. These issues include State implementation of HACCP-based inspection, interstate relations (including the refusal of one State to accept the products of another State), acceptance of product inspected under equivalent systems, the export of State-inspected product, economic effects, and the availability of resources for Federal assistance and oversight.

Administration of State Programs; HACCP

Commenters are invited to consider what additional challenges might arise with the adoption and implementation of ''Pathogen Reduction; HACCP'' regulations proposed by the Agency.

• Should interstate shipment of State-inspected products be authorized prior to the States' implementation of the HACCP and pathogen reduction regulations?

◆ Should interstate shipment of State-inspected products be authorized prior to FSIS's evaluation of States' operations under these adopted regulations?

◆ Is implementation of HACCP by the States a factor that should even be considered?

Interstate Relations

◆ What potential exists for States with conflicting standards to bring actions in Federal courts against firms located in other States or against the States in which such firms are located?

◆ If interstate shipment of State-inspected meat and poultry products is allowed, should there be some provision for all consumers in the States and Territories to participate in the rulemaking proceedings in any one of the States concerning such products?

◆ Should a State be able to refuse acceptance of another State's products? If so, under what conditions? What avenues of recourse are available to the State whose products are refused? What should be the FSIS role in such matters?

Acceptance of Product Inspected Under Equivalent Systems

Meat and poultry products prepared under foreign inspection systems that are equivalent to the Federal inspection system are allowed in interstate commerce. Foreign products that are shipped to the United States have been inspected and passed by a national inspection program that meets standards equivalent to those of this country's Federal program. These programs are subject to regular systems reviews by FSIS officials and, in addition, products imported to this country are subject to FSIS reinspection at points of entry before they are shipped in interstate commerce. Reinspection is a performance-based system; foreign establishments with better compliance histories have their products reinspected less frequently.

◆ Should the FSIS reinspection system for imported products be considered to provide the same level of assurance to the public that foreign-inspected products receive?

◆ If State-inspected products are allowed in interstate commerce without reinspection, should any other measures be considered?

◆ What resources would be necessary to carry out this inspection and from what source or sources should they be obtained?

Export of State-inspected Product

◆ Should State-inspected product be considered eligible for export? Why or why not? Under what conditions should export of State-inspected product be permitted?

◆ How would technical problems and trade issues be addressed? By whom would these problems and issues be addressed?

◆ How would costs be addressed?

◆ How would permitting the interstate shipment of State-inspected product affect the acceptability to foreign countries and importers of U.S.-export products generally?

◆ What agency or agencies would be responsible for certifying exports?

Economic Effects

The number of meat and poultry establishments under State inspection has been declining steadily in recent years. For example, in 1986, 3,707 meat or poultry establishments were operating under State inspection in 27 States, but by 1994 there were 2,904 such establishments in the same number of States.

Permitting interstate sale and distribution of State-inspected products could eliminate the incentives for holding a Federal grant of inspection rather than a State grant. This change could affect the economies of the Federal and State programs if it resulted in significant shifts of establishments between the Federal and State systems.

◆ Should the ability of an establishment to choose between Federal and State inspection be restricted in any way? Why?

◆ Would States be induced to compete with one another by marketing their inspection programs so as to influence company decisions on where to locate new or relocate existing meat and poultry establishments? If so, what would be the consequences for the States, for workers, for consumers?

◆ What would be the implications or consequences of allowing sales of State-inspected product to Federal establishments for further processing? Would this affect decisions by domestic or foreign buyers?

◆ What effect should permitting the interstate shipment of State-inspected product have on establishments where Federal inspection is performed by State

employees under Federal-State cooperative agreements, pursuant to the Talmadge-Aiken Act (7 U.S.C. 450)?

Availability of Resources for Federal Oversight of and Assistance to State Programs

A perennial question to be addressed is the availability of resources for appropriate Federal oversight of State programs to ensure that they are ''at least equal to'' the Federal program. The resource question is sometimes highlighted when the Agency's oversight of State programs undergoes external evaluation by GAO or OIG, as discussed above. Nevertheless, the ability of the Agency to meet the need for oversight of State programs will continue to be challenged by a scarcity of resources. This challenge is likely to be far greater than it is at present if State-inspected products are permitted to be shipped in interstate commerce, for the volume and geographical distribution of State-inspected products could be greater than they are now, and the handling of the products more complicated.

◆ What is the best way to ensure the continued provision of resources necessary for Federal oversight of State programs?

◆ What would be the effect on State resources of allowing interstate shipment of State-inspected product, especially if large numbers of establishments switch from Federal to State inspection?

◆ In addition, how should the financing of State programs be accomplished? Should USDA continue to pay up to half the cost of operating a State program?

◆ If a wider market were opened to State-inspected products, would sales volumes rise and would State economies be better able to support a larger share of program operations?

The foregoing list of issues is not intended to be inclusive; FSIS recognizes that commenters may suggest other issues and provide comments regarding them. FSIS welcomes comments on other issues related to interstate shipment of meat and poultry from State-inspected establishments.

Done, at Washington, D.C., on: May 3, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–11456 Filed 5–3–96; 1:40 pm]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Public Attitudes Toward Administrative Records Use.

Form Number(s): None –– Computer assisted telephone interview.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 300 hours.

Number of Respondents: 1,200.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau is testing the use of administrative records in the Census 2000 to estimate the characteristics of nonresponding households, supplement data for respondents that return incomplete forms, and estimate the number of persons missed within households. To enhance the usability of administrative record information, the Census Bureau is also considering asking respondents in the Census 2000 to provide their Social Security number (SSN). This survey asks respondents to rate their feelings and attitudes toward our use of administrative records and collecting SSN in the census. Knowledge about the public's feelings and attitudes will help the Census Bureau form privacy policy, achieve effective promotion and outreach, and determine language for public use forms.

Affected Public: Individuals.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 29, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–11259 Filed 5–6–96; 8:45 am]

BILLING CODE 3510–07–F

National Institute of Standards and Technology

[Docket No. 960405101–6101–0]

RIN 0693–XX17

Request To Identify Bodies Interested in European Union (EU) Conformity Assessment Activities

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Request for public comment.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology (NIST) is seeking input regarding the identification of bodies which can perform conformity assessment of products that will ultimately be entered into commerce in the European union (EU). This information is requested in support of ongoing negotiations between the United States and the EU for mutual recognition of product approvals pursuant to regulatory requirements. At the present time, we wish to identify and report to the EU those U.S. organizations that believe that they are qualified and are interested in certifying products as being in compliance with mandatory EU product safety requirements, that is, U.S.-based organizations that desire to be recognized as equivalent to notified or competent body status under a U.S.-EU mutual recognition agreement (MRA), as specified in the EU directives covering telecommunications terminal equipment (TTE) (EEC 89/263), electromagnetic compatibility (EMC) (89/336), low voltage electrical equipment (LVD) (EEC 73/23), and recreational craft (EEC 94/25). The areas of present interest are the following: (1) Product testing and quality assessment; (2) quality system registration; (3) evaluation of technical construction files (specific to the EMC directive); and (4) product certification. Copies of the pertinent EU directives and related lists of reference standards are available at the U.S. Department of Commerce, Room 3042, Herbert C. Hoover Building, 14th and Constitution Avenue, Washington, D.C., or NIST, building 820, Room 164, Gaithersburg, Maryland.

Organizations are invited to inform NIST of their interest in carrying out any of the activities listed above under specific EU directives, indicating the scope of their claimed competence and identifying specific standards, test methods, etc. Organizations should note current accreditation by a recognized national, regional or international accreditation body to a recognized or international standard and, if possible,

provide information demonstrating that they actively engaged in conformity assessment procedures related to relevant EU directives. This may include subcontractor relationships with EU notified or competent bodies.

Based on responses to this notice, NIST will compile a list of interested organizations. This list will be provided to European Commission officials to illustrate the types of organizations that may be qualified and subsequently considered for U.S. designated conformity assessment body status. It is emphasized that organizations do not automatically qualify as designated conformity assessment bodies simply by responding to this notice. Formal application and processing under NVCASE or equivalent program will be required before designated status can be granted. (OMB Control No. 0693–0019).

DATES: Comments on this request must be received by June 6, 1996.

ADDRESSES: Comments should be submitted in writing to Dr. Belinda L. Collins, Director, Office of Standards Services, National Institute of Standards and Technology, Building 820, room 282, Gaithersburg, Maryland 20899, by fax at 301–963–2871 or by e-mail to belinda.collins@nist.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Belinda L. Collins, in writing at NIST, Building 820, room 282, Gaithersburg, Maryland 20899, by telephone at 301–975–4000, by fax at 301–963–2871 or by e-mail to belinda.collins@nist.gov.

SUPPLEMENTARY INFORMATION: The U.S. Government is currently engaged in negotiations with the EU for the purpose of entering into a Mutual Recognition Agreement (MRA) regarding the acceptance of each other's testing and certification programs in regulated product areas. Under the National Technology Transfer and Advancement Act of 1995 (P.L. 104–113), signed March 7, 1996, NIST is designated as the federal agency with responsibility for coordinating accreditation activities. NIST also operates the National voluntary Conformity Assessment System Evaluation (NVCASE) program as a means of providing U.S. domestic entities with a U.S. Government ''assurance of competency'' to facilitate the acceptance of test data or product certifications issued in this country by governments of other countries on the same basis as test data or product certification issued in the other country.

This notice is a solicitation of interest on the part of U.S. conformity assessment entities in obtaining U.S. government recognition of their technical competence pursuant to a U.S.-EU MRA.

Interested persons should respond in writing to the above address. All comments submitted in response to this notice will become part of the public record and will be available for inspection and copying at the U.S. Department of Commerce Central Reference and Records and Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th and Constitution Avenue, Washington, D.C. 20230.

Dated: April 30, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–11288 Filed 5–6–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 042996D]

Endangered Species; Permits

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

ACTION: Receipt of an application for modification 4 to scientific research/monitoring permit 822 (P500B).

SUMMARY: Notice is hereby given that the Fish Passage Center at Portland, OR (FPC) has applied in due form for a modification to a permit to take endangered and threatened species for the purpose of scientific research/monitoring.

DATES: Written comments or requests for a public hearing on this application must be received on or before June 6, 1996.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: FPC requests a modification to a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

FPC (P500B) requests modification 4 to permit 822 for an increase in their annual take of ESA-listed species associated with an additional scientific research/monitoring activity, an increase in the number of outmigrating juvenile salmonids in 1996, and recognition of an ESA-listed adult salmon incidental take. Permit 822 authorizes an annual take of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with scientific research/monitoring activities at upstream locations and at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest.

FPC requests an increase in the number of juvenile, ESA-listed, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon associated with the operation of a second airlift sampler at John Day Dam during the 1996 juvenile outmigration. FPC requests an increase in the number of juvenile, ESA-listed, Snake River sockeye salmon to be captured and handled, and an increase in the resulting indirect mortality of these fish, associated with an increase in the estimate of the number of ESA-listed salmon juveniles expected to outmigrate in 1996. In addition, FPC requests an incidental take of adult and jack, ESA-listed, Snake River spring/summer chinook salmon associated with fallbacks through the juvenile bypass systems at Bonneville and John Day Dams on the Columbia River. FPC also requests a modification of their sampling protocol for monitoring juvenile salmonids for symptoms of gas bubble trauma (GBT). An additional take of ESA-listed species is not requested for the modified GBT sampling protocol. Modification 4 is requested for the duration of the permit. Permit 822 expires on December 31, 1997.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: April 29, 1996.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–11264 Filed 5–6–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 042996C]

Endangered Species; Permits

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

ACTION: Issuance of modification 5 to permit 817 (P45K), modification 1 to permit 956 (P45S), and receipt of a notification of withdrawal of the request for modification 3 to permit 849 (P510).

SUMMARY: Notice is hereby given that NMFS has issued modifications to permits that authorize takes of Endangered Species Act-listed species for the purpose of scientific research, subject to certain conditions set forth therein, to the National Biological Service at Cook, WA (NBS) and has received notification of the withdrawal of a modification request from the Shoshone-Bannock Tribes at Fort Hall, ID (SBT).

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: The modifications to permits were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on February 29, 1996 (61 FR 7776) that an application had been filed by NBS (P45K) for modification 5 to scientific research permit 817. Modification 5 to permit 817 was issued on April 16, 1996. Permit 817 authorizes a direct take of juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) and an indirect take of juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with scientific research on the spawning, rearing, and migratory requirements of fall chinook salmon in the Columbia River Basin. Modification 5 authorizes an increase in the annual take of ESA-listed species in association with three additional scientific research activities. NBS will evaluate the extent, seasonality, and size selectivity of predation on subyearling fall chinook salmon; estimate food availability and growth of subyearling fall chinook salmon in nearshore rearing habitats for eventual use in a bioenergetics model; and relate juvenile fall chinook salmon survival to physiological development. Modification 5 is valid for the duration of the permit. Permit 817 expires on December 31, 1996.

Notice was published on February 29, 1996 (61 FR 7776) that an application had been filed by NBS (P45S) for modification 1 to scientific research permit 956. Modification 1 to permit 956 was issued on April 23, 1996. Permit 956 authorizes a take of juvenile, ESA-listed, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to provide managers with data on the distribution, abundance, movement, and habitat use of anadromous fish that migrate through Lower Granite Reservoir on the Snake River in WA. For modification 1, NBS is authorized to collect juvenile fish, a portion of which will be ESA-listed juveniles, with a purse seine in Lower Granite pool to obtain the maximum sample size needed for annual radio tag transmitter research. NBS will apply radio transmitter tags by surgical implantation and transport the ESA-listed juvenile fish from the point of acquisition to an upstream release site. NBS will use radio-tagged fish to evaluate the operation of a surface collector prototype in the forebay of Lower Granite Dam. Also, NBS will capture, handle, and release ESA-listed juvenile fish while using a mid-water trawl for species verification of hydroacoustic surveys. Modification 1 is valid for the duration of the permit. Permit 956 expires on September 30, 1999.

Notice was published on March 5, 1996 (61 FR 8568) that an application had been filed by SBT (P510) for modification 3 to scientific research permit 849. Permit 849 authorizes a take of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with stock assessment and fish condition surveys in the Salmon River subbasin and the pond series of Yankee Fork, Salmon River in Idaho. For modification 3, SBT requested to expand the area of their electrofishing research to include the Salmon River subbasin, an area previously unspecified for this research activity. Notification has been received that SBT would like to withdraw the request for modification 3 to permit 849. Since the target species of the proposed expanded research area is bull trout, a non-listed species, and there is a possibility of an incidental take of an ESA-listed species associated with the research, SBT will submit an incidental take permit application.

Issuance of the modifications, as required by the ESA, was based on a finding that such actions: (1) Were requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that are the subject of the permits, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: April 29, 1996.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–11265 Filed 5–6–96; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Proposed Collection; Comment Request for Extension of Two Currently Approved Information Collections; 3038–0021 and 3038–0023

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, (Pub. L. 104–13) this notice announces that the Commodity Futures Trading Commission intends to submit to the Office of Management and Budget requests for the extension of two currently approved information collections which expire on June 30, 1996. These collections are:

3038–0021—Regulations Governing Bankruptcies of Commodity Brokers

3038–0023—Regulations and Forms Relating to Registration with the Commission

ADDRESSES: Persons wishing to comment on these information collections should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20502, (202) 395–7340. Copies of the submission are available from Joe F. Mink, Agency Clearance Officer, (202) 418–5170.

Title: Regulations Governing Bankruptcies of Commodity Brokers.
Control Number: 3038–0021.
Action: Extension.
Respondents: Futures Commission Merchants.
Estimated Annual Burden: 801 total hours.

Respondents	Estimated number of respondents	Annual responses	Est. avg. hours per response
Futures Commission Merchants	802	16,002	0.35

Title: Regulations and Forms Relating to Registration with the Commission.
Control Number: 3038–0023.
Action: Extension.
Respondents: Registrants.
Estimated Annual Burden: 18,975 hours.

Respondents	Estimated number of respondents	Annual responses	Est. avg. hours per response
Registrants	60,980	4	1.13

Issued in Washington, DC on May 2, 1996.
Jean A. Webb,
Secretary to the Commission.
[FR Doc. 96–11301 Filed 5–6–96; 8:45 am]
BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement (EIS) on the Disposal and Reuse of the Evans Subpost Fort Monmouth, NJ

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by this EIS is the disposal of the Evans Subpost Fort Monmouth, New Jersey, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510. The Draft EIS addresses the environmental consequences of the disposal and subsequent reuse of the 215 acres. Three alternative methods of disposal are analyzed: Encumbered Disposal, Unencumbered Disposal and retention of the property in a caretaker status (i.e., the No Action Alternative). The Encumbered Disposal Alternative addresses natural or man-made encumbrances to the future reuse. The Unencumbered Disposal Alternative evaluates the potential to remove encumbrances, thereby allowing the property to be disposed of with fewer or no Army imposed restrictions on future use. The impacts of reuse are evaluated in terms of land use intensities.

A scoping meeting was held at the theater located on the Main Post of Fort Monmouth on December 8, 1994. Public notices requesting input and comments from the public were issued in the regional area surrounding the Evans Subpost.

DATES: The Army will hold a public review meeting for this Draft EIS. The location and date of the meeting, to be scheduled during May 1996, will be announced in local news media. Copies of the DEIS are available for review at the Wall Township Public Library, 2700 Allaire Road, Wall, New Jersey 07719. Oral and written comments may be presented at the public meeting. Comments and suggestions received within 45 days of the publication of the Environmental Protection Agency's Notice of Availability for this action will be addressed in the Final Environmental Impact Statement.

ADDRESSES: Copies of the Draft Environmental Impact Statement can be obtained by writing to Dr. Susan Rees, U.S. Army Engineer District, ATTN: CESAM–PD–E, P.O. Box 2288, Mobile, Alabama 36628–0001 or by telephone at (334) 694–4141 or telefax (334) 690–2424.

Dated: April 30, 1996.
Raymond J. Fatz,
Acting Deputy Assistant Secretary of the Army, (Environmental, Safety, and Occupational Health) OASA (IL&E).
[FR Doc. 96–11312 Filed 5–6–96; 8:45 am]
BILLING CODE 3710–08–M

Corps of Engineers

Notice of Availability of Surplus Land and Buildings as Prescribed by Public Law 101–510 and Required by Public Law 100–526, Located at Rio Vista Army Reserve Facility, Rio Vista, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Sacramento District, on behalf of the Department of the Army identifies as surplus the real property located at Rio Vista Army Reserve Facility, Rio Vista, California. Rio Vista Army Reserve Facility is located in Sonoma County, on the Sacramento River approximately 20 miles southeast of Travis Air Force Base, between Lodi and Fairfield, California. The Facility is comprised of 27.8 acres and includes 22 temporary wood-frame buildings and miscellaneous improvements. The property is being conveyed to the City of Rio Vista as authorized by the National Defense Authorizations Act of 1995, Section 2834.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Fisbeck, Army Corps of Engineers, Real Estate Division, 1325 J Street, Sacramento, CA 91814–2922, telephone (916) 557–6844, fax (916) 557–7855; or Mr. Norman Repanich, City Hall, P.O. Box 745, Rio Vista, CA 94571, telephone (707) 374–6451.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 96–11286 Filed 5–6–96; 8:45 am]
BILLING CODE 3710–EZ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 17, 1996. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 8, 1996.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 1, 1996.

Arthur F. Chantker,

Acting Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: New.

Title: William D. Ford Federal Direct Loan Program, Closed School Loan Discharge Application Documents.

Frequency: On occasion.

Affected Public: Individuals or households.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 2,200

Burden Hours: 1,100

Abstract: These forms will serve as the means of collecting the information that the Department of Education requires in order to determine whether a direct loan borrower qualifies for a loan discharge based on school closure.

[FR Doc. 96–11262 Filed 5–6–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 6, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 1, 1996.

Arthur F. Chantker,

Acting Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Randolph-Sheppard Vending Facility Program.

Frequency: Annually.

Affected Public: Individuals or households; Business or other for-profit; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 51

Burden Hours: 739

Abstract: The information is needed to evaluate the effectiveness of the program and to promote growth. The information is transmitted to State agencies to assist in the conduct and expansion of the program at the State level. Respondents are the designated vocational rehabiliation agencies.

[FR Doc. 96–11263 Filed 5–6–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 96–02–NG; 96–03–NG, 96–13–NG, 96–12–NG, 96–10–NG, 96–14–NG]

Eastern Energy Marketing, Inc., et al.; Orders Granting Authorization To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing various imports and/or exports of natural gas. These Orders are summarized in the attached Appendix.

These Orders are available for inspection and copying in the Office of Fuels Programs Docket Room, 3–F056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on April 25, 1996.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

APPENDIX—IMPORT/EXPORT AUTHORIZATIONS GRANTED

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1151	03/27/96	Eastern Energy Marketing, (96–2–NG)	2,677 Mcf/day.	.....	Long-term for 20 years, from Canada.
1152	03/27/96	Eastern Energy Marketing, Inc. (96–3–NG)	2,826 Mcf/day.	.....	Long-term for 20 years, from Canada.
1153	03/27/96	Norstar Energy Limited Partnership (96–13–NG)	73 Bcf/2-year term.	73 Bcf/2-year.	Short-term for 2 years, from and to Canada.
1154	03/27/96	Murphy Gas Gathering Company (96–12–NG)	73 Bcf/2-year term.	.....	Short-term for 2 years, from and to Canada.
1156	03/29/96	ProGas U.S.A., Inc. (96–10–NG)	15,000 Mcf/day.	.....	Long-term ending 10/31/2000, from Canada.
1157	04/03/96	Westcoast Gas Services (96–14–NG)	1,000 Bcf/2-year term.	1,000 Bcf/2-year term.	Short-term for 2 years, from and to Canada.

[FR Doc. 96–11299 Filed 5–6–96; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 96–16–NG]

Tenneco Gas Marketing Company; Order Granting Blanket Authorization To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tenneco Gas Marketing Company authorization to export up to 200 Bcf of natural gas to Canada and to export up to 200 Bcf of natural gas to Mexico over a two-year term beginning the date of first export delivery after May 10, 1996.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., April 19, 1996.

Clifford P. Tomaszewski

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–11300 Filed 5–6–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

CNG Transmission Corporation; Notice of Report of Refunds

[Docket No. RP94–96–019]

May 1, 1996.

Take notice that on April 29, 1996, CNG Transmission Corporation (CNG), tendered for filing its report of refunds attributable to the resolution of the captioned proceedings. CNG states that the reported refunds reflect CNG implementation of the rates contained in the Commission-approved Stipulation and Agreement filed on June 28, 1995 (the June 28 Stipulation).

CNG states that the purpose of this filing is to report refunds and associated interest that CNG paid to its customers on March 29, 1996. CNG further states that these refunds were made as a result of CNG implementation of settlement rates, which were approved by Commission order dated December 7, 1995, in Docket Nos. RP94–96, *et al.*, 73 FERC ¶ 61,289 (1995). As detailed in Attachment A to the filing, CNG states that the total refund obligation in these proceedings as of March 29, 1996, consisted of a principal amount of $81,340,394.26, plus interest of $7,372,157.20, for a total refund obligation of $88,712,551.46. The workpapers included in Attachment B to the filing, provide detailed support for CNG computation of this refund

principal and associated interest, as allocated by rate schedule, by customer, and by invoice group.

CNG states that copies of this letter of transmittal and enclosures are being mailed to affected customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC, 20426, in accordance with 18 CFR 385.211 of the Commission Rules and Regulations. All such protests must be filed on or before May 8, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11267 Filed 5–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–47–017]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

May 1, 1996.

Take notice that on April 26, 1996, National Fuel Gas Supply Corporation (National) notified the Commission that it made Billing Adjustments to its former RQ and CD customers, in accordance with Section 20(f) of the General Terms and Conditions of National's FERC Gas Tariff.

Under Section 20, National is required to make any Billing Adjustments caused by the reallocation of take-or-pay (TOP) charges under the Winter Requirement Quantity allocation method within sixty (60) days of a final Commission Order. National states that this Billing Adjustment reflects charges or refunds caused by the reallocation of TOP charges from Columbia Gas Transmission Corporation.

National states that copies of the letter and the attached worksheets were sent to each of National's former RQ and CD customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests must be filed on or before May 8, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11266 Filed 5–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1635–000, et al.]

Indeck Pepperell Power Assoicates, Inc., et al. Electric Rate and Corporate Regulation Filings

April 30, 1996.

Take notice that the following filings have been made with the Commission:

1. Indeck Pepperell Power Associates, Inc.

[Docket No. ER96–1635–000]

Take notice that on April 25, 1996, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell) submitted for filing the Electric Power Service Agreement between Indeck Pepperell and Massachusetts Municipal Wholesale Electric Company (MMWEC) setting forth the terms and conditions for Indeck Pepperell's provision of electric capacity, energy and services to MMWEC under Indeck Pepperell's Rate Schedule FERC No. 1.

Indeck Pepperell states that its filing is in accordance with Part 35 of the Commission's Regulations. Indeck Pepperell requests a waiver of the Commission's notice requirements so that its revised rate schedule may become effective on May 1, 1996.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas City Power & Light Company

[Docket No. ER96–1636–000]

Take notice that on April 25, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated April 4, 1996, between KCPL and Commonwealth Edison Company (ComEd). KCPL proposes an effective date of April 4, 1996, 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 ComEd.

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: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Consumers Power Company

[Docket No. ER96–1637–000]

Take notice that on April 25, 1996, Consumers Power Company (Consumers), tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charge is provided for in Subsection 1.043 of the Agreement, which provides that the annual charge rate may be redetermined effective May 1, 1996 using year-end 1995 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were increased from $17,082.00 to $17,693.00. Consumers requests an effective date of May 1, 1996, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Northern, the Michigan Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Madison Gas and Electric Company

[Docket No. ER96–1638–000]

Take notice that on April 25, 1996, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Delhi Energy Services, Inc., under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Electric and Gas Company

[Docket No. ER96–1639–000]

Take notice that on April 25, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial rate schedule to provide fully interruptible transmission service to PECO Energy Company, for delivery of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER96–1640–000]

Take notice that on April 25, 1996, PECO Energy Company (PECO), filed a Service Agreement dated April 17, 1996, with NorAm Energy Services, Inc. (NORAM) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NORAM as a customer under the Tariff.

PECO requests an effective date of April 17, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to NORAM and to the Pennsylvania Public Utility Commission.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER96–1641–000]

Take notice that on April 25, 1996, PECO Energy Company (PECO), filed a Service Agreement dated April 17, 1996, with South Carolina Public Service Authority (SANTEE COOPER) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SANTEE COOPER as a customer under the Tariff.

PECO requests an effective date of April 17, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to SANTEE COOPER and to the Pennsylvania Public Utility Commission.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Co.

[Docket No. ER96–1642–000]

Take notice that on April 25, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Maine Public Service Company and Virginia Power, dated April 17, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Maine Public Service Company 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 the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and the Maine Public Utilities Commission.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Company

[Docket No. ER96–1644–000]

Take notice that on April 25, 1996, 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:

Federal Energy Sales Inc.

A copy of this filing has been served on the above listed party and the Arizona Corporation Commission.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company

[Docket No. ER96–1646–000]

Take notice that on April 24, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a Purchase and Sales Agreement between LG&E and Rainbow Energy Marketing Corporation under Rate Schedule GSS—Generation Sales Service.

A copy of the filing has been mailed to the Kentucky Public Service Commission.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Co.

[Docket No. ER96–1647–000]

Take notice that on April 26, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a Purchase and Sales Agreement between LG&E and Intercoast Power Marketing Company, under Rate Schedule GSS—Generation Sales Service.

A copy of the filing has been mailed to the Kentucky Public Service Commission.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER96–1648–000]

Take notice that on April 26, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a Purchase and Sales Agreement between LG&E and Industrial Energy Applications, Inc. under Rate Schedule GSS—Generation Sales Service.

A copy of the filing has been mailed to the Kentucky Public Service Commission.

Comment date: May 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. East Texas Electric Cooperative Inc.

[Docket No. ES96–24–000]

Take notice that on April 26, 1996, East Texas Electric Cooperative, Inc. filed an application, under § 204 of the Federal Power Act, seeking authorization to assume a long-term secured loan. The loan will be extended by the National Rural Utilities Cooperative Finance Corporation in an amount up to $6,073,276 and will mature in 7 years.

Comment date: May 14, 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, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11268 Filed 5–6–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5468–9]

Request for Comments: The Pesticides Enforcement and Applicator Certification Cooperative Agreements Output Projection/Quarterly Accomplishments Reporting Form; Agency Information Collection Activities up for Renewal (OMB Control Number 2070–0113)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U. S. C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR)

listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before July 8, 1996.

ADDRESSES: United States Environmental Protection Agency; Office of Enforcement and Compliance Assurance; Enforcement Capacity and Outreach Office (2201A); 401 M Street, SW., Washington, D. C. 20460. Interested persons can obtain a copy of this ICR, without charge, by writing to the following address: Ms. Sandy Farmer; United States Environmental Protection Agency; OPPE Regulatory Information Division (2136); 401 M Street, SW., Washington, DC; EPA ICR Number 1547/OMB Control No. 2070–0113.

FOR FURTHER INFORMATION CONTACT: John J. Neylan III, Telephone number (202) 564–5033; facsimile number (202) 564–0034; E-mail (NEYLAN.JOHN@epamail.epa.gov).

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities affected by this action are those States, Territories, and Indian Tribes which have entered into cooperative agreements with the Agency for pesticide enforcement and/or for certification and training activities.

Title: Pesticides Enforcement and Applicator Certification Cooperative Agreement Output Projections/Quarterly Accomplishments Reporting Form; (OMB Control No. 2070–0113); EPA ICR No. 1547; Expires August 31, 1996. This is a request for an extension of a currently approved collection.

Abstract: This information collection request is for EPA Form 5700–33H, the Pesticides Enforcement and Applicator Certification Cooperative Agreement Output Projections/Quarterly Accomplishments Reporting Form. This reporting form is required from States, Territories, and Tribes (States) that have cooperative agreements (grants) with the Office of Enforcement and Compliance Assurance (OECA) and/or the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act, sections 23(a)(1) and (2), 26(a), and 11(a)(2)(D). The reporting form is used by grantees to report: a) the number and type of inspections projected and completed, the number and type of samples expected to be taken and actually collected, the number and type of enforcement actions taken; and b) the number and type of applicators projected to be trained, certified, and recertified and the number and type actually trained, certified, and recertified during a specific period of time and according to recertification periods.

States submit the completed forms to their EPA Regional Office, where it is entered into a data base. The information is used to evaluate whether planned activities are actually accomplished, whether the activities undertaken are commensurate with grant funding levels, to ensure that adequate coverage is given to the entire, broad scope of compliance and enforcement activities, and to provide a basis for adjusting enforcement plans throughout the year, dependent on emerging situations. Additionally the training, certification, and recertification information is also used to determine if funding levels are adequate, to determine if a State's Certification Plan is being implemented, and to afford a basis for adjustment as needed.

The information collected under this ICR is not confidential and will be provided upon request by writing to the address listed above. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The Agency needs to obtain the information required by this information collection in order to determine (1) if the activities planned are commensurate with the proposed funding level, (2) if the planned activities adequately cover the scope of enforcement and certification and training activities that correspond to a strong pesticide program, (3) if planned activities are actually implemented, and 4) if planned activities need to be adjusted to fit changing circumstances.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of the information on those who 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.

Estimating the Burden and Cost of the Collection

Estimating Respondent Burden

The estimates for developing and providing to EPA the information found in Form 5700–33H are based upon discussions with State pesticide regulatory officials. The information collection involves two groups of respondents: 70 respondents complete projections and report enforcement accomplishments (Group A); and 55 respondents complete certification and training reports (Group B). The type of information being collected and reported on 5700–33H is that which a State Pesticide Agency would already be maintaining as a part of the State's competent management of a Federally-funded grant program. Completion of the enforcement/certification and training activities projection report is estimated to take four hours. The total number of hours to complete the quarterly enforcement accomplishment reports is 20 hours, while it takes six hours to execute the certification accomplishments report and three hours to document annually the total number of certified applicators by category.

Estimating Respondent Cost

The cost to respondents to provide the information collected under this ICR is estimated to be minor. The Agency did not have approximate hourly rates for State employees and therefore in calculating costs EPA substituted hourly labor rates for Federal managers ($76.00), Technical ($55.00), and clerical support ($25.00).

Estimating Agency Burden Cost

The costs to the Government to process, analyze, and maintain the information requested in Form 5700–33H is based on four work hours per report received [five reports from each respondent in Group A, and three reports from each respondent in Group B annually], and ten hours of Headquarters personnel at an average GS–9 Step 4 grade plus 10.4% estimated overhead costs. Other direct costs are limited to printing costs for the reporting form. The number of respondents is based upon the number of States, Tribes and Territories that have entered into cooperative agreements with the Agency.

Bottom Line Burden Hours and Costs

The estimates of costs for Form 5700–33H are discussed below. The annual burden costs for respondents consist of reading instructions, compiling information, completing forms, and filing the forms with EPA. The total time associated with providing the enforcement activity projections and quarterly accomplishments reports is 24 hours, times 70 respondents, which equals 1680 hours at an annual cost of $25,200.00. The total time associated with providing the certification and training activities projections and semiannual accomplishment reports is nine hours, times 55 respondents, which equals 495 hours at an annual cost of $7425.00. The entire annual cost of this collection is $32,625.00.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: April 24, 1996.

Elaine G. Stanley,

Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 96–11335 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5468–3]

Gulf of Mexico Program Joint Management Committee and Policy Review Board Committee Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Joint Management Committee and Policy Review Board Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Joint Management Committee and Policy Review Board Committee will hold a meeting at the Omni Royal Orleans Hotel, 621 St. Louis Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee and Policy Review Board Committee of the Gulf of Mexico Program will be held May 29–30, 1996, at the Omni Royal Orleans Hotel, 621 St. Louis Street, New Orleans, Louisiana. The committee will meet from 10:00 a.m. to 4:30 p.m. on May 29 and from 8:30 a.m. to 3:00 p.m. on May 30. Agenda items will include: Program Assessments: Mission; Function; Organization; FY96–97 Priorities; and Incomplete Business Items.

The meeting is open to the public.

Bryon Griffith,

Acting Director, Gulf of Mexico Program.

Draft Agenda Joint PRB/MC Meeting, May 29–30, 1996

Wednesday, May 29

10:00 am
- Welcome & Introduction of Participants
- Program Status (GMP Director's Update)

Program Assessments

10:30 am
- Mission (Who/What is the Gulf Program?)
  - —External Perceptions (Clients/Constituents)
  - —Internal Perceptions (Partners)
  - —Recommended Adjustments (GMP Director)
  - —PRB/MC Discussion/Decision

1:00 pm
- Function (What are the appropriate functional approaches & objectives for the Gulf Program?)
  - —External Perceptions (Clients/Constituents)
  - —Internal Perceptions (Partners)
  - —Recommended Adjustments (GMP Director)
  - —PRB/MC Discussion/Decision

3:00 pm
- Organization (What structure is needed to carry out the Program?)
  - —External Perceptions (Clients/Constituents)
  - —Internal Perceptions (Partners)
  - —Recommended Adjustments (GMP Director)
  - —PRB/MC Discussion/Decision

4:30 pm Meeting adjourned for the day * * *

Thursday, May 30

8:30 am
- Organization (continued * * *)
  - —PRB/MC Discussion/Decision

10:00 am
- Priorities FY 1996–1997 (Where do we need to focus limited resources for the greatest return?)
  - —Internal Perception (Partners)
  - —PRB/MC Discussion/Decision
- Incomplete Business Items (PRB & MC)

Meeting Summary

2:00 pm
- Agreements/Decisions:
  - —Mission
  - —Function
  - —Organization
  - —Priorities
  - —Incomplete Business Items

3:00 pm
- Meeting Adjourned * * *

[FR Doc. 96–11336 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5501–4]

Air Quality Criteria for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of a final report titled, Air Quality Criteria for Particulate Matter (EPA/600/P–95/001aF–cF), prepared by the U.S. Environmental Protection Agency's (EPA) Office of Research and Development (ORD). This document evaluates the latest scientific information pertaining to health and environmental effects associated with airborne particulate matter (PM).

DATES: On April 12, 1996 ORD transmitted to the EPA Office of Air and Radiation final versions of all thirteen chapters of the document, Air Quality Criteria for Particulate Matter. After duplication of this large final report, bound copies of the PM Air Quality Criteria Document will be available for wide public distribution on or about May 15, 1996. Until duplication is completed, interested parties can access the Executive Summary of the PM Air Quality Criteria Document via the Internet on the ORD Home Page (http://www.epa.gov/ORD). In addition, the entire PM Air Quality Criteria Document is available electronically on the Agency's Office of Air Quality Planning and Standards' (OAQPS) Technology Transfer Network (TTN) Bulletin Board System (BBS). The telephone number for the TTN BBS is (919) 541–5742. To access the bulletin board a modern and communications software are necessary. The following parameters on the communications software are required: Data Bits—8; Parity—N; and Stop Bits—1.The document will be located on the Clean Air Act Amendments BBS, under Title I, Policy/Guidance Documents. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC. Also, a copy of the completed report is available for public inspection at the EPA Air Docket and at the EPA Library, both at EPA Headquarters, Waterside Mall, 401 M Street, SW, Washington, D.C. EPA Air Docket hours, in Room

M1500 of Waterside Mall, are 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding holidays. EPA Library hours are from 10:00 a.m. until 2:00 p.m., excluding holidays.

ADDRESSES: On or about May 15, 1996, interested parties can obtain a single copy of the final PM Air Quality Criteria Document by contacting: ORD Publications Office, Technology Transfer Division, National Risk Management Research Laboratory, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; facsimile: (513) 569–7566. Please provide your name and mailing address, and request the three-volume document by the title and EPA document number (EPA/600/P–95/001aF–cF). There will be a limited number of paper copies available from the above source. Requests will be filled on a first-come-first-served basis. After the supply is exhausted, copies of the PM Air Quality Criteria Document can be purchased from the National Technical Information Service (NTIS) by calling (703) 487–4650 or sending a facsimile to (703) 321–8547. The NTIS order numbers for the Air Quality Criteria for Particulate Matter are: Vol. I of III (PB96–168232), Vol. II of III (PB96–168240), Vol. III of III (PB96–168257), and for the three volume set (PB96–168224).

FOR FURTHER INFORMATION CONTACT: Diane H. Ray, National Center for Environmental Assessment (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: (919) 541–3637; facsimile: (919) 541–1818.

SUPPLEMENTARY INFORMATION: Sections 108 to 109 of the Clean Air Act (CAA) govern the establishment, review, and revision of National Ambient Air Quality Standards (NAAQS). Section 108 directs the Administrator of the U.S. Environmental Protection Agency (EPA) to list pollutants that may reasonably be anticipated to endanger public health or welfare and to issue air quality criteria for them. The air quality criteria are to reflect the latest scientific information useful in indicating the kind and extent of all effects on public health and welfare that may be expected from the presence of the pollutant in ambient air. In keeping with these CAA mandates, this document evaluates the latest scientific information useful in deriving criteria to form scientific bases for decisions regarding possible revision of current PM NAAQS.

Dated: May 1, 1996.

Joseph K. Alexander,

Deputy Assistant Administrator for Research and Development.

[FR Doc. 96–11334 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The rerular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 9, 1996, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

Regulations

1. Flood Insurance Regulations Update [12 CFR Part 614] (Final)
2. Disclosure to Shareholders [12 CFR Part 620] (Proposed)
3. Other Financing Institutions [12 CFR Part 614] (ANPRM)

C. Report

Report on Regulations for the Federal Agricultural Mortgage Corporation

Closed Session*

D. Report

OSMO Quarterly

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Dated: May 3, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–11466 Filed 5–3–96; 3:14 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; FCC To Hold Open Commission Meeting Thursday May 9, 1996

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 9, 1996, which is scheduled to commence at 2:00 p.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Mass Media—Title: Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider action concerning technical standards for digital television.

2—Office of Engineering and Technology—Title: Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices (ET Docket No. 95–19). Summary: The Commission will consider action concerning new equipment authorization procedures for personal computers and peripheral devices, accreditation of testing laboratories, and the authorization of CPU boards and power supplies to facilitate modular construction.

3—International—Title: Motion of AT&T Corp., to be Declared Non-Dominant for International Services. Summary: The Commission will consider a request from AT&T that it be reclassified as a non-dominant carrier in the provision of international services.

4—International—Title: Amendment of the Commission's Regulatory Policies to Allow Non-U.S.- licensed Space Stations to Provide Domestic and International Satellite Service in the United States and Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations (CC Docket No. 93–23, RM–7931). Summary: The Commission will consider action concerning a uniform framework to evaluate

applications by users in the United States for authority to operate with satellites licensed by other countries.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. at (202) 857–3800. Audio and video tapes of this meeting can be purchased from Telspan International at (301) 731–5355.

Dated May 2, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–11528 Filed 5–3–96; 3:14 pm]

BILLING CODE 6712–01–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1111–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1111–DR), dated April 23, 1996, and related determinations.

EFFECTIVE DATE: April 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 23, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms and tornadoes on April 21–22, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Further, you are authorized to provide reimbursement for debris removal and emergency protective measures under the Public Assistance program. Other assistance under Public Assistance or Hazard Mitigation may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Crawford and Sebastian Counties for Individual Assistance and reimbursement for debris removal and emergency protective measures under the Public Assistance program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 96–11320 Filed 5–6–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1111–DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1111–DR), dated April 23, 1996, and related determinations.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 23, 1996:

The counties of Crawford and Sebastian for Hazard Mitigation Assistance. (Already designated for Individual Assistance and Public Assistance.)

The counties of Franklin, Madison, Marion, and Washington for Hazard Mitigation. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–11321 Filed 5–6–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1111–DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1111–DR), dated April 23, 1996, and related determinations.

EFFECTIVE DATE: April 30, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 23, 1996:

The counties of Franklin and Madison for Public Assistance. (Already designated for Individual Assistance and Hazard Mitigation Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–11322 Filed 5–6–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1110–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1110–DR), dated April 23, 1996, and related determinations.

EFFECTIVE DATE: April 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 23, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and tornadoes on April 18–19, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Champaign and Macon Counties for Individual Assistance, Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 96–11323 Filed 5–6–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1110–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–1110–DR), dated April 23, 1996, and related determinations.

EFFECTIVE DATE: April 30, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 23, 1996:

The Counties of Henry, Lake, and Marion for Individual Assistance, Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–11324 Filed 5–6–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1109–DR]

Indiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana, (FEMA–1109–DR), dated April 2, 1996, and related determinations.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Indiana, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 2, 1996:

The counties of Clay, Franklin, Parke, Perry, Montgomery, and Switzerland for reimbursement for the costs of equipment, contracts, and personnel overtime that are required to clear one lane in each direction along snow emergency routes (or select primary roads in those communities without such designated roadways), and routes necessary to allow the passage of emergency vehicles to hospitals, nursing homes, and other critical facilities.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–11319 Filed 5–6–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1095–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1095–DR), dated January 24, 1996, and related determinations.

EFFECTIVE DATE: April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 24, 1996:

Onondaga and St. Lawrence Counties for Hazard Mitigation Assistance (already designated for Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–11318 Filed 5–6–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1107–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon, (FEMA–1107–DR), dated March 19, 1996, and related determinations.

EFFECTIVE DATE: April 24, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oregon, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 19, 1996:

Clatsop and Washington Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–11317 Filed 5–6–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Rowan Bancorp, Inc., China Grove, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Rowan Savings Bank, SSB, Inc., China Grove, North Carolina.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Brookwood Group, Inc., Columbia, Tennessee; to become a bank holding company by acquiring 30.8 percent of the voting shares of Brookwood Group, L.P., Columbia, Tennessee, and thereby indirectly acquire The Middle Tennessee Bank, Columbia, Tennessee.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. F. Gilbert Bickel, III, L.C., St. Louis, Missouri; to become a bank holding company by acquiring 86.3 percent of the voting shares of St. Johns Bancshares, Inc., St. Louis, Missouri, and thereby indirectly acquire St. Johns Bank and Trust Company, St. Louis, Missouri.

Board of Governors of the Federal Reserve System, May 1, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–11269 Filed 5–6–96; 8:45 am]

BILLING CODE 6210–01–F

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 21, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. F. Gilbert Bickel, III and Martha W. Bickel, of St. Louis, Missouri; to acquire an additional 31.52 percent, for a total of 35.61 percent of the voting shares of St. Johns Bancshares, Inc., St. Louis, Missouri, and thereby indirectly acquire St. Johns Bank & Trust Company, St. Louis, Missouri.

Board of Governors of the Federal Reserve System, May 1, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–11270 Filed 5–6–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), Announces the Following Meeting

Name: ICD–9–CM Coordination and Maintenance Committee.

Time and Date: 9 a.m.–5 p.m., June 6, 1996.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: The ICD–9–CM Coordination and Maintenance Committee will be holding its first meeting of the year. This meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, ninth-revision, clinical modification.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance into the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building either between 8:30 and 9 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting room. Entrance to the meeting at other times during the day cannot be assured.

Contact Person for More Information: Substantive program information may be obtained from Donna Pickett, Co-chair, ICD–9–CM Coordination and Maintenance Committee, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050, extension 142.

Dated: April 30, 1996.

Carolyn J. Russell,

Director, Management Analysist and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–11284 Filed 5–6–96; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Health Statistics for Minority and other Special Populations: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following subcommittee meeting.

Name: NCVHS Subcommittee on Health Statistics for Minority and Other Special Populations.

Time and Date: 1 p.m.–4 p.m., June 3, 1996.

Place: Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will discuss topics such as race and ethnicity data for both Medicare and Medicaid managed care populations, State multiracial legislation, Asian/Pacific Islander Summit data, and an update on the review of Federal standards for race and ethnicity data.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building between 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Contact Persons for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: April 30, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–11283 Filed 5–6–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. May 22, 1996, 3 p.m., and May 23, 1996, 7:30 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 or 1–800–465–4329, and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact John Sellman, Sociometrics, Inc., 8300 Colesville Rd., suite 550, Silver Spring, MD 20910, 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Closed committee deliberations, May 22, 1996, 3 p.m. to 5 p.m.; open public hearing, May 23, 1996, 7:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Andrew Novick, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1296, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Orthopedic and Rehabilitation Devices Panel, code 12521. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 15, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On May 23, 1996, the committee will discuss and vote on two premarket approval applications for intervertebral body fusion devices.

Closed committee deliberations. On May 22, 1996, FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time

for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 2, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–11435 Filed 5–6–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposal to alter an existing system of records by: Expanding the purpose of the system, changing the name of the system, changing the name of the ''Unique Physician Identification Number (UPIN)'' to the ''Unique Physician/Practitioner Identification Number,'' changing the structure of the UPIN, adding tax identification numbers to the data fields, and adding a new routine use (number 10) to the system of records for the release of data to Federal and state agencies.

SUMMARY: HCFA is proposing to revise the systems notice for the ''Medicare Physician Identification and Eligibility System (MPIES), '' System No. 09–70–0525. The following alterations will be made to this system of records:

1. The purpose statement for the system will be revised to better reflect the system's expanded function. The new purpose of this system of records will read as follows: ''to maintain unique identification of each physician, practitioner, and medical group practice requesting and/or receiving Medicare reimbursement.''

2. The name of the system will be changed from the ''Medicare Physician Identification and Eligibility System (MPIES),'' to the ''Unique Physician/Practitioner Identification Number (UPIN) System.''

3. The name of the ''Unique Physician Identification Number (UPIN)'' will be changed to the ''Unique Physician/Practitioner Identification Number.'' Despite this amendment, the acronym UPIN will not be changed because Federal and state agencies and private and public insurance entities are familiar with the use of this acronym.

4. The structure of the UPIN identifier is being changed from a 6-digit identifier to a 10-digit identifier so as to uniquely identify all physicians, practitioners and medical group practices, and to rectify current problems with existing individualized identification systems.

5. Tax identification numbers will be collected and added to the data fields

maintained on all physicians, practitioners, and medical group practices in this system.

6. HCFA is also proposing to add a new routine use (number 10) to this system notice for the release of data to other Federal and state agencies.

EFFECTIVE DATE: HCFA filed a new system report with the Chairman of the Committee on Government Reform and Oversight of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 1, 1996. To ensure that all parties have adequate time in which to comment, the revised system of records, including routine uses, will become effective 40 days from the publication of this notice or from the date it is submitted to OMB and the Congress, whichever is later, unless HCFA receives comments which require alterations to this notice.

ADDRESS: Please address comments to: Richard A. DeMeo, HCFA Privacy Act Officer, Freedom of Information and Privacy Office, Associate Administrator for External Affairs (AAEA), Health Care Financing Administration, Room C2–26–21, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for examination at this location.

FOR FURTHER INFORMATION CONTACT: Gerald Wright, Provider Enrollment Unit, Office of Program Requirements, Bureau of Program Operations, Health Care Financing Administration, Room S1–04–20, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. His telephone number is (410) 786–5798.

SUPPLEMENTARY INFORMATION: In 1988, HCFA established a new system of records, under the authority of section 1842(r) of the Social Security Act Pub. L. 101–508, 42 U.S.C. 1395u(r)), to maintain a UPIN for each physician who provides services for which payment is made under Medicare. Notice of this system, the ''Medicare Physician Identification and Eligibility System (MPIES),'' HHS/HCFA/BPO, no. 09–70–0525, was most recently published on June 10, 1989 in the Federal Register. This system contains records of all physicians, as defined by § 1861(r) of Title XVIII of the Social Security Act, who provide services for which payment is made under Medicare.

At this time, HCFA is proposing to expand the purpose of this system of records: ''to maintain unique identification of each physician, practitioner, and medical group practice requesting and/or receiving Medicare reimbursement.'' Expanding the purpose to include other health care professionals and practitioners will assist HCFA in identifying billers and in determining the appropriate amount to pay for Medicare services.

A practitioner includes, but is not limited to, a physical therapist, certified registered nurse anesthetist, certified registered nurse midwife, physician assistant, occupational therapist, audiologist, family nurse practitioner, anesthesia assistant, mammography screening center, ambulance service supplier, portable x-ray supplier, independent physiological laboratory, clinical social worker, psychologist, nurse practitioner, certified clinical nurse specialist or any other practitioner as may be specified by the Secretary as defined in Social Security Act sections 1861(r) and 1877(h)(4).

A medical group practice is defined as a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association (A) In which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides (including medical care, consultation, diagnosis, or treatment) through the joint use of shared office space, facilities, equipment, and personnel; (B) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; (C) in which overhead expenses of, and the income from the practice are distributed in accordance with methods previously determined by members of the group; and (D) which meets other standards such as the Secretary may impose by regulation to implement section 1877(h)(4) of the Social Security Act.

Section 1871(a)(1) of the Act provides that the Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance program under this title (XVIII). Section 1833(d) of the Act prohibits making payment under part B for services which are payable under Part A. By uniquely identifying Part B health professionals, practitioners, and groups we believe we will eliminate the possibility of duplicate payments.

Medicare carriers currently identify physicians, practitioners, and groups using their own systems of assigned numbers. These individualized systems allow for Physician Identification Numbers (PINs) ranging from four to 16 alphabetic and/or numeric characters. Some carriers assign separate PINs to the same physician providing medical services in more than one locality, office or practice, and lack the capability to cross-reference the PINs and related physician data (e.g., group affiliation).

Other carriers maintain a single PIN or cross-referenced PINs for each physician practicing within the carrier's geographic area of responsibility. Since physicians, groups, and practitioners can furnish medical services as well as bill for these services from several locations or states which are in different carrier jurisdictions, the independent providers who have been found to be ineligible for Medicare payments in one area, location or state could move to a different location or state in order to receive inappropriate or illegal payment.

In order to rectify the problems inherent in these individualized identification systems, HCFA proposes to expand the national registry of physicians under Congressional mandate, (section 1842(r) of the Social Security Act, (42 U.S.C. 1395u(r))) so as to identify physicians, practitioners and medical group practices deemed eligible for Medicare payments and to maintain more comprehensive data on provider credentials.

This initiative will also support the Medicare Transaction System (MTS) development effort. MTS is a single, national, government owned, standard, integrated claims processing system that will perform automated claims processing functions for Part A and Part B Medicare claims. HCFA must, therefore, build a national Medicare database of provider information, to be known as the MTS Provider File, in order to support all MTS functions.

The MTS Provider File would retain all provider information in a standard format so as to facilitate Medicare functions, both internal and external to MTS.

The Medicare Provider Database would uniquely identify and enumerate all Medicare providers and would provide summary information to support MTS functions. In order to develop that capability, HCFA is proposing to expand the UPIN system to provide identifying numbers for physicians, practitioners and medical group practices.

At this time, HCFA is also proposing to change the name of this system to better reflect the system's expanded purpose. We are proposing to change the name of this system from the ''Medicare Physician Identification and Eligibility System (MPIES),'' System No. 09–70–0525, to the ''Unique Physician/

Practitioner Identification Number (UPIN) System.'' This system will now be referred to as the UPIN system.

HCFA is proposing to change the name and structure of the unique identifier from ''Unique Physician Identification Numbers (UPIN)'' to ''Unique Physician/Practitioner Identification Numbers.'' HCFA will continue to use the acronym UPIN because Federal and state agencies, as well as private and public insurance entities are familiar with its use.

The structure of the UPIN will be changed from a 6-digit alphanumeric identifier to a 10-digit alphanumeric identifier. It will have a 6-digit base (who) identifier along with a 4-digit location (where) identifier.

These changes will enable HCFA to determine the location where the service was rendered and to decide whether a physician, practitioner and group practice whose services are billed to the program, is entitled to Medicare reimbursement. The 4-digit location identifier for physicians and the 10-digit UPINs assigned to practitioners and medical groups will be used by Medicare only for internal use—to link locally assigned providers to a national provider identifier.

Carriers will continue to use their locally assigned provider numbers in claims processing. Practitioners and group practices will not need to use their UPINs for claims reimbursement. Physicians, suppliers, and laboratories will continue to report the physicians' base 6-digit identifier for ordering and referring requirements.

The UPIN expansion will increase system standardization, identify providers across lines, facilitate development of provider data to support MTS, and permit HCFA to respond timely to and Federal initiative to implement standard, universal health care provider identifiers.

Section 4164 (c) of the Omnibus Budget Reconciliation Act (OBRA) of 1990 requires HCFA to ''publish a directory of the unique physician identification numbers (UPIN) of all physicians providing services for which payment may be made under Part B of Title XVIII of the Social Security Act and shall include in such directory the names, provider numbers, and business addresses of all listed physicians.'' The modification and expansion of the UPIN System will enable HFCA to execute regulations found at 42 Code of Federal Regulations (CFR) 421.200 et seq., as well as the provisions of section 6204(b) of OBRA 1989 (section 1833(q) of the Act) which help HCFA identify utilization patterns that deviate from professionally-established norms, both in the performance of services and in the referral of patients for other services or ordering of other services or suppliers. This requires laboratories and durable medical equipment (DME) suppliers, as well as consulting physicians, to show on the Medicare claim form the UPIN of the ordering or referring physician.

HCFA will continue to publish an annual hard copy directory of UPINs for physicians which will assist in the identification of an ordering or referring physician. The directory will include the names, credentials, state licensed in, zip code, provider numbers, specialty, and business addresses of all listed physicians. HCFA will publish only the 6-digit base number in the directory at this time. The UPINs of practitioners and medical groups as well as the 4-digit location identifiers will not be published in the annual hard copy of the UPIN directory because these numbers will not be used for claims processing, are temporary, transitional internal-control numbers to assist HCFA to transfer locally-assigned carrier numbers to the MTS claims processing system, will not fit on existing billing forms, and may cause confusion as to which numbers should be noted on the claim form. The 10-digit UPINs of physician, practitioners and medical groups will be published annually in an electronic version of the UPIN directory.

Enrollment information will be obtained from data currently available in carrier systems. The data will be researched, verified, and complied by carriers before submission to HCFA for assignment of UPINs. Duplicate data for two or more providers will be investigated by the carrier to determine if the identified providers are the same or different individuals. Once assured that no duplication exists, HCFA will notify each carrier of the assigned UPINs. The carriers will issue the UPINs to physicians, practitioners, and group practices.

HCFA is also proposing to add the collection of tax identification numbers to the data maintained on physicians, practitioners, and medical group practices in this system. Carriers will be required to provide tax identification numbers (e.g., social security or employee identification number) for all physicians, practitioners, and groups to the UPIN system. Tax identification numbers are needed to assure accurate identification of carriers' physician, practitioner, and group records.

The tax identification number provided by a carrier should be the one reported to the Internal Revenue Service and used in HCFA's 1099 program. Carriers are currently collecting this information. Records will not be retrieved by tax identification numbers. Records are retrieved alphabetically by an individual's or group's name or UPIN. Any uses of social security numbers in data identification, retrieval, and analysis are in full compliance with section 7 of the Privacy Act. Data identification at the individual level is necessary to link information collected by HCFA to other data records in order to further the operation and effectiveness of the Medicare program.

Also at this time, HCFA is proposing to add a new routine use (number 10) to this systems notice for the release of data to other Federal and state agencies. The Privacy Act (5 U.S.C. 552a) permits us to disclose information about an individual without consent of the individual for ''routine uses,'' that is, disclosure is permitted for purposes that are compatible with the purpose for which we have collected the information.

The new proposed routine use would permit release of data to other Federal and to state agencies. This routine use has two purposes: First, disclosure would be permitted to other Federal and to state agencies to enhance the accuracy of Medicare's payment of health benefits through improved coordination of benefits and second, disclosure would be permitted to enable other Federal and state agencies to fulfill their own Medicare-related processing procedures.

HCFA has recently received a number of requests from other Federal agencies, e.g., the Department of Labor, Veterans Affairs (Office of Civilian Health and Medical Programs of the Uniformed Services), and from state Medicaid agencies, asking for help in coordinating benefits and fulfilling their own Medicare-related processing procedures. To fulfill these requests requires the release of data from the UPIN system. A primary purpose of the Medicare program, for which this system of records was established, is to assure high quality and effective health care to Medicare beneficiaries. We believe that this purpose can be better accomplished through coordination of provider data between and among other Federal and state agencies. The proposed new routine use in the revised system meets the compatibility criteria, inasmuch as the information is collected for administering payments to providers in accordance with Title XVIII of the Social Security Act. We anticipate that disclosure under the routine use will not result in any unwarranted adverse effects on personal privacy.

The routine use will be numbered (10) and will read as follows:

(10) To another Federal or a state agency to: (1) Contribute to the accuracy of HCFA's proper payment of Medicare health benefits, or (2) enable such agency to administer a Federal or state health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal or state statute or regulation, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is be made cannot reasonably be accomplished unless the data are provided in individually identifiable form;

c. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use on another project under the same conditions and with written authorization from HCFA; and

(c) When required by law;

(d) Secures a written statement attesting to the next recipient's understanding of, and willingness to abide by the following provisions:

(1) Not to use the data for purposes other than those for which the data were disclosed;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that individuals could be identified (i.e., the data must not be individual-specific and must be aggregated to a level where no data cells have 10 or fewer individuals); and

(3) Not to publish any aggregation of the data without HCFA's approval.

The proposed new routine use for the MPIES (hereafter UPIN) system is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7), since it is compatible with the purpose for which the data were collected. We are publishing the notice in its entirety below for the convenience of the reader.

Dated: April 30, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–11260 Filed 5–6–96; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1996.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: June 6–7, 9:00 am–5:00 p.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Agenda: The full Commission will meet on Thursday, June 6 from 9:00 a.m. to 5:00 p.m. and Friday, June 7 from 9:00 am. to 12:00 noon. Agenda items will include, but not be limited to: a report on the National Vaccine Program; a report on the Advisory Committee on Immunization Practices' (ACIP) Polio Vaccine Policy; a report on the Acellular Pertussis Vaccines Symposium; a report on Vaccine-Associated Paralytic Poliomeyelitis; an update on the Centers of Disease Control and Prevention and Food and Drug Administration's Vaccine Safety Activities; report of the Vaccine Safety Subcommittee; and routine Program reports.

Public comment will be permitted before noon and/or at the end of the Commission meeting, as time permits. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Jerry Anderson, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, MD 20852; Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room G and H before 10:00 on June 6–7. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Mr. Anderson, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, Maryland 20852; Telephone (301) 443–6593.

Name: National Advisory Committee on Rural Health.

Date and Time: June 9–12, 1996; 3:00 p.m.

Place: Tamarron Hilton, 40290 U.S. Highway 550 North, Durango, CO 81301 (970) 259–2000 FAX (970) 259–0745

The meeting is open to the public.

Agenda: The meeting will begin on Sunday, June 9, with a working session for the Health Care Financing and Education and Health Services Work Groups and a legislative update. The plenary session will begin at 8:30 a.m. on Monday, June 10, with topics including a discussion of Employee Retirement Income Security Act, Medicaid, and the Colorado Rural Perspective. On Tuesday, June 11, there will be a site visit to Shiprock, NM, with transportation provided. Individuals interested in participating in the site visit should contact Arlene Granderson at (301) 443–0613.

The meeting will convene at 8:30 a.m. on Wednesday, June 12. Adjournment is anticipated by 12:30 p.m.

Anyone requiring information regarding the subject Committee should contact Dena S. Puskin, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson or Lisa Shelton, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Name: Material and Child Health Research Grants Review Committee.

Date and Time: June 12–14, 1996, 9:00 a.m.

Place: Conference Room ''O'', Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on June 12, 1996, 9:00 a.m.—10:00 a.m.

Closed for remainder of meeting

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Science, Education and Analysis, Maternal and Child Health Bureau, who will report on program issues, congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on June 12 at 10:00 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Gontran Lamberty, Dr.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Agenda Items are subject to change as priorities dictate.

Dated: May 2, 1996.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 96–11305 Filed 5–6–96; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Submission for OMB Review; Comment Request; Effect of Chronic Occupational Exposure to Pesticides on Neurological Function in Farmworkers (Workers' Health Study)

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the Federal Register on November 3, 1995, pages 55845–55846, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: Title: Effect of Chronic Occupational Exposure to Pesticides on Neurological Function in Farmworkers (Workers' Health Study). Type of Information Collection Request. NEW. Need and Use of Information Collection: This is a cross-sectional study of 125 farmworkers exposed to pesticides and 125 unexposed control subjects with other jobs matched for age, sex, and ethnicity. There are few studies which document an association of subclinical neurological effects with chronic exposure. The information collected will be used to further understanding of the effects of chronic occupational exposure to pesticides on neurological function and in the assessment of public health concerns to occupational groups and the public. Frequently of Response: One time. Affected Public: Individuals or households; Farms. Type of Respondents: Male and Female adult farmworkers and control subjects. The annual reporting burden is as follows: Estimated Number of Respondents: 326 Estimated Number of Responses per Respondent: 1.92; Average Burden Hours Per Response: 1.11; and Estimated Total Annual Burden Hours Requested: 692. The annualized cost to respondents is estimated at: $6,920.00. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Exposed farmworkers	147	2.0204	1.1515	342
Control subjects	179	1.8379	1.0639	350
Total	326	.....	.....	692

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Freja Kamel, Senior Staff Fellow, DIR, EBMP, Epidemiology Branch, NIEHS, Bldg. 101, Room A357, Research Triangle Park, NC 27709, or call non-toll free number (919) 541–1581.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before June 6, 1996.

Dated: April 5, 1996.

Charles Leasure,

Associate Director for Management, NIEHS.

[FR Doc. 96–11352 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

Public Health Services

National Institutes of Health (NIH); Notice of the Meeting of the National Advisory Eye Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on June 6, 1996, Executive Plaza North, Conference Room G, 6130 Executive Boulevard, Bethesda, Maryland.

The NAEC meeting will be open to the public on June 6 from 8:30 a.m. until approximately 11:30 a.m. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Sec. 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public on June 6 from approximately 11:30 a.m. until adjournment at approximately 5:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Council Assistant, National Eye Institute, EPS, Suit 350, 6120 Executive Boulevard, MSC–7164, Bethesda, Maryland 20892–7164, (301) 496–9110, will provide a summary of

the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health)

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11356 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the National Center for Research Resources Initial Review Group and the Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities, National Center for Research Resources (NCRR) for June 1996. These meetings will be open to the public as indicated below, to discuss program planning; program accomplishments; administrative matters such as previous meeting minutes; the report of the Director, NCRR; review of budget and legislative updates; and special reports or other issues relating to committee business. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301) 435–0888, will provide summaries of meetings and rosters of committee members. other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed below, in advance of the meeting.

Name of Committee: National Center for Research Resources Initial Review Group—Comparative Medicine Review Committee.

Dates of Meeting: June 2–4, 1996.

Place of Meeting: One Washington Circle, Conference Center, One Washington Circle, NW., Washington, DC 20037, (202) 872–1680.

Closed: June 2, 6:30 p.m.—Until recess.

Open: June 3, 8:30 a.m.—10:00 a.m.

Closed: June 3, 10:00 a.m.—until adjournment.

Scientific Review Administrator: Dr. Raymond O'Neill, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0820.

Name of Committee: National Center for Research Resources Initial Review Group—Research Centers in Minority Institutions Review Committee.

Date of Meeting: June 3, 1996.

Place of Meeting: Doubletree Hotel, Alpine Room, 1750 Rockville Pike, Rockville, MD 20852, (301) 468–1100.

Open: June 3, 8:30 a.m.—10:30 a.m.

Closed: June 3, 10:30 a.m.—until adjournment.

Scientific Review Administrator: Dr. John Lymangrover, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0820.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Dates of Meeting: June 18–19, 1996.

Place of Meeting: Holiday Inn, Georgia Room, 8120 Wisconsin Avenue, Bethesda, MD 20814, (301) 562–2000.

Open: June 18, 8:00 a.m.—8:30 a.m.

Closed: June 18, 8:30 a.m.—until adjournment.

Scientific Review Administrator: Dr. Jill Carrington, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0822.

Name of Committee: National Center for Research Resources Initial Review Group—General Clinical Research Centers Review Committee.

Dates of Meeting: June 19–20, 1996.

Place of Meeting: Holiday Inn, Pallidian East, 5520 Wisconsin Avenue, Chevy Chase, MD 20815, (301) 658–1500.

Open: June 19, 8:00 a.m.—9:00 a.m.

Closed: June 19, 9:00 a.m.—until adjournment.

Scientific Review Administrator: Dr. Bela J. Gulyas, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0818.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.389, Research Centers in Minority Institutions; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health)

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11359 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Center for Human Genome Research; Amended Notice of Meeting of the National Advisory Council for Human Genome Research

Notice is hereby given of a change in the open session of the meeting of the National Advisory Council for Human Genome Research, Holiday Inn, Washington/Chevy Chase, Palladian East/Center, 5520 Wisconsin Avenue, Chevy Chase, Maryland, notice of which was published in the Federal Register (61 FR 18397) on April 25, 1996.

This meeting was scheduled to be open to the public on Monday, May 20, from 8:30 a.m. to 11:30. The open session will now begin at 9:30 a.m. to approximately 12 noon.

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11367 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Heart, Lung, and Blood Institute at 8:30 a.m. on June 6–7, 1996, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7S235, Bethesda, Maryland 20892.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting will be closed to the public for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Edward D. Korn, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, (301) 496–2116, will furnish substantive program information.

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11355 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Initial Review Group (IRG) meeting:

Name of IRG: Clinical Trials Review Committee.

Date: June 23–24, 1996.

Time: 7:00 p.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Dr. David M. Monsees, 6701 Rockledge Drive, Rm. 7178, Bethesda, Maryland 20892, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11363 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Initial Review Group (IRG) meeting:

Name of IRG: Heart, Lung, and Blood Program Project Review Committee.

Date: June 20, 1996.

Time: 8:00 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Dr. Jeffrey H. Hurst, 6701 Rockledge Drive, Rm. 7208, Bethesda, Maryland 20892, (301) 435–0303.

Purpose/Agenda: To review and evaluate program project grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11364 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Persons listed below in advance of the meeting.

Name of Panel: Pediatric Cardiovascular Disease.

Dates of Meeting: June 6, 1996.

Time of Meeting: 9:00 a.m.

Place of Meeting: Wood Club Room B, Wood Building, Children's Hospital of Philadelphia, South 34th Street, Philadelphia, Pennsylvania.

Agenda: Identify important areas of research to be included in the next solicitation for SCORs in pediatric cardiovascular disease.

Contact Person: Constance Weinstein, Ph.D, NIH/NHLBI/DHVD, Rockledge Center Two, Room 9144, 6701 Rockledge Drive, Bethesda, Maryland 20892–7940, (301) 435–0510.

Name of Panel: Lung Biology Disease.

Dates of Meeting: June 10–11, 1996.

Time of Meeting: 7:30 p.m.

Place of Meeting: June 10-Ramada Inn, 1775 Rockville Pike, Rockville, Maryland 20852. June 11 (8:00 a.m.)—Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852.

Agenda: To identify current issues in basic and clinical topics related to several programs in the Division of Lung Disease's Lung Biology and Disease Program for future NHLBI-supported research

Contact Person: Dorothy B. Gail, Ph.D, NIH/NHLBI/DLD, Rockledge Center Two, Room. 10018, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0222.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11365 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Microbiology and Infectious Diseases Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on June 6–7, 1996, at the Holiday Inn Gaithersburg, Washingtonian Room, 2 Montgomery Village Avenue, Bethesda, Maryland.

The meeting will be open to the public from 8 a.m. to 9 a.m. on June 6, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until recess on June 6, and from 8 a.m. until adjournment on June 7. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Gary Madonna, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee,

NIAID, NIH, Solar Building, Room 4C21, Rockville, Maryland 20892, telephone 301–496–3528, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11357 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council on June 3–4, 1996. The meeting will be held in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland. The meeting of the Subcommittee on Planning will be open on June 3. The Subcommittee meeting will held in Building 31, Room 2A03, from 8:00 a.m. to 10:00 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

The Council meeting will be open to the public on June 3 from 10:00 a.m. until 5:00 p.m. The agenda includes a report by the Director, NICHD, a report by the Human Learning and Behavior Branch, and a presentation on the Interactive Research Project Grants Mechanism. The meeting will be open on June 4 upon completion of applications at approximately 12:30 p.m. to adjournment if any policy issues are raised which need further discussion.

In accordance with the provisions set forth in sections 552(c)(4), and 552(c)(6), Title 5, United States Code and section 10(d) of Public Law 92–463, the meeting of the full Council will be closed to the public on June 4 from 8:00 a.m. to approximately 12:30 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NICHD, 6100 Executive Boulevard, Room 5E03, National Institutes of Health, Bethesda, Maryland 20892–7510, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research, and 93.865, Research for Mothers and Children, National Institutes of Health)

Dated May 1, 1996.

Susan K. Feldman,

Committee Management Officer NIH.

[FR Doc. 96–11358 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on June 17–19, 1996. The meeting will be held in the 4th Floor Conference Room, Building 4, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public on June 17 from 11 a.m. to 11:45 a.m. and from 1 p.m. to recess. On June 18 the meeting will be open from 9:30 a.m. until 12 p.m. During the open sessions, the permanent staff of the Laboratory of Cellular and Molecular Immunology will present and discuss their immediate, past and present research activities.

In accordance with the provisions set forth in Sec. 552b(c)(6), Title 5, U.S.C. and Sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 17 from 8:30 a.m. until 11 a.m., and from 11:45 a.m. until 1 p.m.; on June 18 from 8:30 a.m. until 9:30 a.m., and from 12 p.m. until recess; and on June 19 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Thomas J. Kindt, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 4A31, telephone 301–496–3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93–301, National Institutes of Health)

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11361 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on June 17–18, 1996, at the Georgetown Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, D.C.

The meeting will be open to the public from 8:30 a.m. to 9:45 a.m. on June 17 to discuss administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities which will include a discussion of budgetary matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:45 a.m. until recess on June 17, and from 8:30 a.m. until adjournment on June 18. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a

clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Kevin M. Callahan, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, Room 4C20, Bethesda, Maryland 20892, telephone 301–496–8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health)

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11362 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant application.

Committee Name: Violence and Traumatic Street Review Committee.

Date: June 3–June 4, 1996.

Time: 8:30 a.m.

Place: One Washington Circle, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Sheri L. Schwartzback, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: Child Psychopathology and Treatment Review Committee.

Date: June 4–June 5, 1996.

Time: 9 a.m.

Place: Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Angela L. Redlingshafer, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: Clinical Neuroscience and Biological Psychopathology Review Committee.

Date: June 5–June 7, 1996.

Time: 9 a.m.

Place: Hampshire Hotel, 1310 New Hampshire Ave., NW., Washington, DC 20036.

Contact Person: Maureen L. Eister, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: Clinical Psychopathology Review Committee.

Date: June 6–June 7, 1996.

Time: 8:30 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Jean Speas, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301 443–1340.

Committee Name: Mental Disorders of Aging Review Committee.

Date: June 6–June 7, 1996.

Time: 9 a.m.

Place: Barcelo Washington, Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: W. Gregory Zimmerman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: Clinical Centers and Special Projects Review Committee.

Date: June 6–June 7, 1996.

Time: 9 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: Services Research Review Committee.

Date: June 11–June 12, 1996.

Time: 9 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Angela L. Redlingshafer, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: Neuropharmacology and Neurochemistry Review Committee.

Date: June 12–June 14, 1996.

Time: 8 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3367.

Committee Name: Treatment Assessment Review Committee.

Date: June 13–June 14, 1996.

Time: 8:30 a.m.

Place: Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: Social and Group Processes Review Committee.

Date: June 13–June 14, 1996.

Time: 9 a.m.

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rehana A. Chowdhury, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Child/Adolescent Development, Risk, and Prevention Review Committee.

Date: June 13–June 14, 1996.

Time: 9 a.m.

Place: The Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone Number: 301, 443–6470.

Committee Name: Health Behavior and Prevention Review Committee.

Date: June 13–June 14, 1996.

Time: 9 a.m.

Place: Embassy Suites Hotel, 4300 Military Road, N.W., Washington, DC 20015.

Contact Person: Monica F. Woodfork, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: Psychobiology, Behavior, and Neuroscience Review Committee.

Date: June 14–June 15, 1996.

Time: 9 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: William H. Radcliffe, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: Molecular, Cellular, and Developmental Neurobiology Review Committee.

Date: June 17–June 18, 1996.

Time: 8 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: Epidemiology and Genetics Review Committee.

Date: June 17–June 19, 1996.

Time: 9 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Shirley Williams, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367

Committee Name: Cognitive Functional Neuroscience Review Committee.

Date: June 20–June 21, 1996.

Time: 9 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3367.

Committee Name: Perception and Cognition Review Committee.

Date: June 20–June 21, 1996.

Time: 9 a.m.

Place: The Latham Hotel Georgetown, 3000 M Street, N.W., Washington, DC 20007.

Contact Person: Regina M. Thomas, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Mental Health AIDS and Immunology Review Committee—1.
Date: June 24–June 27, 1996.
Time: 8:30 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Regina M. Thomas, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Mental Health AIDS and Immunology Review Committee—2.
Date: July 1–July 2, 1996.
Time: 8:30 a.m.
Place: One Washington Circle, One Washington Circle, N.W., Washington, DC 20037.
Contact Person: Rehana A. Chowdhury, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Office, NIH.

[FR Doc. 96–11366 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Disease; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Research Training Grant Applications in Allergy and Immunology.
Date: May 13, 1996.
Time: 4:00 p.m.
Place: Teleconference, Solar Bldg., Room 3C40, 6003 Executive Blvd., Bethesda, MD 20892, (301) 402–4988.
Contact Person: Dr. Dianne E. Tingley, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C07, Bethesda, MD 20892–7610, (301) 496–0818.
Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: April 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11369 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on June 13–14, 1996, convening at 9 a.m. on June 13 and at 8:30 a.m. on June 14 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 13 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Lois Ann Colaianni at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C., Pub. L. 92–463, the meeting will be closed on June 13 from 10:30 a.m. to approximately 5 p.m. and on June 14 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine.

The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11353 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Biomedical Library Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 19–20, 1996, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 19 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Roger W. Dahlen at 301–496–4221 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting on June 19 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on June 20 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: May 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11360 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings that are being held to review grant applications:

Study section/contact person	May–July 1996 meetings	Time	Location
AIDS and Related Research Initial Review Group:			
AIDS & Related Research 1, Dr. Sami Mayyasi, 301–435–1216	July 6–7	8:00 a.m.	Seattle Marriott Hotel, Seattle, WA.
AIDS & Related Research 2, Dr. Gilbert Meier, 301–435–1219	July 19	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3, Dr. Marcel Pons, 301–435–1217	July 27–28	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 4, Dr. Mohindar Poonian, 301–435–1218.	July 12–13	8:30 a.m.	Hilton Hotel, Bellevue, WA.
AIDS & Related Research 5, Dr. Mohindar Poonian, 301–435–1218.	July 14	8:30 a.m.	Hilton Hotel, Bellevue, WA.
AIDS & Related Research 6, Dr. Gilbert Meier, 301–435–1219	July 1	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 7, Dr. Gilbert Meier, 301–435–1219	July 12	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Biobehavioral and Social Sciences Initial Review Group:			
Behavioral Medicine, Ms. Carol Campbell, 301–435–1257	June 26–27	8:30 a.m.	St. James Hotel, Washington, DC.
Bio-Psychology, Dr. Gilbert Meier, 301–435–1219	June 13–14	9:00 a.m.	Doubletree Hotel, Rockville, MD.
Human Development & Aging–1, Dr. Anita Miller Sostek, 301–435–1260.	June 13–14	9:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging–2, Dr. Robert Weller, 301–435–1261.	June 18–19	8:30 a.m.	Hyatt Regency Hotel, Bethesda, MD.
Human Development & Aging–3, Dr. Anita Miller Sostek, 301–435–1260.	June 17–18	9:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Social Sciences & Population, Dr. Robert Weller, 301–435–1261	June 13–14	8:00 a.m.	Washington Vista Hotel, Washington, DC.
Biochemical Sciences Initial Review Group:			
Biochemistry, Dr. Chhanda Ganguly, 301–435–1739	June 12–14	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Medical Biochemistry, Dr. Alexander Liacouras, 301–435–1740	June 20–21	8:30 a.m.	One Washington Circle Hotel, Washington, DC.
Pathobiochemistry, Dr. Zakir Bengali, 301–435–1742	June 6–7	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Physiological Chemistry, Dr. Donald Schneider, 301–435–1165	June 20–21	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Biophysical and Chemical Sciences Initial Review Group:			
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, 301–435–1728.	June 20–21	9:00 a.m.	Manor on Golden Pond, Holdemess, NH.
Biophysical Chemistry, Dr. John Beisler, 301–435–1727	June 13–15	8:30 a.m.	One Washington Circle Hotel, Washington, DC.
Medicinal Chemistry, Dr. Ronald Dubois, 301–435–1722	June 5–7	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Metallobiochemistry, Dr. Asher Hyatt, 301–435–1751	June 27–28	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, 301–435–1726.	June 13–14	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Physical Biochemistry, Dr. Gopa Rakhit, 301–435–1721	June 17–18	8:30 a.m.	Doubletree Hotel, Rockville, MD.
Cardiovascular Sciences Initial Review Group:			
Cardiovascular, Dr. Gordon Johnson, 301–435–1212	June 5–7	8:00 a.m.	Doubletree Hotel, Alexandria, VA.
Cardiovascular & Renal, Dr. Anthony Chung, 301–435–1213	June 17–19	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Cardiovascular Sciences, Dr. Anshumali Chaudhari, 301–435–1210.	June 10–11	8:00 a.m.	Doubletree Hotel, Rockville, MD.
Hematology–1, Dr. Clark Lum, 301–435–1195	June 6–7	8:00 a.m.	Doubletree Hotel, Rockville, MD.
Hematology-2, Dr. Jerrold Fried, 301–435–1777	June 13–14	8:30 a.m.	Holiday Inn, Bethesda, MD.
Pharmacology, Dr. Jeanne Ketley, 301–435–1789	June 19–20	8:00 a.m.	American Inn, Bethesda, MD.
Cell Development and Function Initial Review Group:			
Biological Sciences-2, Dr. Camilla Day, 301–435–1024	June 18–19	8:30 a.m.	The Georgetown Inn, Washington, DC.
Cellular Biology and Physiology-1 Dr. Gerald Greenhouse, 301–435–1023.	June 5–6	8:30 a.m.	Hyatt Fair Lakes, Fairfax, VA.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, 301–435–1022.	June 10–11	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Human Embryology & Development-2, Dr. Sherry Dupere, 301–435–1021.	June 27–28	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects, Dr. G. B. Warren, 301–435–1019.	July 18–19	8:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Molecular Biology, Dr. Robert Su, 301–435–1025	June 27–29	8:30 a.m.	The Georgetown Inn, Washington, DC.
Molecular Cytology, Dr. Ramesh Nayak, 301–435–1026	June 6–7	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Endocrinology and Reproductive Sciences Initial Review Group:			
Biochemical Endocrinology, Dr. Michael Knecht, 301–435–1046	June 5–6	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Endocrinology, Dr. Syed Amir, 301–435–1043	June 10–11	8:30 a.m	The King George Hotel, San Francisco, CA.

Study section/contact person	May–July 1996 meetings	Time	Location
Human Embryology & Development-1, Dr. Michael Knecht, 301–435–1046.	June 20–21	8:00 a.m	Doubletree Hotel, Rockville, MD.
Reproductive Biology, Dr. Dennis Leszczynski, 301–435–1044	June 17–18	8:00 a.m	Doubletree Hotel, Rockville, MD.
Reproductive Endocrinology, Dr. Abubakar Shaikh, 301–435–1042	July 1–2	8:00 a.m.	Doubletree Hotel, Rockville, MD.
Genetic Sciences Initial Review Group:			
Biological Sciences-1, Dr. Nancy Pearson, 301–435–1047	June 23–30	8:30 a.m	St. James Hotel, Washington, DC.
Genetics, Dr. David Remondini, 301–435–1038	June 6–8	9:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Genome, Dr. Cheryl Corsaro, 301–435–1045	June 17–19	9:00 a.m	St. James Hotel, Washington, DC.
Mammalian Genetics, Dr. Jerry Roberts, 301–435–1037	June 27–28	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Health Promotion and Disease Prevention Initial Review Group:			
Epidemiology & Disease Control-1, Dr. Scott Osborne, 301–435–1782.	June 18–20	8:30 a.m	Marriott Residence Inn, Bethesda, MD.
Epidemiology & Disease Control-2, Dr. J. Terrell Hoffeld, 301–435–1781.	June 24–26	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Nursing Research, Dr. Gertrude McFarland, 301–435–1784	June 20–21	8:30 a.m.	Holiday Inn, Bethesda, MD.
Immunological Sciences Initial Review Group:			
Allergy & Immunology, Dr. Gene Zimmerman, 301–435–1220	June 17–18	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Immunology, Dr. Calbert Laing, 301–435–1221	June 17–18	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Immunobiology, Dr. Betty Hayden, 301–435–1223	May 29–30	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, 301–435–1224.	June 12–14	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Immunology, Virology & Pathology, Dr. Lynwood Jones, 301–435–1153.	June 19–21	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Infectious Diseases and Microbiology Initial Review Group:			
Bacteriology & Mycology–1, Dr. Timothy Henry, 301–435–1147	June 17–18	8:30 a.m.	Marriott Residence Inn, Bethesda, MD.
Bacteriology & Mycology–2, Dr. William Branche, Jr., 301–435–1148.	June 19–21	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett Keefer, 301–435–1152	June 24–25	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics–1, Dr. Martin Slater, 301–435–1149.	June 19–21	8:30 a.m.	Holiday Inn, Governor's House, Washington, DC.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, 301–435–1150.	June 20–21	8:30 a.m.	Ramada Inn, Rockville, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, 301–435–1146.	June 20–21	8:00 a.m.	Holiday Inn, Bethesda, MD.
Virology, Dr. Rita Anand, 301–435–1151	June 20–21	8:30 a.m.	Doubletree Hotel, Rockville, MD.
Musculoskeletal and Dental Sciences Initial Review Group:			
General Medicine A–1, Dr. Harold Davidson, 301–435–1776	June 2–4	7:00 p.m.	Marriott Hotel, Pooks Hill, Bethesda, MD.
General Medicine B, Dr. Shirley Hilden, 301–435–1198	June 3–4	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Oral Biology & Medicine-1, Dr. Priscilla Chen, 301–435–1787	June 24–25	8:30 a.m.	Holiday Inn Old Town, Alexandria, VA.
Oral Biology & Medicine-2, Dr. Priscilla Chen, 301–435–1787	June 10–11	8:30 a.m.	Holiday Inn Old Town, Alexandria, VA.
Orthopedics & Musculoskeletal, Dr. Daniel McDonald, 301–435–1215.	June 19–20	8:00 a.m.	Holiday Inn, Gaithersburg, MD.
Neurological Sciences Initial Review Group:			
Neurological Sciences-1, Dr. Carl Banner, 301–435–1251	June 5–7	8:30 a.m.	Holiday Inn, Bethesda, MD.
Neurological Sciences-2, Dr. Kathleen Michels, 301–435–1250	June 10–12	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Neurology B–1, Dr. Lillian Pubols, 301–435–1255	June 4–6	8:30 a.m.	Omni Shoreham Hotel, Washington, DC.
Neurology B–2, Dr. Herman Teitelbaum, 301–435–1254	June 23–25	7:00 p.m.	Holiday Inn, Chevy Chase, MD.
Neurology C, Dr. Kenneth Newrock, 301–435–1252	June 26–28	8:30 a.m.	Radisson Barcelo Hotel, Washington, DC.
NUTRITIONAL AND METABOLIC SCIENCES INITIAL REVIEW GROUP:			
General Medicine A–2, Dr. Mushtaq Khan, 301–435–1778	June 24–26	8:30 a.m.	Doubletree Hotel, Rockville, MD.
Metabolism, Dr. Krish Krishnan, 301–435–1779	July 2–3	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Nutrition, Dr. Sooja Kim, 301–435–1780	June 24–25	8:30 a.m.	Doubletree Hotel, Rockville, MD.
ONCOLOGICAL SCIENCES REVIEW GROUP:			
Chemical Pathology, Dr. Edmund Copeland, 301–435–1715	June 19–21	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Therapeutics–1, Dr. Philip Perkins, 301–435–1718	June 27–28	8:30 a.m.	Hyatt Hotel, Arlington, VA.
Experimental Therapeutics–2, Dr. Marcia Litwack, 301–435–1719	June 26–28	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Metabolic Pathology, Dr. Marcelina Powers, 301–435–1720	June 18–20	8:30 a.m.	Holiday Inn, Bethesda, MD.
Pathology A, Dr. Larry Pinkus, 301–435–1214	June 11–13	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Pathology B, Dr. Martin Padarathsingh, 301–435–1717	June 18–20	8:00 a.m.	Georgetown, Holiday Inn, Washington, DC.
Radiation, Dr. Paul Strudler, 301–435–1716	June 3–5	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Pathophysiological Sciences Initial Review Group:			

Study section/contact person	May–July 1996 meetings	Time	Location
Lung Biology & Pathology, Dr. Anne Clark, 301–435–1017	June 12–13	8:00 a.m.	St. James Hotel, Washington, DC.
Physiology, Dr. Michael Lang, 301–435–1015	June 13–14	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Respiratory & Applied Physiology, Dr. Everett Sinnett, 301–435–1016.	June 18–19	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Sensory Sciences Initial Review Group:			
Hearing Research, Dr. Joseph Kimm, 301–435–1249	June 10–12	8:30 a.m.	Radisson Barcelo Hotel, Washington, DC.
Sensory Disorders & Language, Dr. Jane Hu, 301–435–1245	June 12–14	8:30 a.m.	Capitol Holiday Inn, Washington, DC.
Visual Sciences A, Dr. Luigi Giacometti, 301–435–1246	June 12–14	8:30 a.m.	Ramada Inn, Rockville, MD.
Visual Sciences B, Dr. Leonard Jakubczak, 301–435–1247	June 19–21	8:30 a.m.	The Latham Hotel, Washington, DC.
Visual Sciences C, Dr. Carole Jelsema, 301–435–1248	June 12–14	8:00 a.m.	Omni Shoreham Hotel, Washington, DC.
Surgery, Radiology and Bioengineering Initial Review Group:			
Diagnostic Radiology, Dr. Eileen Bradley, 301–435–1178	June 19–20	8:00 a.m.	The Georgetown Inn, Washington, DC.
Surgery & Bioengineering, Dr. Paul Parakkal, 301–435–1172	June 24–25	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Surgery, Anesthesiology & Trauma, Dr. Gerald Becker, 301–435–1750.	June 19–20	1:00 p.m.	Holiday Inn, Bethesda, MD.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 01, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–11368 Filed 5–6–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, May 31, 1996.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will convene at Headquarters, Marconi Station at 10 a.m. for a field trip to the Bog House.

The commission members will then meet at 1 p.m. at Park Headquarters, Marconi Station for their regular business meeting which will be held for the following reasons:

1. Adoption of Agenda.
2 Approval of Minutes of Previous Meeting.
3. Reports of Officers.
4. Old Business.
5. Dune Shack Policy—R. Philbrick.
6. Report of Superintendent: GMP Update, Lighthouses, Provincetown Airport Terminal Design.
7. Use & Occupancy Subcommittee—W. Hammatt.
8. New Business.
9. Agenda for next meeting.
10. Date for next meeting.
11. Public comment.
12. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663.

Dated: April 30, 1996.

Maria Burks,

Superintendent.

[FR Doc. 96–11303 Filed 5–6–96; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 27, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 22, 1996.

Carol D. Shull,

Keeper of the National Register.

FLORIDA

Monroe County

USS ALLIGATOR, Address Restricted, Islamoranda vicinity, 96000581

GEORGIA

McDuffie County

Pine Top Farm, Jct. of US 78 and US 278, 2 mi. E of Thomson, Thomson vicinity, 96000582

KANSAS

Sedgwick County

Monroe—Mahan House, 1357 S. Broadway, Wichita, 96000583

NEVADA

White Pine County

Osceola (East) Ditch, Starting .5 mi. E of Grouse Canyon and running approximately 18 mi. SE to Lehman Cr., Great Basin National Park, Baker vicinity, 96000584

NEW YORK

New York County

Mount Morris Park Historic District (Boundary Increase), Roughly bounded by Adam Clayton Powell, Jr. Blvd. and Mt. Morris Park W. from W. 118th to W. 124th Sts., New York, 96000585

TEXAS

Bexar County

Calcasieu Building, 202–214 Broadway, San Antonio, 96000588

Dallas County

Titche—Goettinger Department Store, 1901 Main St., Dallas, 96000586

Harris County

Lewis Apartment Building, 2815–2817 Smith St., Houston, 96000587

UTAH

Cache County

Richmond Relief Society Hall (Mormon Church Buildings in Utah MPS), 15 E. Main St., Richmond, 96000589

Sampete County

Moroni Opera House, Jct. of UT 132 and W. Main St., Moroni, 96000589

VIRGINIA

Franklin County

Cahas Mountain Rural Historic District, Jct. of VA 613 and US 220, Peak of Cahas Mt. to near Roanoke Co. line, Boones Mill, 96000593

Rockbridge County

Kennedy—Lunsford Farm, Approximately .5 mi. S of VA 606, near jct. with VA 604, Raphine, 96000592

Salem Independent County

Downtown Salem Historic District, Roughly, Main St. from Broad St. to College Ave., Salem, 96000591

The following property was omitted from a previous Notification of Pending Nominations list:

OREGON

Lane County

Amazon Family Housing Complex, Jct. of Patterson St. and 22nd Ave., Eugene, 95000090

[FR Doc. 96–11302 Filed 5–6–96; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

[USITC SE–96–08]

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 16, 1996 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W. Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–747 (Preliminary) (Fresh Tomatoes from Mexico)—briefing and vote.
5. Outstanding action jackets:
   1. ID–96–006, Request for report approval in Inv. No. 332–237 (Production Sharing: Use of U.S. Components and Materials in Foreign Assembly Operations).
   2. ID–96–007, 1996 Annual report in Inv. No. 332–345 (U.S. Trade Shifts in Selected Industries).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 3, 1996

Donna R. Koehnke,

Secretary.

[FR Doc. 96–11534 Filed 5–3–96; 3:36 pm]

BILLING CODE 7020–02–P

Sunshine Act Meeting

[USITC SE–96–09]

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 29, 1996 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–731 (Final) (Bicycles from the People's Republic of China)—briefing and vote.
5. Outstanding action jackets:
   1. ID–96–008, Initiation of an investigation under section 332 of the Tariff Act of 1930 on South American trading partners' schedules of commitments.
   2. O/TATA–96–004, Report on S. 1550 (2-Amino-3-chlorobenzoic acid, methyl ester).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 3, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–11535 Filed 5–3–96; 3:40 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 22, 1995, and published in the Federal Register on January 22, 1996, (61 FR 1603), Organix Inc., 65 Cummings Park, Woburn, Massachusetts 01801, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I.
Morphine (9300)	II.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Organix Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated; April 29, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–11310 Filed 5–6–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 2, 1996.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to

the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* enhance the quality, utility, and clarity of the information to be collected; and
* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture.

OMB Number: 1215–0032.

Agency Number: WH–200–MIS.

Frequency: Annually.

Affected Public: Individuals or households; Business or other for-profit; Not-for-Profit institutions; Farms.

Number of Respondents: 5,000.

Estimated Time Per Respondent: 10–30 minutes.

Total Burden Hours: 1,100.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $1,750.

Description: This collection of information is used to determine whether a retail or service or agricultural employer should be authorized to pay subminimum wages to full-time students pursuant to the provisions of section 14(b) of the Fair Labor Standards Act.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–11346 Filed 5–6–96; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Extension of the Unemployment Insurance (UI) Revenue Quality Control Program (RQC); 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 revision and extension of the UI RQC Program. 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 July 8, 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 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: Eve MacDonald, Unemployment Insurance Service, Employment and Training Administration, Department of Labor, Room C 4514, 200 Constitution Ave, N.W., Washington, D.C., 20210; 202 219–5309 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Since 1987, all State Employment Security Agencies (SESAs) except the Virgin Islands have been required by regulation at 20 CFR 602 to operate a Quality Control program to assess their Unemployment Insurance tax and benefit programs. Revenue Quality Control (RQC) developed new measures for tax performance to replace those previously gathered under the Quality Appraisal (QA) system. RQC is designed to assess the major internal UI tax functions by utilizing three methodologies: (1) Computed Measures are indicators of timeliness and completeness based on data automatically generated via the existing ET 581 automated report. (2) Program Reviews assess accuracy through a two-fold examination: (a) ''Systems Reviews'' examine tax systems for the existence of internal controls; (b) small ''Acceptance Samples'' of those systems' transactions are then examined to verify the effectiveness of those controls. (3) Through the use of non-evaluative surveys, RQC documents the methods and procedures the SESA uses to manage its tax operation. Best practices are identified and this information is shared with other SESAs.

The last tax function to be covered by RQC, Cashiering, has recently been developed and transmitted to all States. As with the other sections of RQC, the Cashiering section will include a Systems Review. Since the quality of payment applications will be evident through the Acceptance Samples of other sections of RQC, there will be no Acceptance Sample specific to Cashiering. Instead, a measure is in place to identify timeliness of deposit of employer payments into the clearing account. Deposit activities dictate that the measurement be conducted manually; therefore, an Estimation Sample (ES) review, similar in form to

the Quality Appraisal review for deposit promptness, has been developed.

II. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 USC 3506 (c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB control No. 1205–0332. A revision is also proposed to substitute the RQC design for measuring cashiering timeliness for the Quality Appraisal design. The proposed revision should have little or no impact on total burden hours because it replaces the sample used in the Quality Appraisal cashiering review and no longer includes an additional Acceptance Sample of 60 to test for accuracy in posting.

The overall approach used in RQC sampling is similar in function to the QA sampling approach for Cashiering. There are, however, some differences in estimation sampling that enhance the RQC review approach:

- Deposit timeliness will be measured during the second quarter report period instead of the third quarter report period measured by QA. More payments are typically received for the second quarter, providing a more accurate reading of the SESAs' effectiveness;
- States have the flexibility to choose the period during which the ES will be selected (the QA time period was the same for all States). This should allow States to draw the sample from the most representative flow of remittances;
- A standard sample size has been established, to give all States' estimates similar precision;
- A less cumbersome, more direct method of calculating timeliness has been developed for the ES than the one used in the QA;
- The ES includes a review of the Cashiering activities performed by agents of the SESAs previously excluded from QA; and
- The new timeliness measure now reflects timeliness of electronically transferred payments.

AGENCY: Employment and Training Administration, Department of Labor.

Title: Unemployment Insurance Revenue Quality Control Program.

OMB Number: 1205–0332.

Affected Public: State governments (State Employment Security Agencies).

Total Respondents: Fifty two State governments.

Frequency: Annually.

Total Responses: Fifty two.

Average Time Per Response: 1750 hours.

Estimated Total Burden Hours: 91,000 hours for 52 States.

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: May 1, 1996.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 96–11345 Filed 5–6–96; 8:45 am]

BILLING CODE 4510–30–P

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. West End Coal Company, Deep Mine

[Docket No. M–96–24–C]

West End Coal Company, Deep Mine, 525 Pine Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Last Chance Slope (I.D. No. 36–07859) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. West End Coal Company, Deep Mine

[Docket No. M–96–25–C]

West End Coal Company, Deep Mine, 525 Pine Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its Last Chance Slope (I.D. No. 36–07859) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnel. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. West End Coal Company, Deep Mine

[Docket No. M–96–26–C]

West End Coal Company, Deep Mine, 525 Pine Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its Last Chance Slope (I.D. No. 36–07859) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. West End Coal Company, Deep Mine

[Docket No. M–96–27–C]

West End Coal Company, Deep Mine, 525 Pine Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Last Chance Slope (I.D. No. 36–07859) located in Schuylkill County, Pennsylvania. The petitioner proposes to visually examine each seal for physical damage from the slope gunboat during the preshift examination after an air quality reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. West End Coal Company, Deep Mine

[Docket No. M–96–28–C]

West End Coal Company, Deep Mine, 525 Pine Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Last Chance Slope (I.D. No. 36–07859) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be

installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. West End Coal Company, Deep Mine

[Docket No. M–96–29–C]

West End Coal Company, Deep Mine, 525 Pine Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.1100 (quantity and location of firefighting equipment) to its Last Chance Slope (I.D. No. 36–07859) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Amax Coal Company

[Docket No. M–96–30–C]

Amax Coal Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County, Illinois. The petitioner proposes to extend the length of portable trailing cables to 825 feet. These cables would carry electrical power from the working face transformer to the mobile roof supports. The trailing cables connecting the working section transformer to the mobile roof supports are No. 4 3/C G–GC. The petitioner is conducting second mining in certain areas of its mine where Voest-Alpine mobile roof supports are used and asserts that a safer mining process and more effective roof control is provided during second mining than if timbers and other types of support are used. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Eighty-Four Mining Company

[Docket No. M–96–31–C]

Eighty-Four Mining Company, 655 Church Street, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1100–2(e) (quantity and location of firefighting equipment) to its Mine 84 (I.D. No. 36–00958) located in Washington County, Pennsylvania. The petitioner proposes to provide two portable fire extinguishers or one portable fire extinguisher with twice the required capacity at each temporary electrical installation instead of providing one extinguisher and rock dust at temporary electrical installations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Pittsburg & Midway Coal Mining Company

[Docket No. M–96–32–C]

Pittsburg & Midway Coal Mining Company, P.O. Box 6518, Englewood, Colorado 80155–6518 has filed a petition to modify the application of 30 CFR 75.325(b) (air quantity) to its Sebree No. 1 Mine (I.D. No. 15–17044) located in Webster County, Kentucky. The petitioner proposes to provide positive ventilation by using the stopping line constructed to separate the intake and return air courses in the rooms previously developed on the same panel. The petitioner states that the stopping line would be constructed and maintained in accordance with the requirements in 30 CFR 75.333; that permanent stopping lines would be constructed when rooms are driven more than 600 feet deep and temporary stopping lines would be used when rooms are driven 600 feet deep or less, as measured from the centerline of the panel from which the rooms are driven; and that air flow volumes would be measured in accordance with 30 CFR 75.360(c)(1) and 75.362(c)(1). The petitioner asserts that application of the standard would result in a diminution of safety to the miners; and that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Pittsburg & Midway Coal Mining Company

[Docket No. M–96–33–C]

Pittsburg & Midway Coal Mining Company, P.O. Box 6518, Englewood, Colorado 80155–6518 has filed a petition to modify the application of 30 CFR 75.360(c)(1) (preshift examination) to its Sebree No. 1 Mine (I.D. No. 15–17044) located in Webster County, Kentucky. The petitioner proposes to provide positive ventilation by using the stopping line constructed to separate the intake and return air courses in the rooms previously developed on the same panel. The petitioner states that the stopping line would be constructed and maintained in accordance with the requirements in 30 CFR 75.333; that permanent stopping lines would be constructed when rooms are driven more than 600 feet deep and temporary stopping lines would be used when rooms are driven 600 feet deep or less, as measured from the centerline of the panel from which the rooms are driven; and that air flow volumes would be measured in accordance with 30 CFR 75.360(c)(1) and 75.362(c)(1). The petitioner asserts that application of the standard would result in a diminution of safety to the miners; and that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Pittsburg & Midway Coal Mining Company

[Docket No. M–96–34–C]

Pittsburg & Midway Coal Mining Company, P.O. Box 6518, Englewood, Colorado 80155–6518 has filed a petition to modify the application of 30 CFR 75.362(c)(1) (on-shift examination) to its Sebree No. 1 Mine (I.D. No. 15–17044) located in Webster County, Kentucky. The petitioner proposes to provide positive ventilation by using the stopping line constructed to separate the intake and return air courses in the rooms previously developed on the same panel. The petitioner states that the stopping line would be constructed and maintained in accordance with the requirements in 30 CFR 75.333; that permanent stopping lines would be constructed when rooms are driven more than 600 feet deep and temporary stopping lines would be used when rooms are driven 600 feet deep or less, as measured from the centerline of the panel from which the rooms are driven; and that air flow volumes would be measured in accordance with 30 CFR 75.360(c)(1) and 75.362(c)(1). The petitioner asserts that application of the standard would result in a diminution of safety to the miners; and that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Pittsburg & Midway Coal Mining Company

[Docket No. M–96–35–C]

Pittsburg & Midway Coal Mining Company, P.O. Box 6518, Englewood 80155–6518 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Sebree No. 1 Mine (I.D. No. 15–17044) located in Webster County, Kentucky. The petitioner proposes to mine through oil and gas wells. The petitioner asserts that the proposed alternative method would

provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 6, 1996. Copies of these petitions are available for inspection at that address.

Dated: April 30, 1996.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 96–11273 Filed 5–6–96; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL INSTITUTE FOR LITERACY

Proposed Agency Information Collection Activities

AGENCY: National Institute for Literacy.

ACTION: Notice and request for comments.

Correction

In notice document 96–10329 appearing on page 17326 in the issue of Friday, April 19, 1996, in the first column, Notice 96–10146 appearing on page 18162, in the issue of Wednesday, April 24, 1996, in the third column, Notice 96–10329 appearing on page 18446 in the issue of Thursday, April 25, 1996, in the second column, and Notice 96–10328 appearing on page 18446 in the issue of Thursday, April 25, 1996, in the third column, after *Frequency of Collection* insert the following correction:

Request for Comments

NIFL solicits comments to: (1) 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. (2) Evaluation the accuracy of the agency's estimates of the burden of the proposal collection of information. (3) Enhance the quality, utility, and clarity of the information to be collected. (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies of other forms of information technology, e.g., permitting electronic submission of responses.

Andrew J. Hartman,

Director, National Institute for Literacy.

[FR Doc. 96–11439 Filed 5–6–96; 8:45 am]

BILLING CODE 6055–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting; Regular Meeting of the Board of Directors

TIME AND DATE: 2:00 p.m., Monday, May 17, 1996.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W., Suite 800, Board Room, Washington, D.C. 20005.

STATUS: Open/Closed.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary 202/376–2441.

Agenda.

I. Call to Order
II. Approval of Minutes:
  March 4, 1996, Regular Meeting
III. Committee Appointments:
  a. Audit Committee
  b. Budget Committee
  c. Personnel Committee
IV. Election of Officers
V. Board Appointments
VI. Treasurer's Report
VII. Executive Director's Quarterly Management Report
VIII. Personnel Matters (Closed Meeting)
IX. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 96–11452 Filed 5–3–96; 1:00 pm]

BILLING CODE 7570–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services; Research in Learning in Museums, Request for Proposals

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of Availability of Funds for Cooperative Agreement to Support Research in Learning in Museums.

SUMMARY: This announcement applies to a request for proposals to support, through a cooperative agreement(s), a collaborative team(s) which will design and conduct a program of theoretical and applied research on learning in museums. It is intended that support for this Request for Proposals is provided from the Institute of Museum Services, the National Endowment for the Arts, the National Endowment for the Humanities and the National Science Foundation.

DEADLINE DATE FOR TRANSMITTAL OF PROPOSALS: Proposals must be received by Friday, August 2, 1996.

PROPOSALS DELIVERED BY MAIL: A proposal sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW, Room 609, Washington, DC 20506.

PROPOSALS DELIVERED BY HAND: Proposals that are hand-delivered must be taken to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW, Room 609, Washington, DC 20506. Hand-delivered applications will be accepted between 9 a.m. and 4:30 p.m. (Washington DC time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

ADDRESSES: Institute of Museum Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Program Director, (202) 606–8539. Deaf and hearing impaired individuals may call the TDD Line, (202) 606–8636.

SUPPLEMENTARY INFORMATION: The issue of learning in a museum setting is complex. Here, learning is viewed both as a process (involving perception and memory as shaped by prior experience to develop neurological structures) and as a product (including a range of ideas, feelings and sensations). This view mandates a broad conception in considering museum learning.

As defined here, museums include art, history, natural history, and science museums; art, nature and science centers; historic houses and sites; children's museums planetariums, arboretums and botanical gardens, zoos and aquariums and general and specialized museums. They provide a wide range of content to a virtually unlimited variety of audiences. Thus the issues of museum learning cuts across a broad spectrum of contexts and contents.

Museums share many of the characteristics of other educational organizations both in their educational missions and in their conduct of educational practice. However, museum based learning has important dimensions which may afford unique experiences for learners:

Museums learning is inherently sensory, experiential and contextual. Much of what a visitor learns in a museum is subject specific, generally based on that museum's role as a repository of cultural artifacts, but much

of it is not. Museum learning is often ''object-centered'' and activity centered,'' but visitors also perceive and remember the other facets of a museum experience including the rich social, physical and personal contexts.

Museum learning provides opportunities for active learning and provides for multiple points of entry into the learning experience. Because a museum visit may offer varied experiences, including the potential for discovery learning and for self-directed and self-paced inquiry, museums may provide learning experiences for a variety of learners with differing characteristics, needs expectations and learning styles.

Although museum learning experiences include formal, nonformal. and informal modes, they often differ from or transcend the typical offerings of formal, sequential instruction tied to specified goals with clearly identified populations which are found in other educational organizations.

AVAILABLE FUNDS: An award(s) is expected to be no greater than $1,000,000 and may be less, depending on the availability of funds and the quality of proposals. The supporting funding agencies reserve the right to make one, multiple or no awards as a result of this request for proposals. The coordinating agency, the Institute of Museum Services, reserves the right to negotiate with the applicant to ensure that the goals of this request for proposals are met.

APPLICATION FORMS: Applicants may obtain application packets for Research in Learning in Museums, Request for Proposals, by contacting the Institute of Museum Services, 1100 Pennsylvania Avenue, NW, Room 609, Washington, DC 20506, (202) 606–8539, TDD Line—(202) 606–8636, or e-mail at imsinfo@ims.fed.us.

APPLICABLE REGULATIONS: In addition to statutes and regulations referenced in the Statement of Assurances, these Office of Management and Budget Circulars may apply to the management of project activities by the cooperative team(s), depending on the organizational structure of the official applicant(s): A–21 Cost Principles for Educational Institutions; A–87 Cost Principles for State and Local Governments; A–102 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; A–110 Uniform Administrative Requirement for Grants and Other Agreements to Non-Profit Organizations; A–122 Cost Principles for Non-Profit Organizations; A–128 Audits of Institutions of Higher Education and Other Non-Profit Institutions; A–133 Audits of State and Local Governments.

(Catalogue of Federal Domestic Assistance No. 45.301, Institute of Museum Services)

Dated: May 1, 1996.

Diane B. Frankel,

Director.

[FR Doc. 96–11261 Filed 5–6–96; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review: Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control numbers.

1. Type of submission new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR 81, Standard Specifications for Granting of Patent Licenses.

3. The form number if applicable:

4. How often the collection is required: Application for licenses are submitted once. Other reports are submitted annually or as other events require.

5. Who will be required or asked to report: Applicants for and holders of NRC licenses to NRC inventions.

6. An estimated number of annual respondents: 0.

7. The estimated number of annual respondents: 0.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 35 hours; however, no applications are anticipated during the next three years.

9. An indication of whether Section 3507(d), Pub. L 104–13 applies: Not applicable.

10. Abstract: 10 CFR Part 81 establishes the standard specifications for the issuance of licenses to rights in inventions covered by patents or patent applications invested in the United States, as represented by or in the custody of the Commission and other patents in which the Commission has legal rights.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level, Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by June 6, 1996. Peter Francis, Office of Information and Regulatory Affairs (3150–0121), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland this 1st day of May 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–11294 Filed 5–6–96; 8:45 am]

BILLING CODE 7590–01–P

Jefferson Proving Ground (U.S. Army), Indiana

[Docket No. 040–08838]

AGENCY: Nuclear Regulatory Commission.

ACTION: Finding of no significant impact associated with amendment to Materials License SUB–1435 for Release of Area South of Firing Line for Unrestricted Use, U.S. Army Jefferson Proving Ground, Madison, IN.

The U.S. Nuclear Regulatory Commission is considering issuing an amendment to Material License No. SUB–1435, to release, for unrestricted use, that portion of the U.S. Army

Jefferson Proving Ground (JPG), Madison, IN, located south of the firing line, in response to a license amendment application dated September 29, 1995.

Summary of Environmental Assessment

Background

The U.S. Army (the licensee) holds NRC Material License No. SUB–1435 to use, store, and test depleted uranium (DU) munitions at the JPG, Madison, Indiana. In accordance with the Defense Authorization Amendments and Base Realignment and Closure Act of 1988 (Public Law 100–526), the licensee was required to close the JPG base on September 30, 1995.

The JPG site has been divided into two parts, separated along a line (firing line) connecting Gate 19 (west) with Gate 1A (east). The two areas have been designated ''the area north of the firing line'' and ''the area south of the firing line.''

The area north of the firing line contains the DU impact area and consists of approximately 12,000,000 m^2 (3,000 acres) located in the south-central portion of the site. The area located south of the firing line contains buildings and facilities that were used for storage of DU material and is the area that the licensee has requested be released for unrestricted use.

Identification of the Proposed Action

In a letter dated September 29, 1995, the licensee referenced previous briefings and correspondence as the bases for undertaking the following proposed actions: (1) Transferring the license (SUB–1435) to Headquarters, U.S. Army Test and Evaluation Command (TECOM), until license termination and defining the DU impact area north of the firing line as the area that would be covered by the license (SUB–1435) transferred to TECOM; and (2) informing NRC of the completion of the decommissioning of the area south of the firing line and the proposed release of the area for unrestricted use.

The Need for the Proposed Action

In accordance with the requirements of the Defense Authorization Amendment and Realignment Act of 1988 (Public Law 100–526), the licensee was required to close the JPG site on September 30, 1995. Upon base closure the JPG Army Command which managed the licensed material at the site was eliminated. On elimination of the JPG Army Command, responsibility for the licensed material at the JPG site was effectively transferred from the JPG Command (subordinate command) to TECOM.

The portion of the JPG site located south of the firing line has been remediated to levels in compliance with the current NRC decommissioning criteria for unrestricted release. The licensee submitted a Final Survey Report (FSR) to NRC by letter dated March 8, 1995. The staff reviewed the licensee's FSR and conducted a Confirmatory Radiological Survey (CRS) on June 6–8, 1995. Based on the FSR and CRS data, the staff concluded that the area south of the firing line meets NRC criteria for unrestricted release and can be removed from License SUB–1435.

Environmental Impact of the Proposed Action

The actual oversight of the licensee's licensed activities at JPG was effectively transferred from the JPG Army Command to TECOM, on closure of the JPG facility. The overall effects of base closure, on the JPG license oversight, were the elimination of a lower level of management and the transfer of responsibility to a higher level of management within the same organization. The practical impact of the transfer is a change in the radiation protection officers and their locations.

The staff, based on its review of the licensee's organization, has determined that it is acceptable for the licensee to transfer licensing responsibility for the area north of the firing line to what amounts to a higher level of management within the same organization. The reassignment of the JPG licensing responsibility to this higher level of management (TECOM) will not have an adverse impact on the environment nor on the health and safety of the public.

The licensee's submittals indicate that the residual contamination levels comply with NRC's criteria for unrestricted release established in ''The Action Plan to Ensure Timely Decommissioning of Site Decommissioning Management Plan Sites'' (57 FR 13391) of April 16, 1992. A confirmatory radiological survey conducted by NRC provided the staff with confidence in the accuracy and reliability of the licensee's final survey results. To alleviate concerns regarding potential inadvertent intrusion, from the area south of the firing line, into the DU impact area north of the firing line, the licensee has recently completed installation of a fence that will separate the area south of the firing line from the area north of the firing line. The NRC finds that because these criteria have been met and the fence has been installed, there is no significant impact on the environment and the area south of the firing line can be released for unrestricted use.

Alternatives to the Proposed Action

Alternatives to the proposed actions include:

(a) Transferring the License to another Army Command;

(b) Postponing release of the area south of the firing line until final disposition of the area north of the firing line is determined; and

(c) Taking no action.

The JPG Army Command is a subordinate command to TECOM. The technical capabilities of TECOM exceed those of the JPG Command. The Army had the option of selecting other commands with equivalent or greater capability upon elimination of the JPG Command upon base closure. The licensee's decision to transfer the license responsibility to a higher level Command (TECOM) with greater technical capability is acceptable.

Postponing release of the area south of the firing line is not consistent with the timeliness requirements of 10 CFR 40.42(g)(1) or the licensing provisions of § 40.42(j). Therefore, timely release of the remediated JPG portion south of the firing line is consistent with NRC regulations. In addition, postponing its release would hinder the licensee's plans to use the land and facilities for other useful purposes.

The ''no action alternative'' is unacceptable for the same reasons as postponed release.

Agencies and Persons Consulted

NRC has consulted with the Indiana State Department of Health, Division of Indoor and Radiological Health concerning this environmental assessment. This agency has concurred with the NRC's assessment that the area south of the firing line at JPG can be released for unrestricted use.

Finding of No Significant Impact

Based on the environmental assessment, the Commission concludes that the issuance of the license amendment will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

The environmental assessment and the documents related to this proposed action are available for public inspection and copying at NRC's Public Document Room, 2120 L Street, N.W., Washington, DC 20555.

Dated at Rockville, Maryland this day of April, 1996.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–11293 Filed 5–6–96; 8:45 am]

BILLING CODE 7590–01–P

Environmental Assessment Finding of No Significant Impact Related to Amendment to Materials License No. SUB–908 BP Chemicals, Inc., Lima, OH

The U.S. Nuclear Regulatory Commission is considering issuing an amendment to Materials License No. SUB–908, held by BP Chemicals, Inc. (BPC), to authorize the remediation, decommissioning and construction of the mixed waste pond closure project at its facility in Lima, Ohio.

On November 19, 1991, NRC published a notice of Consideration of Amendment to BPC's License and Opportunity for Hearing (56 FR 58406). There was no response to that notice.

Environmental Assessment Summary

Proposed Action

The proposed action is as proposed by the licensee in a second revised application dated February 7, 1994, which supplemented the initial application dated August 15, 1991, and the first revision dated February 28, 1992. In this action, BPC is proposing to use onsite disposal, under 10 CFR Part 20.2002, at its facility in Lima, Ohio, to dispose of the mixed waste with concentrations up to the Option 2 limit in NRC's 1981 Branch Technical Position (1981 BTP) on ''Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations'' (46 FR 52061). Materials to be disposed of are currently located in surface impoundments, hereinafter called ponds, that contain sludges contaminated with mixed wastes. The disposal will be in up to three lined closure cells designed and constructed according to the Resource Conservation and Recovery Act (RCRA) criteria.

Need for Proposed Action:

The proposed action is necessary to remediate the existing depleted uranium contamination and to decommission the ponds containing the radioactive wastes. Onsite disposal is proposed to accomplish the objectives of the remediation and decommissioning. Based on the advantages and disadvantages of the five other alternatives investigated, BPC concluded that the 10 CFR Part 20.2002 disposal option is the preferred choice.

Environmental Impacts of the Proposed Action:

The NRC staff reviewed the levels of contamination, the proposed remediation and decommissioning methods, BPC's preferred disposal option, and the radiological and environmental controls that will be used during the remediation and decommissioning. These controls include the as low as is reasonably achievable (ALARA) program, worker dosimetry, a bioassay program for workers, air monitoring, routine surveys, and routine monitoring of both airborne and liquid effluent releases to meet 10 CFR Part 20 radiation protection requirements. Worker and public doses will be limited so that exposures will not exceed 10 CFR Part 20 requirements.

BPC proposed to remediate the contaminated sludge ponds in accordance with ''Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, and Special Nuclear Materials,'' dated August 1987. BPC also proposed to dispose of the depleted uranium-contaminated mixed wastes in the RCRA-designed onsite closure cells, in accordance with the 1981 BTP. Based on uranium solubility testing of the mixed wastes, the maximum depleted uranium concentration that is acceptable for disposal in the closure cells is 11.1 Bq/gm (300 pCi/gm) total depleted uranium.

The staff also analyzed the radiological impacts to the public from the disposal of depleted uranium-contaminated sludges and soils in the proposed on-site closure cells. Radiological impacts on members of the public could result from inhalation and ingestion of releases of radioactivity in air and in water during the remediation operations, and direct exposure to radiation from radioactive materials at the site during remediation operations. The public will also be exposed to radiation as a result of the on-site disposals in the closure cells. Decommissioning workers will receive doses primarily by ingestion, inhalation and direct exposure during the remediation activities. In addition to impacts from routine operations, the potential radiological consequences of accidents were considered.

The BPC provided an estimate of the dose to the public from airborne effluents to be generated during the remediation activities associated with the pond closure project. During normal operations, the licensee expects airborne concentrations to be minimal, because the sludges and soils will be handled in a wet state. NRC staff agrees with this assessment.

Liquids discharged to the U.S. Environmental Protection Agency (EPA) permitted deep well injection system will have concentrations less than the EPA proposed drinking water limits for uranium, and will result in doses less than 0.057 mSv/yr (5.7 mrem/yr) to individuals hypothetically, consuming this water.

The BPC performed dose assessments for two of the three closure cells using RESRAD computer code, Version 5.05. The RESRAD computer code estimates radiation dose impacts assuming a resident-farmer scenario, where an individual would live in a residence on the site, grow food, and consume all drinking water from a water well. The NRC staff verified BPC's analyses and obtained similar results to BPC's. These dose assessments include the worst-case scenarios, with the proposed cover over the closure cells assumed to have been removed. The predicted doses are less than NRC's limit of 1 mSv/yr (100 mrem/yr) for radiation doses to the public in 10 CFR Part 20. NRC staff considers that, if a third closure cell is constructed, the dose assessment results of the two closure cells will envelope the dose impacts of the third closure cell.

During the remediation of the waste from the ponds and placement of the waste into the closure cells, workers will receive doses from direct exposure and from the inhalation of airborne depleted uranium. The maximum estimated direct exposure is for workers standing on the contaminated soil from the ponds. The estimated exposure is 4.0E–05 mSv/hr (4.0E–03 mrem/hr). Assuming a 2000-hour work year, the maximally exposed worker would receive an annual dose of 0.08 mSv/yr (8 mrem/yr). The resulting dose is a small fraction of the 50 mSv/yr (5000 mrem/yr) limit for workers (routine occupational exposure) in 10 CFR Part 20.

Based on the above evaluations, radiation exposures, of persons living or traveling near the site, caused by onsite operations, will be well within limits contained in NRC's regulations and will be small in comparison to natural background radiation. The licensee has a radiation protection program that will maintain radiation exposures and effluent releases within the limits of 10 CFR Part 20, and will maintain exposures ALARA.

BPC and the NRC staff also evaluated the radiological impacts from potential accidents. The predicted maximum

exposure to a member of the public (BPC employee not involved in the remediation project) from an accident scenario would be 0.07 mSv (7 mrem) internal exposure. This potential exposure would result when a truck, transporting contaminated soil, tipped over, spread fuel over the spilled soil, and caught fire. The exposed individual was assumed to be standing downwind of the accident at the controlled access area boundary. The calculated dose is a small fraction of the annual dose limit to the public of 1.0 mSv/yr (100 mrem/yr) in 10 CFR Part 20. The NRC staff verified these calculations used by the licensee.

The predicted maximum exposure to a worker from an accident scenario, other than the above truck accident, would be 7.7E–04 mSv (7.7E–02 mrem). This is based on an explosion of the pug mill mixer, where the worker was immersed in a ''contaminated'' cloud of suspended sludge for 10 seconds while leaving the immediate area of the explosion. This resultant exposure is a small fraction of the 50 mSv/yr (5000 mrem/yr) annual exposure limit for radiation workers and would not significantly add to the worker's annual exposure. The NRC staff verified calculations used by the licensee.

Because no wastes are expected to be shipped offsite to a licensed low-level waste disposal site, there are no expected impacts from the transportation or offsite disposal of radioactive materials.

The NRC staff also considered nonradiological impacts and concluded that all such impacts are negligible.

The NRC staff examined the distribution of minority and low-income communities near the BPC site. Based on the data, there is no potential for environmental justice issues because of race, because no minority exceeds 20 percent of the total population. Because the site represents an insignificant risk to the public health and safety, and the human environment, any residual radioactivity left at the site is not expected to disproportionately impact minority or low income populations near the BPC site. The staff concludes that no environmental justice potential occurs at the BPC site.

Alternatives to the Proposed Action

Six alternatives were investigated that resulted in the selection of onsite disposal as the recommended and preferred option by BPC. They are:

- No action;
- Pond water treatment only;
- Disposal at an existing commercial low-level radioactive waste disposal site;
- On-site temporary storage followed by off-site permanent disposal at a future, commercial low-level radioactive waste disposal site;
- Treatment of the mixed waste to remove the hazardous constituents and disposal of the remaining low-level radioactive waste at a commercial low-level radioactive waste disposal site;
- On-site disposal under 10 CFR Part 20.2002 (BPC's preferred option).

The advantages and disadvantages of these alternatives, are described in the EA.

Conclusions

The onsite permanent disposal under 10 CFR Part 20.2002 (the BPC's preferred option) consists of removing and stabilizing the contaminated material, and disposing of the wastes in up to three closure cells designed and constructed according to the RCRA criteria. This disposal option complies with the provisions of 10 CFR Part 20.2002.

The environmental and public health impacts would be minimized to ALARA standards. No additional lands are required. There will be no adverse impacts caused by off-site waste transportation because no off-site waste transport is involved. Also, occupational exposures will be minimized. The estimated cost for the mixed waste pond closure project is $6 million, plus a contingency factor of 25 percent.

The NRC staff concludes that there are no reasonably available alternatives, to the BPC's preferred action, that are obviously superior.

Agencies and Persons Consulted, and Sources Used

This EA was prepared entirely by NRC's Office of Nuclear Material Safety and Safeguards staff in Rockville, Maryland, and Region III staff in Lisle, Illinois. Review comments were solicited on the draft EA from the Ohio Department of Health, the Ohio Environmental Protection Agency, and the Allen County Combined Health District, Lima, Ohio.

Finding of No Siginficant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly the Commission has determined not to prepare an environmental impact statement for the proposed action.

Additional Information

For further details with respect to the proposed action, see: (1) BPC's license amendment application submittals dated August 15, 1991, February 28, 1992, and February 7, 1994; and (2) the complete Environmental Assessment. The documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, N.W., Washington, DC 20555.

Dated at Rockville, Maryland, this 1st day of May 1996.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–11291 Filed 5–6–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of May 6, 13, 20, and 27, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 6

Friday, May 10

10:00 a.m.
Briefing on Severe Accident Master Integration Plan (Public Meeting)
(Contact: Themis Speis, 301–415–6802)

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of May 13—Tentative

Monday, May 13

2:00 p.m.
Briefing by Commonwealth Edison (Public Meeting)

Wednesday, May 15

2:00 p.m.
Briefing on Performance Assessment Program in HLW, LLW, and SDMP (Public Meeting)
(Contact: Norman Eisenberg, 301–415–7285)

3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

Week of May 20—Tentative

Wednesday, May 22

10:00 a.m.
Briefing on Status of NRC Operator Licensing Initial Examination Pilot Process (Public Meeting)
(Contact: Stuart Richards, 301–415–1031)

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

2:00 p.m.

Briefing by International Programs (Closed—Ex. 1)

Friday, May 24

9:30 a.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)

Week of May 27—Tentative

Thursday, May 30

2:00 p.m.
Briefing on Status of Dry Cask Storage Issues (Public Meeting)
(Contact: William Travers, 301–415–8500)

Friday, May 31

10:00 a.m.
Briefing on NRC Inspection Activities (Public Meeting)
11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

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: May 3, 1996.

Andrew L. Bates,

Senior Level Advisor, Office of the Secretary.

[FR Doc. 96–11529 Filed 5–3–96; 3:51 pm]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Motor Carrier Advisory Committee; Charter Renewal

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of charter renewal.

SUMMARY: The charter for the National Motor Carrier Advisory Committee (the Committee) has been renewed for a two-year period of time from 1996 through 1998, effective on January 29, 1996. The Committee acts in an advisory capacity to the Federal Highway Administrator. It makes recommendations intended to improve the safety and productivity of the motor carrier industry and the effectiveness of the FHWA's programs and policies. The Committee reviews research projects, regulations, and programs including those involving commercial motor vehicle licensing and taxation, uniformity, and safety. Meetings of the Committee are open to the public and must be announced in the Federal Register. Copies of the Committee's charter are available upon request.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, HIA–20, Room 3104, 400 Seventh Street, SW., Washington 20590, (202) 366–1861. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except for Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: April 29, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–11371 Filed 5–6–96; 8:45 am]

BILLING CODE 4910–22–P

Surface Transportation Board [1]

[STB Finance Docket No. 32857]

Burlington Northern Railroad Company—Lease Exemption— Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board exempts under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–25 the lease by Burlington Northern Railroad Company of Union Pacific Railroad Company's 1.0-mile line of railroad from milepost 32.0 to milepost 33.0, at Valmont, CO, subject to standard employee protective conditions.

DATES: This exemption is effective on June 6, 1996. Petitions to stay must be filed by May 17, 1996. Petitions to reopen must be filed by May 28, 1996.

ADDRESSES: Send pleadings referring to STB Finance Docket No. 32857 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Michael E. Roper, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: April 23, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–11315 Filed 5–6–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32899]

Owensville Terminal Company, Inc.—Acquisition and Operation Exemption—Poseyville & Owensville Railroad Company, Inc. [9623]

Owensville Terminal Company, Inc. (OTC), a noncarrier, filed a notice of exemption to acquire from Poseyville & Owensville Railroad Company, Inc. (P&O), and operate approximately 11.2 miles of rail branch line in Gibson and Posey Counties, IN, between milepost 271.0 in Poseyville and milepost 282.2 in Owensville.[2] The transaction was to be consummated on or after April 19, 1996.[3]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] P&O owns the line and operates it as a branch line, using equipment and labor supplied under contract by Garden Spot & Ohio Railroad (GS&O). The line connects with GS&O at Poseyville.

[3] P&O was placed into receivership by the Gibson County Superior Court, Gibson County, IN, in Cause No. 26001–9303–CP–0010. On March 19, 1993, the court appointed Robert W. Musgrave (Musgrave) receiver for P&O. Pursuant to a March 26, 1996 court order, Musgrave agreed to sell the line (real estate, leases and licenses, track, ties, and other track materials) to RailAmerica, Inc. (RailAmerica), a Delaware corporation. RailAmerica, in turn, will assign its rights and interests in the line to OTC, and Huron and Eastern Railway Company, Inc. (Huron), will supply the labor and equipment, as needed, for OTC to operate the line. OTC and Huron are Michigan corporations and RailAmerica subsidiaries.

proceeding to revoke the exemption under 49 U.S.C. 10502(d) [formerly section 10505(d)] may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32899, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Robert P. vom Eigen, Esq., Hopkins & Sutter, 888 16th St., N.W., Washington, D.C. 20006.

Decided: April 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–11314 Filed 5–6–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32903]

Pittsburg & Shawmut Railroad, Inc.—Acquisition and Operation Exemption—Rail Lines Controlled by Arthur T. Walker Estate Corporation (The Pittsburg & Shawmut Railroad Company, Red Bank Railroad Company and Mountain Laurel Railroad Company) [9544]

Pittsburg & Shawmut Railroad, Inc. (P&S), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate all of the lines of railroad controlled by Arthur T. Walker Estate Corporation (ATWEC),[2] *viz.*, the lines owned by The Pittsburg & Shawmut Railroad Company (Shawmut), Mountain Laurel Railroad Company (Mountain Laurel), and Red Bank Railroad Company (Red Bank).[3] All of the lines to be acquired and operated by P&S are in the State of Pennsylvania and are from: (1) Shawmut, being 96.747 miles of line (a) between Brockway Yard, Brockway (milepost 0.0) and Freeport (milepost 88.027), a distance of 88.027 miles, (b) between milepost 0.98 of the main line at Snyder Township (a/k/a milepost 0.0) and the connection with B&P (milepost 0.37), a distance of .37 miles, (c) between Brookville Yard (milepost 20.89) and the connection with Mountain Laurel (milepost 0.30), a distance of .30 miles, (d) between milepost 24.29 of the main line at Knox Township (a/k/a milepost 0.0) to the end of track (milepost 3.65), a distance of 3.65 miles, (e) between milepost 60.42 of the main line at Madison (a/k/a milepost 0.0) and the end of track (milepost 3.12), a distance of 3.12 miles, and (f) between Milepost 69.86 of the main line in East Franklin (a/k/a milepost 0.0) and the connection with B&P (milepost 1.28), a distance of 1.28 miles; (2) Mountain Laurel,[4] being 127.7 miles of line (a) between Lawsonham (milepost 6.0) and Driftwood (milepost 110.0) a distance of 104 miles, and (b) between Rose (Brookville) (milepost 0.0) and Piney (milepost 23.7), a distance of 23.7 miles; and (3) Red Bank's 12.5 miles of leased line, being (a) between Lawsonham (milepost 0.0) and Sligo (milepost 10.5), a distance of 10.5 miles, and (b) between the end of track (milepost 4.0) and Lawsonham (milepost 6.0), a distance of 2.0 miles, for a total mileage of 236.947.

Consummation was expected to be on or about April 25, 1996.

This proceeding is related to *Genesee & Wyoming Inc.—Continuance in Control Exemption—Pittsburg & Shawmut Railroad, Inc.*, STB Finance Docket No. 32904, wherein Genesee & Wyoming, Inc. has concurrently filed a petition for exemption to continue in control of P&S together with the other railroads in its system after P&S becomes a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32903, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: May 1, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–11316 Filed 5–6–96; 8:45 am]

BILLING CODE 4915–00–P

---

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] P&S maintains, and we agree, that this transaction falls under 49 U.S.C. 10901. Because P&S, a noncarrier, is acquiring all rail assets of three separate carriers, it could be argued that the transaction is subject to 49 U.S.C. 11323(a)(4). However, although Shawmut, Mountain Laurel and Red Bank are now separate, substantial corporate entities, together they comprise the single rail system of ATWEC. P&S will acquire and commence operation of the three rail lines simultaneously, and operate them as a single carrier. As a practical matter, the only effect of processing this transaction under section 10901, as opposed to section 11323, is that the class exemption at 49 CFR 1150.31 is available for section 10901 transactions involving the creation of a Class III carrier. Because this transaction only involves Class III carriers, it is immaterial, for purposes of employee protective arrangements, whether the transaction falls under section 10901 or section 11323. *See* 49 U.S.C. 10901(c) and 11326(c).

[3] Red Bank operates, with Shannon Transport, Inc. (Shannon), its rail lines under a lease and operating agreement authorized in Finance Docket No. 31705, *Shannon Transport, Inc., and Red Bank Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation.* Shannon has indicated that it will provide its written consent to the assignment of that agreement to P&S at the closing of the transaction prior to the commencement of operations by P&S.

[4] The ICC approved Mountain Laurel's acquisition of these lines in Finance Docket No. 31974, *Mountain Laurel Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation.* By petition filed December 28, 1993, the Brotherhood of Maintenance of Way Employees seeks to revoke the exemption. This matter is pending before the Board, and, as a result, P&S's acquisition of Mountain Laurel is subject to final Board action in Finance Docket No. 31974.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comments concerning an information collection titled Interpretive Rulings (12 CFR 7).

DATES: Written comments should be submitted by June 6, 1996.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557–0204, Third Floor, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be obtained by contacting Jessie Gates or Dionne Walsh, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0204), Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Interpretive Rulings (12 CFR 7).

OMB Number: 1557–0204.

Form Number: None.

Abstract: This information collection covers various recordkeeping requirements in the interpretive rulings in 12 CFR Part 7. National banks need these records to insure their compliance with applicable banking law and regulatory requirements. The OCC uses these records as an audit tool to verify bank compliance.

Type of Review: Renewal of OMB approval without change.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,430.

Total Annual Responses: 2,430.

Frequency of Response: Recordkeeping.

Total Annual Burden Hours: 4,156.

Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: April 30, 1996.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 96–11376 Filed 5–06–96; 8:45 am]

BILLING CODE 4810–33–P

Internal Revenue Service

Proposed Collection; Comment Request for Form 8697

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8697, Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.

DATES: Written comments should be received on or before July 8, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.

OMB Number: 1545–1031.

Form Number: Form 8697.

Abstract: Taxpayers required to account for all or part of any long-term contract entered into after February 28, 1986, under the percentage of completion method must use Form 8697 to compute and report interest due or to be refunded under Internal Revenue Code section 460(b)(3). The IRS uses Form 8697 to determine if the interest has been figured correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and businesses or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 12 hr. 39 min.

Estimated Total Annual Burden Hours: 63,270.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: April 29, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–11347 Filed 5–6–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form MSR E–665

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)). Currently, the IRS is soliciting comments concerning Form MSR E–665 (formerly SWR E–665), Deduction for Depletion on Ground Water Used for Irrigation.

DATES: Written comments should be received on or before July 8, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form MSR E–665, Deduction for Depletion on Ground Water Used for Irrigation.

OMB Number: 1545–0520.

Form Number: Form MSR E–665.

Abstract: This form provides a standard method of computing and reporting water depletion deductions by taxpayers who extract ground water

from the Ogallala geological formation. The IRS uses the information to determine if the depletion deduction has been computed correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Farms, individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 4,000 hours.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: April 29, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–11348 Filed 5–6–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 1041–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–A, U.S. Information Return—Trust Accumulation of Charitable Amounts.

DATES: Written comments should be received on or before July 8, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Information Return—Trust Accumulation of Charitable Amounts

OMB Number: 1545–0094

Form Number: Form 1041–A

Abstract: Form 1041–A is used to report the information required in Internal Revenue Code section 6034 concerning accumulation and distribution of charitable amounts. The data is used to verify that amounts for which a charitable deduction was allowed are used for charitable purposes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 18,000

Estimated Time per Respondent: 37 hr 21 min.

Estimated Total Annual Burden Hours: 672,300

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: April 25, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–11349 Filed 5–6–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 4563

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4563, Exclusion of Income for Bona Fide Residents of American Samoa.

DATES: Written comments should be received on or before July 8, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Exclusion of Income for Bona Fide Residents of American Samoa.

OMB Number: 1545–0173.

Form Number: Form 4563.

Abstract: This form is used by bona fide residents of American Samoa to exclude income from sources within American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands to the extent specified in Internal Revenue Code section 931. This information is used by the Service to determine if an individual is eligible to exclude possession source income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hr. 21 min.

Estimated Total Annual Burden Hours: 135.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of

public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: April 29, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–11350 Filed 5–6–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8848

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8848, Consent To Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884–2T (a) and (c).

DATES: Written comments should be received on or before July 8, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consent To Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884–2T (a) and (c).

OMB Number: 1545–1407.

Form Number: Form 8848.

Abstract: Form 8848 is used by (a) foreign corporations that have completely terminated all of their U.S. trade or business within the meaning of Regulations section 1.884–2T(a) during the tax year or (b) domestic corporations to whom a foreign corporation has transferred its U.S. assets in a transaction described in Internal Revenue Code section 381(a), if the foreign corporation was engaged in a U.S. trade or business at that time.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 5hr. 34 min.

Estimated Total Annual Burden Hours: 27,800

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: April 30, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–11377 Filed 5–6–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8842

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8842, Election To Use Different Annualization Periods for Corporate Estimated Tax.

DATES: Written comments should be received on or before July 8, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Use Different Annualization Periods for Corporate Estimated Tax.

OMB Number: 1545–1409.

Form Number: Form 8842.

Abstract: Form 8842 is a form used by corporations, tax- exempt organizations subject to the unrelated business income tax, and private foundations to annually elect the use of an annualization period under Internal Revenue Code section 6655(e)(2)(C) (i) or (ii) for purposes of figuring the corporation's estimated tax payments under the annualized income installment method.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 2hr. 21 min.

Estimated Total Annual Burden Hours: 4,700.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology.

Approved: April 30, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–11378 Filed 5–6–96; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Africa: The Art of a Continent'' (See list[1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Solomon R. Guggenheim Museum from on or about June 4, 1996, through September 29, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: May 2, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–11416 Filed 5–2–96; 4:38 pm]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, D.C. 20547–0001.

DEPARTMENT OF VETERANS AFFAIRS

Persian Gulf Expert Scientific Committee; Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with P.L. 92–463, gives notice that a meeting of the VA Persian Gulf Expert Scientific Committee will be held on:

Monday, June 3, 1996, at 9:00 a.m.–5:00 p.m.
Tuesday, June 4, 1996, at 9:00 a.m.–12:01 p.m.

The location of the meeting will be 810 Vermont Avenue, NW., Washington, D.C., Room 230.

The Committee's objectives are to advise the Under Secretary for Health about medical findings affecting Persian Gulf era veterans.

At this meeting the Committee will review all aspects of patient care and medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development, veterans benefits and/or training aspects for patients and staff.

All portions of the meeting will be open to the public except from 4:00 p.m. until 5:00 p.m. on June 3 and from 11:00 a.m. to 12:00 noon on June 4, 1996. During these executive sessions, discussions and recommendations will deal with medical records of specific patients and individually identifiable patient medical histories. The disclosure of this information is clearly an unwarranted invasion of personal privacy. Closure of this portion of the meeting is in accordance with subsection 10(d) of P.L. 92–463, as amended by P.L. 94–409, and as cited in 5 U.S.C. 552b(c)(6).

The agenda for June 3 will begin with an update on recent events, followed by responses from Committee members. The first day's agenda will also cover reports on activities of the Persian Gulf Spouses and Children Exam and the Directions for Research and Development in Veterans Affairs, as well as feedback from the Presidential Advisory Committee on Gulf War Veterans' Illnesses Interim Report.

On June 4 the Committee will hear updates from the Persian Gulf Veterans' Illnesses Investigative Team as well as activities from England's Persian Gulf Studies.

Additional information concerning these meetings may be obtained from the Executive Secretary, Office of Public Health & Environmental Hazards, 810 Vermont Avenue NW., Washington, D.C. 20420.

Dated: April 22, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–11274 Filed 5–6–95; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 61, No. 89
Tuesday, May 7, 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.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2128]

Petitions for Reconsideration, Clarification and Stay of Actions in Rulemaking Proceedings

Correction

In notice document 96–9746 appearing on page 19295, in the issue of Wednesday, May 1, 1996, make the following correction:

On page 19295, in the 1st column, in the 13th line, ''May 7, 1996.'' should read ''May 16, 1996.''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 114, 116, 117, 118, 119, 120, 121, 122, 170, 173, 175, 176, 177, 178, 179, 180, 181, 182, 183, 185

[CGD 85–080]
RIN 2115–AC 22

Small Passenger Vessel Inspection and Certification

Correction

In rule document 96–213 beginning on page 864 in the issue of Wednesday, January 10, 1996, make the following corrections:

§ 114.400 [Corrected]

1. On page 887, in the third column, in §114.400(b), in the definition *High Speed Craft*, in the last line, the equation should read: ''$V=3.7\times Displ^{.1667}$''.

2. On page 888, in the first column, in the same section, in the definition *Length*, in the second line, ''sprints'' should read ''sprits''.

§ 116.300 [Corrected]

3. On page 901, in the third column, the section heading ''§ 116.300 Sailing vessels.'' should read ''§ 116.330 Sailing vessels.''

§ 116.415 [Corrected]

4. On page 903, in §116.415(b), in the table, in column 12, ''^{1}C'' and ''^{2}C'' should read ''^{1}C′'' and ''^{2}C′'', respectively.

5. On the same page, in §116.415(c), in the table, in columns 4 and 12, ''C^{1}'' should read ''^{1}C′''.

6. On the same page, in the same table, in column 13, in the 12th entry, ''A–0'' should read ''^{1}A–0''.

§ 116.438 [Corrected]

7. On page 907, in the first column, in §116.438(m)(3), in the last line, ''of'' should read ''if''.

§ 116.500 [Corrected]

8. On page 908, in the second column, in §116.500(o)(2), ''designated'' should read ''designed''.

§ 117.64 [Corrected]

9. On page 912, in the second column, in §117.64, in the second line, ''operators'' should read ''operates''.

§ 118.300 [Corrected]

10. On page 917, in the third column, in §118.300(e), in the first line, ''most'' should read ''must''.

§ 118.410 [Corrected]

11. On page 919, in the second column, in §118.410(d), the second ''(1)'' should read ''(4)''.

§ 119.115 [Corrected]

12. On page 922, in the second column, in §119.115(b), in the second line from the bottom, ''no'' should read ''not''.

§ 119.445 [Corrected]

13. On page 925, in the third column, in §119.445(d), in the first line, ''Full'' should read ''Fill''.

§ 119.455 [Corrected]

14. On page 926, in the second column, in §119.455(a)(1)(ii), in the last line, ''lest'' should read ''least''.

15. On the same page, in the same column, in §119.455(b)(3), in the 11th line, ''dock'' should read ''deck''.

§ 119.530 [Corrected]

16. On page 927, in the second column, in §119.530(a), in the second line, ''alarms'' should read ''alarm''.

§ 120.330 [Corrected]

17. On page 929, in the third column, in §120.330, the second ''(g)'' should read ''(h)''.

§ 120.340 [Corrected]

18. On page 931, in the first column, in §120.340(p), in the eighth line, ''=10.75 ohms/mil-foot (english)'' should not have appeared.

§ 120.380 [Corrected]

19. On page 932, in the first column, in §120.380(h)(2), in the fifth line, ''responsible'' should read ''responsive''.

§ 121.704 [Corrected]

20. On page 935, in the third column, in §121.704, in the last line, ''3 CFR Part 159'' should read ''33 CFR Part 159''.

§ 122.604 [Corrected]

21. On page 942, in the first column, in §122.604(h), in the seventh line, ''March 11, 1995'' should read ''March 11, 1996''.

22. On the same page, in the same column, in §122.604(i), in the first line, insert ''and'' after ''boat''.

§ 122.702 [Corrected]

23. On the same page, in the third column, in §122.702(a), in the second line, ''inboard'' should read ''onboard''.

§ 122.704 [Corrected]

24. On the same page, in the third column, in §122.704(a), in the first line, ''fail'' should read ''fall''.

§ 122.900 [Corrected]

25. On page 943, in the third column, in §122.900, in the second line, insert ''will subject'' after ''subchapter''.

§ 170.170 [Corrected]

26. On page 944, in the first column, in §170.170(a), in the second line, ''T=cither:'' should read ''T=either:''.

§§ 173.059, 173.060, 173.061, 173.062 [Corrected]

27. On page 946, in the second column, in the table, in column 2, the second entry should read ''Or §179.360 in subchapter T of this chapter.''.

SUBCHAPTER T—[CORRECTED]

28. On the same page, in the third column, in the table of contents for Subchapter T, in the third line from the bottom, ''Electrical'' was misspelled.

§ 175.110 [Corrected]

29. On page 947, in §175.110(d), in the table heading, ''Subchapter K[1]'' should read ''Subchapter [1]K′''.

§ 175.400 [Corrected]

30. On page 948, in the first column, in §175.400, in the definition *Cargo space*, in the second line, remove ''(1) *Cargo space* means a:''.

31. On the same page, in the same column, in §175.400, in the definition *Consideration*, in the third line, ''according'' should read ''accruing''; and beginning with the fourth line, remove ''but not including a pecuniary payment accruing to an individual, person, or entity,''.

32. On the same page, in the second column, in §175.400, the definition ''*Dripproof*'' was misspelled.

33. On page 949, in the first column, in §175.400, in the definition *High Speed Craft*, in the second paragraph, in the second line, the equation should read: ''$V=3.7\times Displ^{.1667}$''.

34. On the same page, in the same column, in the definition *Lakes, bays, and sounds*, in the third line, ''lack'' should read ''lake''.

§ 176.100 [Corrected]

35. On page 954, in the first column, in §176.100(b), in the fifth line, ''abroad'' should read ''aboard''.

§ 176.105 [Corrected]

36. On the same page, in the second column, in §176.105(d), in the first line, ''Certification'' should read ''Certificate''.

37. On the same page, in the same column, in §176.105(e), in the fourth line, ''Certification'' should read ''Certificate''.

§ 176.107 [Corrected]

38. On the same page, in the same column, in §176.107(a) and (b), in the first lines, ''Certification'' should read ''Certificate''.

§ 176.110 [Corrected]

39. On the same page, in the same column, in §176.110(a) and (b), in the fifth and fourth lines respectively and the second line of the third column, ''Certification of Inspection'' should read ''Cerfiticate of Inspection''.

§ 176.310 [Corrected]

40. On page 956, in the second column, in §176.310(a), in the first line, ''Certificate'' should read ''Certification''.

41. On the same page, in the same column, in §176.310(b), in the fourth line, ''Certificate'' should read ''Certification''.

§ 176.400 [Corrected]

42. On the same page, in the same column, the section heading ''§176.000 General.'' should read ''§176.400 General.''

§ 176.404 [Corrected]

43. On page 957, in the first column, in §176.404, in the fifth line from the bottom, ''conducting'' should read ''conducted''.

§ 176.802 [Corrected]

44. On page 959, in the first column, in §176.802(c), the last line should read ''hull can be observed.''

§ 176.810 [Corrected]

45. On page 960, in §176.810(b)(2), in the table heading, ''1786.810(b)'' should read ''176.810(b)''.

§ 176.920 [Corrected]

46. On page 961, in the first column, the section heading ''§176.970 Exemptions.'' should read ''§176.920 Exemptions.''

§ 177.1010 [Corrected]

47. On page 966, in the second column, in §177.1010, in the first line, ''Class'' should read ''Glass''.

§ 178.320 [Corrected]

48. On page 967, in the third column, in §178.320(d), in the last line, ''leading'' should read ''loading''.

§ 178.330 [Corrected]

49. On page 968, in the third column, in §178.330(d)(3)(i), the second line should read: ''i=f(2L–1.5L′)/4L''.

50. On the same page, in the same column, in §178.330(d)(3)(ii), the third line should read: ''i=f(2L–L′)/4L''.

51. On the same page, in the same column, in §178.330(d)(3)(ii), in the 10th line, ''L[1]'' should read ''L′''.

§ 178.450 [Corrected]

52. On page 971, in the first column, in §178.450(a), under Recess Ration=L_R/L_C, insert ''L_C=2/3 vesel length (LOD).'' under ''L_R=the length of the recess in the after 2/3 vessel length (LOD).''

§ 179.220 [Corrected]

53. On page 972, in the third column, in §179.220(a), in NOTE 1 appearing after the table, in the second line, ''mid0point'' should read ''midpoint''.

§ 180.68 [Corrected]

54. On page 976, in the third column, in §180.68(c)(1), in the seventh line, insert ''or (b)'' after ''(a)''.

§ 180.70 [Corrected]

55. On page 977, in the second column, in §180.70(d)(1), in the second line, ''§160.010'' should read ''§161.010''.

§ 180.130 [Corrected]

56. On page 978, in the second column, in §180.137(e), in the first line, ''carried'' should read ''carries''.

§ 180.204 [Corrected]

57. On page 980, in the second column, the section heading ''§180.304 Survival craft—vessels operating on coastwise routes.'' should read ''§180.204 Survival craft—vessels operating on coastwise routes.''

§ 181.320 [Corrected]

58. On page 983, in the first column, in §181.320(c)(3), in the fourth through the sixth lines, ''and an outer cover of rubber tube, plies of braided fabric reinforcement, '' should be removed.

59. On page 984, in the first column, in §181.410(b)(2), in the last line, ''tow'' should read ''two''.

§ 182.320 [Corrected]

60. On page 987, in the third column, in §182.320(a), in the second line, ''53'' should read ''52''.

§ 182.425 [Corrected]

61. On page 989, in the first column, in §182.425(b)(6), in the second line, ''new'' should read ''raw''.

§ 182.430 [Corrected]

62. On the same page, in the third column, in §182.430, in the last paragraph, ''(1)'' should read ''(l)''.

§ 182.520 [Corrected]

63. On page 995, in the second column, in §182.520(j)(1), in the first line, ''On'' should read ''One''.

PART 183—[CORRECTED]

64. On page 997, in the second column, under the heading Subpart A, ''183.000'' should read ''183.100''.

§ 183.130 [Corrected]

65. On the same page, in the third column, in §183.130(a), in the second line, ''or'' should read ''of''.

§ 183.330 [Corrected]

66. On page 1000, in the first column, in §183.330(p), the seventh line should read: ''=10.75 ohm/mil-foot (english)''.

§ 183.350 [Corrected]

67. On the same page, in the same column, in §183.350(d), in the third line, ''slips'' should read ''clips''.

§ 185.506 [Corrected]

68. On page 1008, in the second column, in §185.506(b)(1), insert ''through'' in lieu of the first ''and''.

BILLING CODE 1505–01–D

federal register

Tuesday
May 7, 1996

Part II

Department of the Interior

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments: Type A Procedures; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA21 & 1090–AA23

Natural Resource Damage Assessments—Type A Procedures

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for assessing natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act. Federal, State, and Indian tribe natural resource trustees may use these regulations to obtain compensation from potentially responsible parties for natural resource injuries resulting from hazardous substance releases. Trustees obtain a rebuttable presumption in litigation for damages, up to $100,000, calculated in accordance with this rule. The rule does not change the overall administrative process for conducting assessments but simply revises an existing ''type A'' procedure for assessing natural resource damages in coastal and marine environments and establishes a new type A procedure for the Great Lakes.

EFFECTIVE DATE: The effective date of this final rule is June 6, 1996. The incorporation by reference of certain documents listed in this rule was approved by the Director of the Federal Register and is effective June 6, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Morton at (202) 208–3302 (for questions about the rule language) or David Rosenberger at (202) 208–3811 (for questions about the computer models). Interested parties may obtain copies of the computer models and supporting documentation free of charge from the Department through July 31, 1996, and thereafter for a fee from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, ph: (703) 487–4650. The models are also on the Internet at http://www.usgs.gov/doi/oepc/oepchome.html.

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. Background
A. Statutory Provisions
B. History of this Rulemaking
C. Oil Pollution Act Regulations
II. Relationship of Today's Final Rule to the Existing Regulations
A. Preassessment Phase
B. Assessment Plan Phase
C. Assessment Phase
D. Post-Assessment Phase
III. Nature of Type A Procedures
IV. Workings of the NRDAM/CME and NRDAM/GLE
A. Overview
B. Data Inputs and Modifications
C. Geographic Information System
D. Submodels
V. Use of the NRDAM/CME and NRDAM/GLE in Other Contexts
VI. Summary of Major Changes from the Proposed Rules
A. Rule Language
B. NRDAM/CME and NRDAM/GLE
VII. Response to Comments
A. General Comments
B. Technical Documents
C. Selection of Assessment Procedures
D. User-Supplied Information
E. Physical Fates
F. Species Distribution and Abundance
G. Toxicity and Mortality
H. Loss of Production
I. Catch and Bag Losses
J. Habitat Restoration
K. Assimilative Capacity Restoration
L. Restocking
M. Consideration of Costs and Benefits of Active Restoration
N. Damages for Fishing and Hunting Losses
O. Damages for Lost Wildlife Viewing
P. Damages for Beach and Boating Closures
Q. Judicial Review and the Rebuttable Presumption

I. Background

A. Statutory Provisions

The Department of the Interior (the Department) is amending the regulations for assessing natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.) (CERCLA). CERCLA provides that certain categories of persons, known as potentially responsible parties (PRPs), are liable for natural resource damages resulting from a release of a hazardous substance. CERCLA sec. 107(a). Natural resource damages are monetary compensation for injury to, destruction of, or loss of natural resources. CERCLA sec. 107(a)(4)(C).

Only those Federal, State, and Indian tribe officials designated as natural resource trustees may recover natural resource damages. CERCLA defines ''State'' to include:

> The District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction. CERCLA sec. 101(27).

Trustees must use all sums they recover in compensation for natural resource injuries to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources. CERCLA sec. 107(f)(1). Trustee officials may also recover the reasonable costs of assessing natural resource damages. Natural resource damages are distinct from response costs. Response costs are the costs of actions taken under the National Contingency Plan (40 CFR part 300) to remove threats to human health and the environment caused by hazardous substance releases. Today's final rule addresses only the assessment of natural resource damages and is not intended for use in connection with response-related activities, such as setting cleanup priorities.

CERCLA requires the President to promulgate regulations for the assessment of natural resource damages resulting from hazardous substance releases. CERCLA sec. 301(c). The President delegated the responsibility for promulgating these regulations to the Department. E.O. 12316, as amended by E.O. 12580. The regulations must identify the ''best available'' procedures for assessing natural resource damages. CERCLA sec. 301(c)(2). CERCLA requires that the natural resource damage assessment regulations include two types of assessment procedures. ''Type A'' procedures are ''standard procedures for simplified assessments requiring minimal field observation.'' CERCLA sec. 301(c)(2)(A). ''Type B'' procedures are ''alternative protocols for conducting assessments in individual cases.'' CERCLA sec. 301(c)(2)(B). Federal and State trustees who perform assessments in accordance with these regulations receive a rebuttable presumption in court. CERCLA sec. 107(f)(2)(C). The Department must review the regulations, and revise them as appropriate, every two years. CERCLA sec. 301(c)(3).

B. History of this Rulemaking

On March 20, 1987, the Department published a final rule establishing a type A procedure for coastal and marine environments that incorporated a computer model, known as the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). 52 FR 9041. The Department indicated that it would consider developing additional type A procedures as experience was gained with the type A procedure for coastal and marine environments. Id. at 9057. On June 2, 1988, the Department published an advance notice of proposed rulemaking soliciting comment on the development of a type A procedure for Great Lakes environments that would incorporate a computer model called the Natural Resource Damage Assessment Model for Great Lakes Environments (NRDAM/GLE). 53 FR 20143. A few months later,

the Department published an advance notice of proposed rulemaking announcing the commencement of the statutorily required biennial review of the type A procedure for coastal and marine environments. 54 FR 5093 (Feb. 1, 1989).

On July 14, 1989, the U.S. Court of Appeals for the District of Columbia Circuit issued two decisions that affected these two pending type A rulemakings. The Department had issued type B procedures on August 1, 1986. 51 FR 27674. State, industry, and environmental group petitioners challenged those procedures in *State of Ohio* v. *United States Department of the Interior* (*Ohio* v. *Interior),* 880 F.2d 432 (D.C. Cir. 1989). The court in *Ohio* v. *Interior* upheld various aspects of the type B procedures but ordered the Department to revise the type B procedures to reflect the statutory preference for using restoration costs as the measure of natural resource damages. The court used the term ''restoration costs'' to encompass the cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources. The court also ordered the Department to revise the type B procedures to allow for the recovery of all reliably calculated values lost to the public as a result of the injury to natural resources.

State, industry, and environmental group petitioners also challenged the original type A procedure for coastal and marine environments in *State of Colorado* v. *United States Department of the Interior (Colorado* v. *Interior),* 880 F.2d 481 (D.C. Cir. 1989). The court in *Colorado* v. *Interior* upheld the Department's sequential approach to developing type A procedures but urged the Department to develop additional type A procedures to address as many different cases as possible. The court also remanded the type A procedure for coastal and marine environments, based on the reasoning in the *Ohio* v. *Interior* decision, to permit the Department to allow for the calculation of restoration costs. The original type A procedure for coastal and marine environments calculated damages based solely on certain lost public uses of the injured resources.

On September 22, 1989, the Department published an advance notice of proposed rulemaking stating that it would revise the type A procedure for coastal and marine environments in compliance with *Ohio* v. *Interior* and *Colorado* v. *Interior* during the ongoing biennial review. 54 FR 39013. The Department also announced that it would modify the development of the type A procedure for Great Lakes environments to conform with *Ohio* v. *Interior* and *Colorado* v. *Interior.* 54 FR 39015 (Sept. 22, 1989).

The Department published a notice of proposed rulemaking for the type A procedure for Great Lakes environments on August 8, 1994. 59 FR 40319. The August 8, 1994, Federal Register notice also contained two proposed amendments to the natural resource damage assessment regulations that would affect all type A procedures. The Department proposed to revise the conditions under which both type A and type B procedures could be used in the same assessment, and to make explicit the scope of judicial review of assessments performed using type A procedures. The Department later extended the comment period on the August 8, 1994, proposed rule through February 6, 1995. 59 FR 54877 (Nov. 2, 1994).

On December 8, 1994, the Department issued a notice of proposed rulemaking for the modified type A procedure for coastal and marine environments. 59 FR 63300. On February 7, 1995, the Department extended the comment periods on both the proposed Great Lakes type A rule and the proposed coastal and marine type A rule through July 6, 1995. 60 FR 7155 and 7156. The Department noted that, in light of the similarities between the two proposed rules, it would consider the public comments on the two rules concurrently. Id. at 7156 and 7157. Today's final rule covers both the type A procedure for coastal and marine environments and the type A procedure for Great Lakes environments.

C. Oil Pollution Act Regulations

Originally, trustees could use the Department's regulations to assess natural resource damages resulting from either a hazardous substance release under CERCLA or an oil or hazardous substance discharge into navigable waters under the Clean Water Act (33 U.S.C. 1251 *et seq.*). However, the Oil Pollution Act of 1990 (OPA) amended the natural resource damage provisions of the Clean Water Act. See 33 U.S.C. 1321, 2702(b)(2), and 2706(a). OPA authorized the National Oceanic and Atmospheric Administration (NOAA) to develop new natural resource damage assessment regulations for assessing natural resource damages resulting from discharges, or threats of discharges, of oil into navigable waters that, once final, would supersede the provisions of the Department's regulations addressing oil. 33 U.S.C 2706(e)(1) and 2751(b). NOAA published a final OPA rule on January 5, 1996. 61 FR 439.

The Department began developing the type A procedures before the enactment of OPA and, thus, originally included both hazardous substances and oil in the NRDAM/CME and NRDAM/GLE algorithms and databases. The Department has worked closely with NOAA during the development of the type A procedures. During its rulemaking, NOAA indicated it would allow use of the Department's type A procedures under the OPA regulations. See 59 FR 1062, 1124–25 (Jan. 7, 1994); and 60 FR 39803, 39831 (Aug. 3, 1995).

NOAA's final rule states that trustees may use ''[m]odel-based procedures, including type A procedures identified in 43 CFR part 11, subpart D,'' provided that any such procedure meets the following conditions:

(1) The procedure must be capable of providing assessment information of use in determining the type and scale of restoration appropriate for a particular injury;

(2) The additional cost of a more complex procedure must be reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure; and

(3) The procedure must be reliable and valid for the particular incident. 61 FR at 503 (15 CFR 990.27).

Therefore, the Department has retained components relating to oil in the final versions of the NRDAM/CME and NRDAM/GLE, while recognizing that these components are without any direct regulatory effect. The Department is also providing responses to comments it received on the oil-related components of the type A models. However, the Department wishes to emphasize that its regulations do not govern the assessment of natural resource damages for oil discharges under OPA. Trustees who wish to use the type A procedures and obtain a rebuttable presumption for assessments of oil discharges must follow the process established by NOAA's regulations.

Further, some of the language in the CERCLA rule varies from that in the OPA rule. For example, today's final rule incorporates the existing definition of ''reasonable cost'' at 43 CFR 11.14, from which the definition in the OPA rule differs. See 61 FR at 504 (15 CFR 990.30). Section 11.35(b) of today's final rule, which requires trustees to conduct type B procedures if the PRPs advance the reasonable costs of using such procedures, differs from the OPA rule conditions governing PRP requests for alternative assessment procedures. See 61 FR at 501 (15 CFR 990.14(b)(6)). Also, § 11.44(f) of today's final rule

provides that if the models calculate damages in excess of $100,000, then trustees who wish to obtain a rebuttable presumption must either: (1) limit the portion of their claim calculated with the type A procedure to $100,000; or (2) compute all damages using type B procedures. The OPA rule, on the other hand, contains no dollar cut-off for use of specific procedures. Because use of the type A procedures for oil discharges is governed by the OPA rule, the Department defers to NOAA on how such differences are to be resolved when the NRDAM/CME and NRDAM/GLE are used for assessments of oil discharges.

II. Relationship of Today's Final Rule to the Existing Regulations

The existing regulations establish an administrative process for conducting assessments. See 43 CFR part 11. The administrative process covers all the steps trustees need to follow if they wish to obtain a rebuttable presumption in litigation of their claim. However, trustees have the authority to settle their damage claims at any time during the administrative process and the Department continues to encourage trustees and PRPs to pursue settlement. Furthermore, trustees are not required to follow the regulations. If, however, trustees and PRPs fail to reach a settlement and the case is litigated, trustees will only obtain a rebuttable presumption if they performed their assessment in accordance with the regulations.

The same general administrative process applies regardless of whether type A or type B procedures are used. The process has four phases: Preassessment, Assessment Plan, Assessment, and Post-Assessment. During the Assessment Phase, trustees use type A and/or type B procedures to perform the technical work needed for the actual determination of damages.

Today's final rule does not change this overall administrative process. The rule simply revises the type A procedures available for use during the Assessment Phase and modifies the standards for using both type A and type B procedures for the same release.

A. Preassessment Phase

Today's final rule does not affect the Preassessment Phase. The Preassessment Phase consists of the activities that precede the actual assessment. For example, upon detecting or receiving notification of a release, trustees decide, based on a number of criteria, whether further assessment actions are warranted. Trustees document this decision in the Preassessment Screen Determination. For more information on the Preassessment Phase, see subpart B of 43 CFR part 11.

B. Assessment Plan Phase

If trustees determine that additional assessment work is warranted, they begin the Assessment Plan Phase. The Assessment Plan Phase includes the preparation of a written Assessment Plan describing the procedures trustees intend to use to determine damages. The trustees must make the draft Assessment Plan available for public review and comment.

The regulations provide two types of assessment procedures: type A and type B. Type A procedures, such as those contained in today's final rule, are simplified procedures requiring minimal field observation. Type B procedures involve more detailed field studies. The Assessment Plan documents whether trustees plan to use a type A procedure, type B procedures, or both. Today's final rule revises the standards that trustees must follow when selecting assessment procedures .

Section 11.34 of today's final rule identifies several conditions that must be met before trustees can use a type A procedure and obtain a rebuttable presumption. If the conditions are not met, then trustees who elect to follow the regulations must use type B procedures to assess all damages. If the conditions are met, then trustees must decide whether to use a type A procedure, type B procedures, or both. This decision is based on whether the benefits of the increased accuracy provided by type B procedures would offset the anticipated additional cost of using type B procedures, and whether the anticipated damages would exceed the anticipated cost of using type B procedures.

Trustees may use both type A and type B procedures for the same release if: (1) The type B procedures are cost-effective and can be performed at a reasonable cost; (2) the type B procedures are used only to determine damages for injuries or economic values of a type not addressed by the type A procedure; and (3) there is no double recovery. Section 11.36 of the final rule lists the categories of damages that are included in the type A models and for which trustees may not conduct supplemental type B studies. Trustees must document in the Assessment Plan how they intend to prevent double recovery when they use both type A and type B procedures.

Today's final rule also maintains the requirement that trustees use type B procedures, even if they determine that use of a type A procedure would be appropriate, whenever a PRP submits a written request and justification for use of type B procedures and advances all reasonable costs of using type B procedures within a time frame acceptable to the trustees.

For more information on the Assessment Plan Phase, see §§ 11.30 through 11.37 of today's final rule and subpart C of 43 CFR part 11.

C. Assessment Phase

During the Assessment Phase, trustees conduct the work described in the Assessment Plan. The work consists of three steps: Injury Determination; Quantification; and Damage Determination. In Injury Determination, trustees determine whether any natural resources have been injured. If trustees determine that resources have been injured, they proceed to Quantification, in which they quantify the resulting change in baseline conditions. ''Baseline'' conditions are the conditions that would have existed had the release not occurred. Finally, in Damage Determination, trustees calculate the monetary compensation to be sought as damages for the natural resource injuries. Damages include two components: (1) The cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources; and (2) the economic value lost by the public pending recovery of the resources (compensable value).

When trustees use type B procedures, they perform Injury Determination, Quantification, and Damage Determination through laboratory and field studies. The regulations provide a range of alternative type B scientific and economic methodologies for conducting such studies. For more information on use of type B procedures during the Assessment Phase, see subpart E of 43 CFR part 11.

When trustees use a type A procedure, they perform Injury Determination, Quantification, and Damage Determination through a computer model. Today's type A procedure for coastal and marine environments incorporates Version 2.4 of the NRDAM/CME. Today's type A procedure for Great Lakes environments incorporates Version 1.4 of the NRDAM/GLE.

Trustees must supply a number of data inputs to operate the NRDAM/CME and the NRDAM/GLE. The rule also requires trustees to modify certain data contained in the models if they have more reliable information. Section 11.41 and Appendices II and III of the final rule describe the required data inputs and modifications. After trustees supply

the data inputs and modifications, the models themselves perform the remaining calculations necessary to establish if there has been an injury, quantify the extent of injury, select appropriate restoration actions, and value economic losses. With the availability of these computer models, trustees will now be able to pursue compensation for cases in which the cost of detailed type B studies is prohibitive.

Trustees may not implement type B procedures until after the public review period on the Assessment Plan. However, today's final rule provides that trustees who use a type A procedure must perform a preliminary application of the model before issuing the Assessment Plan and then include the data inputs and the results of the preliminary application in the publicly reviewed Plan. This requirement should provide PRPs and other members of the public with a more meaningful opportunity for comment. Performance of a preliminary application of the models will also allow trustees to determine if type B procedures are warranted in light of a new cap on the damages that can be claimed through use of a type A procedure.

The rule now provides that if the preliminary application indicates damages in excess of $100,000, then trustees who wish to obtain a rebuttable presumption must decide whether to: (1) limit the portion of their claim calculated with the type A procedure to $100,000; or (2) compute all damages using type B procedures. The $100,000 limit applies only to damages calculated by a type A procedure and does not limit damages calculated through supplemental type B studies. This dollar cut-off is based on the fairness of allowing trustees to receive a rebuttable presumption for damages calculated by the NRDAM/CME or NRDAM/GLE given the current level of experience with these models. The cut-off is not based on reliability. The Department believes the NRDAM/CME and NRDAM/GLE are capable of generating reliable damage estimates at levels above $100,000. Therefore, although trustees cannot use the models and obtain a rebuttable presumption above $100,000, the Department believes the models are appropriate for use in other contexts, such as settlement negotiations and litigation without the rebuttable presumption.

After the close of the comment period on the Assessment Plan, trustees must carefully review and substantively respond to all comments they receive and must decide whether to continue using the type A procedure. If they do decide to continue using the type A procedure, they must make any necessary revisions to the user inputs, and perform a final application of the model.

For more information on the Assessment Phase, see §§ 11.40 through 11.44 of the final rule. For more information on how the NRDAM/CME and the NRDAM/GLE perform Injury Determination, Quantification, and Damage Determination, see Section IV of this preamble.

D. Post-Assessment Phase

Once the Assessment Phase is completed, trustees enter the Post-Assessment Phase. Today's final rule does not substantively modify the Post-Assessment Phase.

During the Post-Assessment Phase, trustees prepare a Report of Assessment detailing the results of the Assessment Phase. When trustees use a type A procedure, the Report will include the printed output of the final model application. If a trustee is aware of reliable evidence that a private party has recovered damages for commercial harvests lost as a result of the release, the trustee must eliminate from the claim any damages for such lost harvests included in the lost economic rent calculated by the model. If a trustee is aware of reliable evidence that the model application covers resources beyond his or her trustee jurisdiction, the trustee must either: (1) have the other trustees who do have jurisdiction over those resources join in the type A assessment; or (2) eliminate any damages for those resources from the claim.

Trustees present the Report of Assessment to the PRPs along with a demand for damages and assessment costs. If a PRP does not agree to pay within 60 days, the trustees may file suit. Federal and State trustees receive a rebuttable presumption of correctness if they performed their assessments in accordance with the Preassessment Phase, Assessment Plan Phase, Assessment Phase, and Post-Assessment Phase requirements set forth in the regulations. Once a court awards damages or the trustees and PRPs have reached a settlement, trustees establish an account to hold the recovered damages pending preparation of a Restoration Plan describing how they intend to use the funds.

When trustees use a type A procedure, they are not restricted to implementing the general restoration methods used by the model to calculate the restoration cost component of the damage claim. Instead, trustees have the discretion to spend recovered sums on other actions to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources.

Also, existing 43 CFR 11.93(d), which was not a subject of this rulemaking, provides that trustees may apply several type A recoveries to a single Restoration Plan, so long as the Plan is intended to address the same or similar injuries as those identified in each application of the type A procedure.

For more information on the Post-Assessment Phase, see subpart F of 43 CFR part 11.

III. Nature of Type A Procedures

The Department believes it is important that trustees, PRPs, and the public clearly understand what the type A procedures are, as well as what they are not, intended to provide. The NRDAM/CME and the NRDAM/GLE are sophisticated computer models. These models incorporate a significant level of site-specific detail about actual physical and biological conditions in the geographic areas they encompass. The language and legislative history of CERCLA suggest that Congress envisioned type A procedures as look-up tables based on dollars per gallon or unit of affected area. See, e.g., S. Rep. No. 96–848, 96th Cong. 2d Sess. 86 (July 11, 1980). In requiring the development of two types of assessment procedures—one simplified and the other more complex and site-specific—Congress made a policy choice that trustees be provided with a simplified, inexpensive mechanism for obtaining recoveries in smaller cases. By envisioning a mechanism such as a look-up table, Congress obviously recognized that trustees who use type A procedures should not be required to develop—or be prejudiced for not developing—the same degree of site-specific accuracy as might be achieved using more expensive type B procedures. Nevertheless, in order to increase accuracy, the Department has developed computer models that enable the consideration of site-specific factors. For example, the NRDAM/CME and NRDAM/GLE take into account physical variations among geographic areas, differences in the toxicity and physical characteristics of hazardous substances, seasonal and temperature effects, and differences in the biological productivity of the spill site. The Department believes that when applied correctly using reliable input data, the NRDAM/CME and NRDAM/GLE are powerful, reliable tools for assessing the injuries and compensable values they address.

However, as sophisticated and reliable as they are, the NRDAM/CME and NRDAM/GLE do not, and were

never intended to, constitute automated type B procedures. The NRDAM/CME and NRDAM/GLE are, after all, only models of selected aspects of reality and, like all models, they are incapable of precisely capturing reality in every case. Modeling always necessitates some simplifying assumptions, and the modeling of something as complex as the effects of hazardous substance spills on natural resources necessitates numerous simplifying assumptions.

Section 11.34 of the final rule identifies a number of assumptions the Department made during the development of the NRDAM/CME and NRDAM/GLE. If these assumptions are not reasonable in a particular case, trustees may not use the models and obtain a rebuttable presumption. But even when these assumptions are reasonable, the models' damage estimates will differ from the damages that type B procedures would produce. However, Congress explicitly authorized the development of simplified type A procedures that required less field work than type B procedures and then explicitly granted a rebuttable presumption to assessments performed using these type A procedures just as it granted a rebuttable presumption to assessments performed using type B procedures. Finally, the Department has retained in today's final rule the safety valve that always allows PRPs to require trustees to use type B procedures rather than a type A procedure if they advance all reasonable costs of using such type B procedures within an acceptable time frame.

The standard for evaluating the results of the NRDAM/CME or the NRDAM/GLE in a particular case is not whether the model projections conform precisely to field observations. Rather, the standard is whether the overall damage figure calculated by the models is fair and reasonable in light of the feasibility and cost of developing more specific information using type B procedures. For example, if a spill occurs in an area where biological conditions are relatively uniform over a wide area, the fact that the NRDAM/CME or NRDAM/GLE project that the surface trajectory would turn to the right when in fact it turned to the left is not necessarily adequate grounds to reject wholesale the results of the model.

IV. Workings of the NRDAM/CME and NRDAM/GLE

A. Overview

The NRDAM/CME and the NRDAM/GLE consist of integrated submodels and databases that calculate natural resource damages based on certain types of estimated restoration costs and compensable values. The NRDAM/CME and the NRDAM/GLE are complex computer models; however, their use is not restricted to computer specialists.

The NRDAM/CME was developed under contract to the Department by Applied Science Associates, Inc., A.T. Kearney, Inc., and Hagler Bailly Consulting, Inc. The NRDAM/GLE was developed under contract to the Department by Applied Science Associates, Inc., and Hagler Bailly Consulting, Inc.

''CERCLA Type A Natural Resource Damage Assessment Model for Coastal and Marine Environments Technical Documentation,'' dated April 1996 (the NRDAM/CME technical document) describes the NRDAM/CME. Volume I of the NRDAM/CME technical document discusses the content and derivation of the NRDAM/CME submodels and databases. Volume II is a user's manual. Volume III is a compilation of the chemical and environmental databases used by the NRDAM/CME. Volume IV contains the biological databases on the species life histories, species abundances, and trophic-level production rates used by the NRDAM/CME. Volume V is a compilation of the compensable values and restoration costs used by the NRDAM/CME. Volume VI is a listing of the active source code for the NRDAM/CME.

''CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments Technical Documentation,'' dated April 1996 (the NRDAM/GLE technical document) describes the NRDAM/GLE. Volume I of the NRDAM/GLE technical document discusses the content and derivation of the NRDAM/GLE submodels and databases. Volume II is a user's manual. Volume III is a compilation of all the databases used by the NRDAM/GLE. Volume IV is a listing of the active source code for the NRDAM/GLE.

Today's final rule incorporates by reference the NRDAM/CME, the NRDAM/CME technical document, the NRDAM/GLE, and the NRDAM/GLE technical document. Anyone can obtain computer diskettes containing the models and technical documents from the National Technical Information Service for a fee. The technical documents supplied on diskette are formatted in WordPerfect® 5.1. Some databases are formatted in QuatroPro®. Hard-bound copies of the technical documents are also available. Also, to facilitate prompt distribution of the models, the Department will be providing diskettes of the models and technical documents free of charge until July 31, 1996.

The models have a menu-driven graphic display to assist users. The minimum computer configuration required to use the models is:

- IBM®-compatible personal computer (PC) using MS–DOS® 3.3 or higher;
- 80386 processor or better with math co-processor;
- 1.4 megabyte 3.5 inch floppy disk drive;
- 4 megabytes of RAM with 540 kilobytes available;
- Hard disk with 75 megabytes of available space;
- VGA monitor; and
- Microsoft®-compatible mouse and mouse driver software. For further information on installation of the models, see Section 2, Volume II of the NRDAM/CME and NRDAM/GLE technical documents.

B. Data Inputs and Modifications

The models' databases include most of the data used by the models to determine injury and damages. However, the final rule requires trustees to provide certain data inputs. The rule also requires trustees to modify certain data contained in the models if they have more reliable information. The required data inputs and modifications are described in § 11.41 and Appendices II and III.

Trustees may have direct knowledge of some of the required data inputs. Additional information may be available from the On-Scene Coordinator (OSC), who is responsible for managing response actions following a release. The U.S. Coast Guard will normally be the OSC for releases in coastal or marine environments or the Great Lakes. However, trustees remain responsible for ensuring that all data inputs are reliable.

C. Geographic Information System

The models incorporate a geographic information system (GIS) that supplies geographically distributed information to the submodels. The submodels divide space into series of rectangular grids. In the NRDAM/CME, each grid contains 10,000 cells (100 × 100). In the NRDAM/GLE, each grid contains 2,500 cells (50 × 50). The size of a specific grid and, therefore, the interior cells, varies based on the physical geometry of and the availability of natural resource information about the particular geographic area. For example, the GIS uses smaller grids for nearshore areas than for offshore areas. The models assign a habitat type to each grid cell. The GIS draws the necessary

environmental and biotic data from the appropriate databases. The models assume that conditions are uniform throughout a particular grid cell.

For further information about the GIS and grid system, see Section 2, Volume I of the NRDAM/CME technical document; and Section 3.15, Volume I of the NRDAM/GLE technical document.

D. Submodels

Both models include four linked submodels: a physical fates submodel, a biological effects submodel, a restoration submodel, and a compensable value submodel. The NRDAM/GLE also has a hydrodynamics submodel.

1. Physical Fates Submodel

The physical fates submodel estimates the distribution of the released substance on the water surface, along shorelines, in the water column, and in sediments over time. The submodel uses an array of computational ''particles'' to represent the released substance. A variable fraction of the released substance is associated with each particle. The submodel tracks the distribution of the particles in both time and space as they move across a three-dimensional gridded environment.

Modeled wind and current effects drive the movement of the particles on the water surface and in the water column. In the NRDAM/GLE, the hydrodynamics submodel simulates the wind-driven currents occurring in the water column. In the NRDAM/CME, the physical fates submodel simulates wind-driven currents in the upper water column and employs user-supplied data inputs on background and tidal currents to simulate movement in the upper and lower water column.

Drawing data about the physical and chemical properties of the released substance from the chemical and toxicological database, the submodel continues simulating the transport and fate of the substance until all environmental exposure levels are below a specified concentration (the acute toxicity threshold). The acute toxicity threshold serves as a switch to turn off the physical fates submodel and activate the biological effects submodel. The submodel creates a time-series file of surface slick coverage, shoreline coverage, and substance concentration levels in the water column and in bottom sediments that is used by the biological effects submodel.

For further information on the physical fates submodel, see Section 3, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. For further information on the chemical and toxicological database, see Section 7, Volume I, and Section 2, Volume III of the NRDAM/CME and NRDAM/GLE technical documents.

2. Biological Effects Submodel

The biological effects submodel determines whether certain types of natural resource injuries have resulted from the release and, if so, quantifies those injuries. The biological effects submodel determines and quantifies the following types of injury: (1) Direct mortality resulting from short-term exposure to the released substance; (2) direct loss of production resulting from short-term exposure to the released substance; (3) indirect mortality resulting from food web losses; and (4) indirect loss of production resulting from food web losses. The biological database supplies data on habitat type and species biomass to the biological effects submodel.

The biological effects submodel determines direct mortality of fish, shellfish, and wildlife and direct loss of production for plants and invertebrates by calculating exposure of different species to the released substance. When performing these calculations, the biological effects submodel uses the time series data generated by the physical fates submodel concerning the distribution and concentration of the released substance.

The biological effects submodel determines direct mortality of fish and shellfish through use of an array of computational ''particles'' that move through the gridded environment. Each particle represents a portion of the fish or shellfish populations potentially exposed to the release. Each time a particle enters an area with dissolved water or sediment concentrations of the spilled substance, the submodel calculates the percentage mortality of the fish or shellfish population represented by the particle. These calculations continue until concentrations of the released substance fall below acute toxicity thresholds.

The biological effects submodel uses similar procedures to determine direct mortality of birds and mammals. However, the submodel only determines direct mortality of birds and mammals when the released substance forms a surface slick.

The biological effects submodel determines direct mortality of fish and shellfish eggs and larvae through use of particle arrays that move with the currents, as biologically appropriate. For plants and invertebrates, the submodel determines direct loss of production based on the assumption that such biota are uniformly distributed throughout a particular habitat type within the model grids rather than through use of particle arrays.

Once the biological effects submodel determines direct mortality and direct loss of production , the submodel then calculates indirect mortality and indirect loss of production for fish, shellfish, and wildlife resulting from reductions in food resources. The submodel uses a generalized food web model to determine the effect that direct loss of plant production, invertebrates, and noncommercial fish and mammals have on higher trophic-level fish, shellfish, and wildlife.

After determining injuries from both direct exposure and food web losses, the biological effects submodel quantifies those injuries both in terms of lost populations over time and, in the case of fish, shellfish, and wildlife, fishing and hunting losses. The submodel also computes fishing and hunting losses resulting from closures. The compensable value submodel uses this information to determine compensable value.

For further information on the biological effects submodel, see Section 4, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. For further information on the biological database, see Section 6, Volume I, and Volume IV of the NRDAM/CME technical document; and Section 8, Volume I, and Section 3, Volume III of the NRDAM/GLE technical document.

3. Restoration Submodel

The restoration submodel estimates the cost, if any, of restoring the injured resources. The submodel first evaluates possible habitat restoration and restocking actions. The submodel analyzes the costs and benefits of any possible habitat restoration and restocking actions to determine whether these forms of active restoration or natural recovery should be assumed for purposes of the models' damage calculations. In some cases, the submodel also determines the cost of restoring lost assimilative capacity. The active restoration costs, if any, computed by the restoration submodel comprise one component of the damage figure; the other component, compensable value, is calculated by the compensable value submodel.

For certain types of habitats, the restoration submodel evaluates habitat restoration action. The submodel identifies those habitats for which human intervention may potentially facilitate recovery. For each such habitat in each affected area, the restoration submodel evaluates the effect that a

particular active restoration alternative would have on the compensable value calculated by the model. If the relevant active habitat restoration alternative would result in a lower total compensable value for a particular grid cell than reliance upon natural recovery, then the restoration submodel computes the cost of performing that alternative for that grid cell. The restoration cost database supplies information on unit restoration costs to the restoration submodel. The biological effects and compensable value submodels supply information to the restoration submodel concerning the extent of injury and compensable value with and without active habitat restoration. If the active habitat restoration alternative would not result in a lower total compensable value than reliance upon natural recovery, then the restoration submodel does not compute any habitat restoration costs.

The restoration submodel evaluates the following types of active habitat restoration alternatives against natural recovery:

For open water sediments: dredging and refilling with clean material (shallow water); or capping (deep water);

For wetlands, macroalgal beds, and seagrass beds: replacement of contaminated substrate and replanting (if sediments are toxic); or replanting (if sediments are not toxic but mortality has occurred);

For invertebrate reefs (coral and mollusk): replacement of contaminated substrate and reseeding (if sediments are toxic); or reseeding (if sediments are not toxic but mortality has occurred); and

For shorelines in coastal or marine environments: washing of sand and gravel; replacement of mud; and chemical washing of rocky shoreline.

The restoration submodel then considers restocking of fish and wildlife. If stocks of the same age as the injured fish and wildlife are available through captive breeding programs, then the submodel computes the cost of restocking those species after the habitat has recovered, either through natural recovery or active habitat restoration. The restoration cost submodel supplies data on the availability and cost of stocks to the restoration submodel.

If the relevant active habitat restoration alternative would reduce compensable value or if restocking is possible, then the submodel performs a cost-benefit test of these forms of active restoration. The submodel compares the total costs of active habitat restoration and restocking against the measured benefits of such restoration (i.e., compensable value assuming natural recovery minus compensable value assuming active habitat restoration and restocking). If the costs exceed ten times the measured benefits, then the submodel assumes, for purposes of generating a damage figure, that natural recovery, rather than active restoration, will be used to reestablish baseline conditions. If the costs do not exceed the measured benefits by ten times, then the submodel assumes, for purposes of generating a damage figure, that habitat restoration and restocking actions will be implemented.

Finally, for releases that generate a damage figure related to mortality and loss of productivity, the restoration submodel also calculates the cost of restoring the water's baseline ability to absorb pollutants (assimilative capacity). In the case of such releases, the restoration submodel determines the amount of the released substance that would remain in the environment after environmental exposure levels are below acute toxicity thresholds and after any habitat restoration actions are completed. The submodel then computes the cost of removing a contaminant mass with toxicity equivalent to the remaining non-acutely toxic dispersed mass of the released substance from other identified contaminated sites. When determining the amount of contaminant mass to remove, the submodel adjusts for the relative degradability of that contaminant compared to that of the spilled substance. The restoration cost database supplies data on unit costs to the restoration submodel.

The restoration submodel sums the costs of any selected types of active restoration. The models combine this figure with the compensable value figure computed by the compensable value submodel to form the final damage figure.

For further information on the restoration submodel, see Section 5, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. For further information on the restoration cost database, see Sections 5, 12, and 13, Volume I, and Sections 5 through 7, Volume V of the NRDAM/CME technical document; and Section 9, Volume I and Section 5, Volume III of the NRDAM/GLE technical document.

4. Compensable Value Submodel

Compensable value, as computed by the compensable value submodel, is the sum of certain economic use values lost to the public pending the reestablishment of baseline conditions through either natural recovery or active restoration, as determined by the restoration submodel. Only public losses are included in compensable value.

The submodel computes the following types of compensable values:

Lost economic rent for lost commercial harvests resulting from any closures specified by the authorized official and/or from population losses;

Lost recreational harvests resulting from any closures specified by the trustee and/or from population losses;

In the NRDAM/CME, lost wildlife viewing, resulting from population losses, by residents of the States bordering the provinces in which the population losses occurred;

In the NRDAM/GLE, lost wildlife viewing, resulting from population losses, by residents of local areas bordering the provinces in which the population losses occurred; Lost beach visitation due to closure; and

In the NRDAM/GLE, lost boating due to closure.

The submodel calculates compensable value for lost economic rent by multiplying the total lost harvest of the species, as computed by the biological effects submodel, by the commercial price per unit of harvest, as supplied by the compensable value database. The rule provides that if a trustee is aware of reliable evidence that a private party has recovered damages for commercial harvests lost as a result of the release, the trustee must eliminate from the claim any damages for such lost harvests included in the lost economic rent calculated by the model.

The submodel calculates compensable value for lost recreational harvests by multiplying the total lost recreational harvest of the species, as computed by the biological effects submodel, by the marginal value of harvesting an additional animal, as supplied by the compensable value database. The submodel computes damages only for harvests lost due to populations losses or closures. The submodel does not compute damages for lost quality of recreational fishing unrelated to lost harvests or for lost trips due to de facto closures.

The compensable value submodel computes compensable value for a specific range of lost wildlife viewing. First, the submodel only calculates wildlife viewing damages resulting from population losses and does not address damages resulting from closures. Second, the submodel only calculates losses incurred by certain segments of the wildlife viewing public. The models divide geographic areas into provinces. The NRDAM/CME computes lost wildlife viewing only for residents of States bordering the provinces in which the population loss occurred. The NRDAM/GLE computes lost wildlife viewing only for residents of local areas bordering the provinces in which the population loss occurred. The submodel calculates damages by multiplying the

number of viewing trips affected by the release by the per-animal marginal viewing value for the animals killed.

The compensable value submodel computes compensable value for lost beach visitation only if trustees specify that there has been a closure of a beach. The submodel does not calculate damages for lost quality of beach visitation or for lost beach visitation due to de facto closures. If a closure is specified, the compensable value submodel calculates compensable value by multiplying the length of beach closed per day and the number of days closed, as supplied by trustees, by the per-day value of trips to the closed length. The compensable value database supplies data on the per-unit value of lost beach visitation.

The NRDAM/GLE computes compensable value for lost boating only if trustees specify that there has been a closure of a boating area. The model does not calculate damages for lost quality of boating or for lost boating trips due to de facto closures. If a closure is specified, the compensable value submodel calculates compensable value by multiplying the geographic area closed per day and the number of days closed, as supplied by trustees, by the per-day value of trips to the closed area. The compensable value database supplies data on the per-unit value of lost boating. The NRDAM/CME does not compute compensable value for lost boating.

The per-unit values in the compensable value database are stated in 1991 dollars for the NRDAM/CME and 1990 dollars for the NRDAM/GLE. The compensable value submodel uses the Gross National Product Implicit Price Deflator, as supplied by trustees, to adjust per-unit values to current dollars. The compensable value submodel discounts the value of future losses using a three percent discount rate.

After applying the Gross National Product Implicit Price Deflator and the discount rate, the compensable value submodel sums the lost values to calculate a compensable value figure. This figure is added to the restoration costs, if any, computed by the restoration submodel to form the final damage figure calculated by the models.

The rule provides that if a trustee is aware of reliable evidence that the model application covers resources beyond his or her jurisdiction, the trustee must either: (1) Have the other trustees who do have jurisdiction over those resources join in the type A assessment; or (2) eliminate any damages for those resources from the claim. Further, the rule provides that if the model output indicates damages in excess of $100,000, then trustees who wish to obtain a rebuttable presumption must either: (1) Limit the portion of their claim calculated with the type A procedure to $100,000; or (2) compute all damages using type B procedures.

For further information on the compensable value submodel, see Sections 8 through 11, Volume I of the NRDAM/CME technical document; and Section 6, Volume I of the NRDAM/GLE technical document. For further information on the compensable value database, see Sections 8 through 11, Volume I, and Sections 1 through 4, Volume V of the NRDAM/CME technical document; and Section 6, Volume I, and Section 4, Volume III of the NRDAM/GLE technical document.

V. Use of the NRDAM/CME and NRDAM/GLE in Other Contexts

The Department is issuing today's final rule in compliance with the statutory requirement to develop procedures for conducting simplified assessments that are entitled to a rebuttable presumption. The standards in today's final rule apply only when trustees use the type A models to develop a damage figure and intend to obtain a rebuttable presumption for that figure in litigation. Trustees who use the models in other contexts, such as settlement negotiations or litigation without the benefit of the rebuttable presumption, are not subject to the rule standards. In these other contexts, trustees are free to make modifications to the model databases beyond those permitted under the rule and to use some, but not all, of the components of the models.

For example, trustees may wish to use the models to develop a benchmark damage figure for settlement negotiations but may have more up-to-date or more site-specific information on recreational fishing values. In that case, trustees may choose to apply the models using modified recreational fishing values, notwithstanding the rule provisions concerning modification of the model databases. In other situations, trustees may choose to rely on the models' predictions of injury but perform their own analyses of restoration alternatives and compensable values. Trustees may also choose to rely on the models' damage calculations for some resources but for other resources substitute their own damage calculations for other resources covered by the models. The Department believes that although use of the type A models in these ways would not be covered by today's rule and, therefore, would not be entitled to a rebuttable presumption, such use can produce reliable damage estimates if done properly.

VI. Summary of Major Changes from the Proposed Rules

The Department has made numerous changes in the rule language and models based on the comments received. The Department discusses its rationale for these changes in Section VII of this preamble.

A. Rule Language

The Department has made several major substantive changes to the proposed rule language. With regard to the applicability of the type A procedures, the Department has modified the conditions that must be met before a trustee can use a type A procedure to obtain a rebuttable presumption and has eliminated the provision that would have required trustees to use the type A procedures in some circumstances. Instead of delineating ''primary'' and ''secondary'' conditions for use as the proposed rule did, the final rule now provides that if the conditions for use of the models listed in § 11.34 are met, then trustees decide whether to use type A or type B procedures based on an evaluation of the averaged data and simplifying assumptions listed in the NRDAM/CME and NRDAM/GLE technical documents. The Department has also more clearly delineated the conditions under which trustees can use type B procedures to supplement a type A procedure and the process for doing so.

With regard to operation of the NRDAM/CME and the NRDAM/GLE, the rule now allows trustees to modify the habitat designations in the models and still obtain a rebuttable presumption. The rule also requires trustees to perform a preliminary application of the NRDAM/CME or NRDAM/GLE and make the results available for public review before performing a final application and presenting a demand to the PRP.

The final rule contains three new provisions that require trustees in some cases to adjust the damage figure calculated by the models before presenting a demand. First, the rule now provides that if trustees are presented with evidence that private parties have obtained recoveries for lost commercial harvests, they must eliminate any damages for such lost harvests included in the lost economic rent calculated by the model. Second, the rule provides that if a trustee is aware of reliable evidence that the model application covers resources beyond his or her trustee jurisdiction, the trustee must

either: (1) Have the other trustees who do have jurisdiction over those resources join in the type A assessment; or (2) eliminate any damages for those resources from the type A damage calculation. Third, the rule provides that if the model output indicates damages in excess of $100,000, then trustees who wish to obtain a rebuttable presumption must either: (1) Limit the portion of their claim calculated with the type A procedure to $100,000; or (2) compute all damages using type B procedures.

The Department has also eliminated the proposed clarification of the scope of review of a type A assessment in a natural resource damage case.

Finally, as part of its regulatory reform efforts, the Department has rewritten the final rule in plain English. The Department believes this revision has made the rule significantly clearer and easier to read.

The following is a section-by-section analysis of the final rule:

Subpart A—Introduction

Section 11.15 What Damages May a Trustee Recover?

The Department has rewritten the heading of this section to make it easier to understand. The final rule language revising subsection (a)(1) is unchanged from the August 1994 proposed rule. The final rule eliminates the separate subsections referring to type A procedures, type B procedures, or a combination of type A and B procedures in the same assessment. Sections 11.34 through 11.36 include the criteria and standards for selecting type A procedures, type B procedures, or a combination, making additional detail in this introductory section unnecessary.

Section 11.18 Incorporation by Reference

The final rule slightly revises and updates the proposed rule language incorporating by reference the NRDAM/CME technical document, and adding language incorporating by reference the NRDAM/GLE technical document.

Section 11.19 Information Collection

The final rule retains the December 1994 proposed rule language to remove and reserve this section.

Subpart C—Assessment Plan Phase

Section 11.30 What Does the Authorized Official do if an Assessment is Warranted?

The final rule makes several revisions to this section that were not included in the proposed rules, but which are necessary to conform to other provisions in today's final rule. Existing subsection (a), which applied to both type A and type B procedures, did not authorize performance of any assessment methodologies until after the period of public review and comment for the Assessment Plan. Section 11.42 of today's final rule requires trustees to perform a preliminary application of the NRDAM/CME or NRDAM/GLE before releasing the Assessment Plan for public review and comment. Trustees who use type B procedures, however, must still make the Assessment Plan available for public review and comment before performing any of the procedures contained in the Plan. See § 11.32(c) of today's final rule. The Department has revised the heading of the section and the language of subsection (a) to make them easier to understand and to make this conforming change. The Department has also modified subsection (c)(1)(vi) to make a necessary conforming change cross-referencing other rule provisions.

Section 11.31 What Does the Assessment Plan Include?

The final rule revises the heading and rule language to make the section easier to understand. Subsection (a)(1) adopts as final the language in the August 1994 proposed rule.

The Department has revised subsection (b) from the August 1994 proposed rule to make it clear that the Assessment Plan must include a detailed explanation of how the trustee's decision to use a type A procedure, type B procedures, or a combination, satisfies the decisional standards contained in the rule.

Subsection (c) clarifies and corrects existing rule language, which was garbled in 1988. Compare 53 FR 5174 (Feb. 22, 1988) with 51 FR at 27731. Although this language was not in the proposed rules, it is a nonsubstantive change. Subsection (c)(1) has been modified to make a necessary conforming change cross-referencing redesignated § 11.37.

Subsection (d) revises the existing rule language to make it easier to understand. Subpart D contains the requirements concerning identification and documentation of information, and therefore it is unnecessary to repeat them in subsection (d).

Section 11.32 How Does the Authorized Official Develop the Assessment Plan?

The Department has revised the heading of this section to make it easier to understand.

The final rule revises subsection (c) to make it easier to understand and to make the same necessary conforming change described in the discussion of § 11.30.

The final rule language revising subsection (f) is slightly reworded, but substantively the same as, the language in the August 1994 proposed rule. As explained in the August 1994 notice of proposed rulemaking, this provision clarifies that the confirmation of exposure requirement applies to type B, but not type A, procedures. Original §§ 11.34(a)(1), 11.31(c)(1), and 11.33(b)(4) already established this distinction. Today's final rule language merely makes the rule easier to understand.

Section 11.33 What Types of Assessment Procedures Are Available?

Today's final rule revises § 11.33 to limit this section to providing a brief description of the difference between type A and type B procedures.

Section 11.34 When May the Authorized Official Use a Type A Procedure?

New § 11.34 combines and revises changes that were proposed for § 11.33 in the August 1994 and December 1994 proposed rules. This section now states the threshold conditions that must be present before a trustee may use a type A procedure, many of which were included among the ''primary'' conditions in the proposed rules.

Section 11.35 How Does the Authorized Official Decide Whether to Use Type A or Type B Procedures?

New § 11.35 further revises changes that were proposed for § 11.33. The section provides decisional criteria for the determination whether to use type A or type B procedures, assuming that the conditions in § 11.34 are met. The final rule language requires trustees to base the decision whether to use type A or type B procedures on an evaluation of the data and assumptions in the type A procedures, as described in the NRDAM/CME and NRDAM/GLE technical documents. These assumptions include many of the ''secondary conditions'' contained in the proposed rules.

Section 11.36 May the Authorized Official Use Both Type A and Type B Procedures for the Same Release?

New § 11.36 provides standards for when trustees may use both a type A procedures and type B procedures for the same release. The August and December 1994 proposed revisions to § 11.33 included similar modifications.

Today's final rule language provides clearer, more specific criteria, and specifically identifies the categories of injury and compensable value addressed by the type A procedures.

Subsection (d) addresses the issue of which type B procedures must be followed when a trustee decides to combine a type A and type B procedures in a single assessment.

Section 11.37 Must the Authorized Official Confirm Exposure Before Implementing the Assessment Plan?

The Department has revised the heading of this section (formerly § 11.34) and has modified subsection (a) from the proposed rule to make it easier to read. Subsection (a) clarifies the intent of the existing rule that the confirmation of exposure requirement applies only to type B procedures. Although former § 11.34(a) did not expressly distinguish between type B and type A procedures, former §§ 11.31(c)(1) and 11.33(b)(4) limited the confirmation of exposure requirement to type B procedures.

Subpart D—Type A Procedures

Section 11.40 What Are Type A Procedures?

The Department has revised the heading of this section and the language of subsection (a) to make them easier to read, to add references to the type A procedures for Great Lakes environments, to provide additional information about both type A procedures, and to incorporate the requirement that a trustee must follow the procedures in §§ 11.41 through 11.44 when using either of the two type A procedures. Today's final rule provides a more detailed description of type A procedures than was contained in the August 1994 proposed revision to § 11.40.

Section 11.41 What Data Must the Authorized Official Supply?

This section identifies the data inputs and modifications that the trustee must supply to use the NRDAM/CME or NRDAM/GLE. Today's final rule modifies and simplifies proposed § 11.42 (c) and (d) in the August 1994 proposed rule, and proposed revisions to § 11.41 in the December 1994 proposed rule. The final rule language for § 11.41 is considerably shorter than that in the proposed rules, because the format for data inputs and modifications is now contained in two new appendices to the rule. The final rule now requires trustees to make certain modifications to the model databases, including the habitat designations, if they have reliable evidence that the databases are incorrect.

Section 11.42 How Does the Authorized Official Apply the NRDAM/CME and NRDAM/GLE?

This section contains a new procedure requiring trustees to perform a preliminary application of the NRDAM/CME or NRDAM/GLE as part of the process for deciding whether to use a type A procedure. If the trustee decides to continue with a type A procedure, then the data inputs, modifications, and results of the preliminary application become part of the Assessment Plan.

Section 11.43 Can Interested Parties Review the Results of the Preliminary Application?

This section requires trustees who decide to continue with a type A procedure to develop an Assessment Plan, which must include the data inputs, modifications, and results of the preliminary application. The trustee must make the Assessment Plan available for public review and comment.

Section 11.44 What Does the Authorized Official do After the Close of the Comment Period?

Subsections (a) through (c) of this section state the procedural and substantive requirements following public comment on the Assessment Plan, which include performing a final application of the NRDAM/CME or NRDAM/GLE and preparing a Report of Assessment. Subsection (d) includes specific criteria to preclude double recovery for economic rent for lost commercial harvests if a private party has already recovered for the same damages. Subsection (e) resolves a potential problem arising when trustees have not agreed in advance to use a type A procedure jointly. Subsection (f) limits the damages that may be recovered by trustees who use the NRDAM/CME or NRDAM/GLE and intend to obtain a rebuttable presumption.

Subpart E—Type B Procedures

Section 11.73 Quantification Phase-Resource Recoverability Analysis

The Department has revised subsection (a) to make a necessary conforming change to cross-reference redesignated § 11.35 (now § 11.38).

Subpart F—Post-Assessment Phase

Section 11.90 What Documentation Must the Authorized Official Prepare After Completing the Assessment?

The Department has revised the final rule from the August 1994 proposed rule to make the heading and rule language simpler and easier to understand. The substantive effect of this provision is the same as existing § 11.90.

Section 11.91 How Does the Authorized Official Seek Recovery of the Assessed Damages From the Potentially Responsible Party?

Today's final rule revises the heading of the section and the first sentence of subsection (a) to make the rule language simpler and easier to understand. The substantive effect of this provision is the same as existing § 11.91.

Appendices

The Department has added two new appendices to the rule. These appendices specify the format for data inputs and modifications for the NRDAM/CME and NRDAM/GLE.

B. NRDAM/CME and NRDAM/GLE

The Department has made several major substantive changes to the NRDAM/CME and NRDAM/GLE computer code and databases. The Department has revised the chemical database for both the NRDAM/CME and NRDAM/GLE to incorporate an additional 24 oils and petroleum products. The Environment Canada publication, ''A Catalogue of Crude Oil and Oil Product Properties,'' and NOAA's ADIOS (Automated Data Inquiry for Oil Spills) database provided the principal sources of information for revision of the databases. The Department also deleted the following hazardous substances from the database: pure metals, nontoxic substances, and substances for which the toxicity threshold was less than the water solubility. The Department deleted a total of 31 hazardous substances from the NRDAM/CME database and 32 hazardous substances from the NRDAM/GLE database.

The Department has included an additive toxicity model for oil and petroleum products in the biological effects submodel to address the additive toxicity of the multiple substances in oil and petroleum products. The additive toxicity model also addresses the effects of oil weathering.

The Department has updated the wildlife viewing values contained in both the NRDAM/CME and NRDAM/GLE economic databases based on

recent information available from the 1994 addendum to the 1991 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation developed by the U.S. Fish and Wildlife Service (FWS). Also, in the NRDAM/CME, the Department revised the wildlife viewing values to reflect the total population of the respective coastal states.

In the NRDAM/CME, the Department has modified the habitat grids to provide a finer scale resolution. The Department changed the scale from a 50 x 50 grid to a 100 x 100 grid. The Department has also upgraded the Microsoft® compiler to allow for use of 32-bit processing and additional random access memory (RAM).

The Department has revised the east coast wetland habitats represented in the NRDAM/CME grids for provinces 11, 12, and 13 (New York and New Jersey) to incorporate more site-specific data provided by commenters. See Section 3.4, Volume III of the NRDAM/CME technical document.

In the NRDAM/CME, the Department has substantially revised wildlife abundance data for provinces 40 through 51 (west coast and the Gulf of Alaska) based on additional information and data provided by public commenters.

The Department has added a habitat editor to the NRDAM/GLE user interface consistent with that provided in the proposed NRDAM/CME.

The Department has included intertidal seagrass as an additional habitat type in the NRDAM/CME. The intertidal seagrass habitat includes those common habitats for tropical seagrass and eelgrass.

The Department has disaggregated the model output files for the injury and damage calculations resulting from direct kills versus food web and habitat losses, and from commercial versus recreational fishing losses.

The Department has revised the active habitat restoration alternatives evaluated for structured habitats (i.e., wetlands, seagrass beds, macroalgal beds, and invertebrate reefs) to include not only sediment replacement with replanting but also replanting alone.

The Department has eliminated the calculation of compensable value for lost boating and subsistence losses from the NRDAM/CME.

The Department has revised the restoration submodel to include a cost-benefit test for determining whether the measured benefits of active habitat restoration and restocking, as compared to natural recovery, are worth the additional costs.

Finally, the Department has revised the calculation of assimilative capacity restoration costs to correct for the degradation rate of the spilled substance and to limit the calculation of assimilative capacity restoration costs to cases where biological injury has occurred and produces compensable value.

VII. Response to Comments

The Department received numerous public comments on the proposed type A procedures. The Department and NOAA also asked several independent technical reviewers to examine the proposed NRDAM/CME. The Department made the comments of these independent technical reviewers available to the public and included them in the administrative record for this rulemaking. See 60 FR 28773 (June 2, 1995). The Department provides responses to both the public comments and the comments of the independent technical reviewers below.

In addition to the issues discussed below, commenters addressed a number of issues beyond the scope of this rulemaking. The Department explicitly limited this rulemaking to four issues: the revision of the existing type A procedure for coastal and marine environments; the development of a new type A procedure for Great Lakes environments; the conditions for combined use of type A and type B procedures; and the scope of judicial review of assessments performed using type A procedures. See 59 FR at 40319–20, 63300, and 63302. Nevertheless, some commenters raised additional issues, including: whether trustees should be allowed to pool natural resource damage recoveries to implement regional restoration plans; the permissibility of using type A and type B procedures for the same release; and whether lost economic rent and the cost of restoring lost assimilative capacity are legally permissible categories of damages. The Department has not evaluated, and is not providing substantive responses to, comments on these issues in this rulemaking.

Section 11.93(d) of the existing regulations, which was promulgated in 1987, allows pooling of multiple type A recoveries to implement a single restoration plan, so long as the plan is intended to address the same or similar injuries as those identified in each application of the type A procedure. See 52 FR at 9100. The Department neither reproposed, revisited, nor solicited comment on § 11.93(d) and merely cited it in the preambles to the proposed rules by way of background. 59 FR at 40324 and 63305.

Section 11.15(a)(1)(iii) of the original type A rule, which was promulgated in 1987, established that trustees could use both type A and type B procedures for the same release under certain circumstances. See 52 FR at 9095. The Department did not repropose, revisit, or solicit comment on whether CERCLA allows trustees to combine type A and type B procedures. The only issue raised and addressed in this rulemaking was whether the Department should expand the authorization for combined use of type A and type B procedures.

Finally, the Department did not repropose, revisit, or solicit comment on its long-standing positions on the recoverability of damages for lost economic rent and lost assimilative capacity. Both the original type B rule and the original type A rule explicitly allowed for the recovery of lost economic rent. See 43 CFR 11.83(c)(1); 51 FR at 27749; and 52 FR at 9047. The Department has recognized the loss of assimilative capacity as a legitimate category of natural resource damages since the promulgation of the original type B procedures in 1986. 51 FR at 27716; see also 59 FR at 14273. The Department has begun a biennial review of the type B procedures and will be considering the issues of lost economic rent and lost assimilative capacity in that context. See 59 FR 62749 (Oct. 19, 1994).

A. General Comments

Comment: Some commenters supported the concept of a reliable, accurate, automated damage assessment procedure that would eliminate the need for expensive tailor-made studies. However, other commenters objected to the calculation of damages through what they considered to be abstract application of theoretical, generic models. Some of these commenters thought that many of the calculations of the NRDAM/CME and NRDAM/GLE were based on unsubstantiated assumptions.

A number of commenters, including some of the independent technical reviewers, questioned the Department's use of ''grand averages'' to extrapolate data for a specific species, substance, or location, to different species, substances, and locations. Commenters were particularly concerned about the extrapolation of economic values made in the compensable value submodel. For example, commenters noted that some of the studies used to value recreational fishing in the NRDAM/CME were based on freshwater fishing and commercial fishing. Commenters also stated that many of the studies used outdated data and outdated or unreliable

methodologies. For example, commenters noted that recreational hunting values were derived from a 20-year old contingent valuation study. Some commenters suggested specific criteria that they thought should be met when performing benefits transfer (i.e., the extrapolation of economic values derived from studies of one situation to another situation).

Response: CERCLA requires that type A procedures involve ''minimal field observation'' and authorizes type A procedures to be based on ''units of discharge or units of affected area.'' CERCLA sec. 301(c)(2)(A). The Senate Report that accompanied the predecessor bill to CERCLA provides the following indication of Congress' intent:

> Natural resource damage assessments based on this type of regulation [type A] should require as little fieldwork as possible, and rely on a combination of habitat values, tables of values for individual species, and previously conducted surveys and laboratory studies, related to units of discharge or units of affected area. S. Rep. No. 96–848 at 86.

This language indicates that Congress envisioned the development of type A procedures that do not require the performance of any new studies but instead use existing studies to provide generalized values that can be applied in specific cases. Inherent in the concept of developing unit values from existing studies is the notion of making assumptions in the absence of empirical data and applying average values across a range of nonidentical items. Therefore, the Department believes that CERCLA authorizes it to make appropriate extrapolations from existing data.

The science of natural resource damage assessment is still evolving. The universe of relevant studies is still very small for many crucial aspects of damage assessment. Existing data are particularly limited as to the effects of small spills. Even when addressing the limited range of scenarios covered by the NRDAM/CME and the NRDAM/GLE, the Department faced significant challenges in bridging data gaps. Although Congress did authorize the Department to make extrapolations from existing data, the Department recognizes that any such extrapolations must be reasonable. Thus, when developing the models, the Department tried to make use of the most reliable information available based on extensive reviews of published and unpublished information and data; make only those assumptions that are necessary; ensure that any assumptions that are made are reasonable; and identify clearly all assumptions that were required for the development of simplified procedures.

With regard to the compensable value submodel, the Department did apply specific criteria during its selection of studies to use for benefits transfer. The Department used only studies that: (1) Were based on an extensive literature review and consultations with relevant governmental agencies; (2) reasonably represented the natural resource and public use under investigation; (3) contributed to a reasonable representation of the different regions included in the models; (4) were conducted by a recognized university-associated researcher or established consulting firm; and (5) used appropriate valuation methodologies. The Department believes that these criteria adequately address all the concerns that the commenters' suggested criteria are intended to address. The first three criteria assure that the resources considered in the selected studies are as similar as possible to the resources to be valued in the models. The fourth criterion assures that the selected studies are scientifically sound. The fifth criterion assures that the selected studies use appropriate valuation methodologies.

Comment: One commenter suggested that the Department had developed the models by selecting values from a few studies while ignoring others. The commenter argued that the Department had failed to provide adequate justification for the values it selected.

Response: The Department conducted extensive searches for available information. Some data the Department identified were not used because better or more applicable data were available. However, none of the identified data was ignored. The Department believes that the NRDAM/CME and NRDAM/GLE technical documents adequately explain and justify the values in the models.

Comment: Some commenters thought that the proposed type A models were so technically flawed that they did not meet the statutory standard of ''best available procedures'' and, therefore, trustees should not obtain a rebuttable presumption if they use the models. These commenters urged the Department to abandon the models noting that *Colorado* v. *Interior* does not require or authorize the Department to issue a model that is unreliable. One commenter acknowledged that the proposed revised NRDAM/CME appeared to be an improvement over the original NRDAM/CME Version 1.2 issued in 1987. However, the commenter thought the proposed revised model still contained too many flaws to accomplish its intended purpose. Another commenter stated that the damage figures produced by the models are nothing more than sheer speculation and are not legally sufficient due to the compounding of errors, uncertainties, biases, and overestimates.

Response: As discussed in more detail below, the Department has carefully reviewed all comments it received on the proposed models and rule language. Based on this review, the Department has made numerous modifications to the models and the rule language. Where the Department concluded that no changes were needed, the Department has explained its reasoning. The Department believes that the final type A models, as revised in response to comments, are best available procedures when used in accordance with the standards and process set forth in today's final rule. The models, with their state-of-the-art modeling and extensive databases, represent a significant advancement beyond the original NRDAM/CME issued in 1987. The final type A procedures provide for reliable, cost-effective, simplified assessments that are entitled to a rebuttable presumption.

Comment: Several commenters thought the Department had been overly ambitious in attempting to develop models like the NRDAM/GLE and the NRDAM/CME. Specifically, these commenters stated that the biological effects submodel attempted to perform a task that is beyond the current state of ecological modeling. The commenters contended that state-of-the-art ecological modeling is not yet capable of producing accurate quantitative determinations and is primarily useful only for making qualitative predictions. The commenters also thought that the multiple iterative calculations performed by the biological effects submodel did not alleviate the problem but simply amounted to averaging of nonsense.

Response: The Department agrees that ecological models should generally be used only for qualitative predictions. However, the biological effects submodel in the NRDAM/GLE and the NRDAM/CME is not a true ecological model in the sense suggested by commenters. Ecological models evaluate the changes in ecosystem structure and function resulting from disturbances. The biological effects submodel, on the other hand, is a toxicological effects model. The biological effects submodel simply calculates acute mortality and lost production and projects these injuries forward as biota not present or used in future years. The submodel need not, and does not attempt to, address the higher-order ecological

changes in the structure and functions of biological systems as true ecological models do.

The Department believes that the NRDAM/CME and NRDAM/GLE are reasonable tools for assessing the injuries and compensable values that they address and do not generate ''nonsense.'' Further, the use of iterative calculations is designed to, and does, enhance the reliability of damage estimates in particular cases. The biological effects submodel uses several randomized algorithms for processes, such as swimming by fish, that are considered random at the relevant spatial and temporal scales. For each spill modeled, the submodel performs multiple iterative runs and then selects the mean result. This approach is a generally accepted method of modeling the most probable biological effects for events that have an element of randomness.

Comment: Some commenters thought the proposed models were fundamentally flawed because they used overly simplistic simulations of movement of biota within a population. The commenters stated that these simulations could not be improved because of the lack of basic data on population movement.

Response: The Department believes that the NRDAM/CME and the NRDAM/GLE use the best available procedure for simulating the movement of biota and that this procedure is reliable for the purposes of a simplified damage assessment. The Department acknowledges that the directed movement of biota is not well understood quantitatively. However, at the smallest scale, there is a random component to the movements of animals within the habitats they occupy, and the NRDAM/CME and NRDAM/GLE can and do model this component. The models do not simulate within-season, between-habitat movements, except where currents carry organisms across boundaries. However, the seasonal and habitat-specific abundances included in the database do account for inter-habitat movement between seasons.

Comment: Some commenters, including some of the independent technical reviewers, thought that the Department should validate the models against real-world data and perform sensitivity analyses. A few commenters also thought the Department should calibrate the models.

Response: The Department has conducted extensive sensitivity studies of both the NRDAM/CME and NRDAM/GLE. It is difficult to conduct conclusive validation studies of the models due to the extreme lack of data on the natural resource effects of small spills. In fact, although more data exist for large spills, even those data are limited. Nonetheless, the Department has used the data that are available to conduct validation studies of the NRDAM/CME physical fates and biological effects submodels and believes that these studies suggest that the submodels provide reasonable estimates of the actual physical fates and biological effects of spills. Even less data exist for spills in the Great Lakes than for spills in coastal and marine environments. However, since the NRDAM/GLE contains the same algorithms as the NRDAM/CME, the Department believes the results of the validation studies of the NRDAM/CME also support the NRDAM/GLE.

Because of the cost involved in performing site-specific type B studies, trustees have rarely pursued damage claims for minor releases. Therefore, virtually no data exist with which to validate the restoration and compensable value submodels or determine the need for calibrating the damage estimates produced by the models. In the absence of such data, the Department has relied primarily on careful reviews of the accuracy and reasonableness of the data and algorithms used in the models. The Department believes that these reviews of the scientific underpinnings of the models provide adequate support for the reliability of the damage estimates produced by the models.

The Department further believes that the models are consistent with congressional intent underlying the directive to produce procedures for simplified assessments. The models are best available simplified procedures. They produce reliable, fair, and reasonable results when used for their intended purpose. The Department has clearly identified the capabilities and limitations of the models and has allowed trustees to select between type A and type B procedures based on specified criteria. Finally, the Department has retained the provision allowing PRPs to require trustees to use type B procedures if they advance the reasonable cost of using such procedures within an acceptable time frame.

Comment: One commenter stated that the NRDAM/GLE should be peer reviewed in an open forum prior to promulgation.

Response: The Department believes that the NRDAM/GLE has been adequately reviewed. The proposed model was made available for public review and comment for eleven months. Also, the review of the proposed NRDAM/CME by independent technical reviewers was directly relevant for the NRDAM/GLE because the NRDAM/GLE incorporates the same basic modeling as the NRDAM/CME.

Comment: Some of the independent technical reviewers claimed that the proposed NRDAM/CME underestimated damages. In support of this claim, these reviewers noted that when used to calculate damages for certain actual releases, the model generated damage figures that were usually at least an order of magnitude less than the figure for which the parties settled.

Response: The Department believes that when the conditions set forth in § 11.34 are met, the models will generate reasonable and appropriate damage figures for the injuries and losses these simplified procedures address. The Department does not believe that historical settlements provide an accurate or meaningful standard against which to judge the reliability of damage figures generated by the NRDAM/GLE and the NRDAM/CME. Although real-life case data on physical fates and biological effects can, in some instances, provide useful comparisons when evaluating the physical fates and biological effects submodels, bottom-line settlement figures may differ from model damage figures for a number of reasons that have nothing to do with reliability.

First, because of the cost involved in performing site-specific type B studies, trustees have rarely pursued damage claims for minor releases. Therefore, historical natural resource damage settlements usually involve large spills. The type A models were designed for minor releases and are based on various assumptions that often are not reasonable in the case of large spills. Therefore, the restoration and compensable value submodels would not have been applicable to the cases in which natural resource damage settlements have been reached.

Second, it is difficult to determine the appropriate user inputs for some of the actual cases, many of which are several years old. For example, user-supplied information on beach, and fisheries closures can significantly affect the total damage figure, yet data on the actual extent of such closures are in some cases no longer available.

Third, the models do not purport to capture all, or even most, of the ''real world'' or ''actual'' damages that could be determined if the costs of a full on-site assessment were not a consideration. Instead, the models use averaged values to calculate a specific subset of the damages resulting from a release. When used for the minor

releases for which they are intended, the models yield reliable and appropriate damage figures that are calculated at a reasonable cost. Past natural resource damage settlement agreements have generally identified a single damage figure that is not broken down by component. In fact, most settlement agreements to date have not even listed which types of injuries and losses the agreement is intended to address. Therefore, it is usually impossible to determine if the model is even calculating the same type of damages as those covered by the settlement, let alone whether the calculation produces a damage figure that matches the settlement figure. The larger—and more complicated—the release, the greater the likelihood of a divergence between the type A damage figures and the more site-specific damages that might be calculated using type B procedures. The fact that such divergence occurs, and even at times might appear ''extreme,'' does not suggest unreliability or an inappropriate ''underestimation'' of damages by the type A models. Rather, it only serves to illustrate the limited function these procedures are intended to serve, and the reason they are designed to be used for minor releases, for which the costs of type B procedures cannot be justified when compared to the anticipated level of damages.

Finally, settlements are the result of negotiation. The negotiation process usually begins before either party has completed its assessment work. Settlement negotiations are influenced by both parties' perception of several factors extraneous to the assessment process. These factors include: the transaction costs associated with delaying settlement or terminating negotiations and litigating the case; the strength of the liability portion of the case; the PRP's financial condition; and the trustee's ability to fund a complete assessment. In light of the influence of these factors in settlement negotiations and the other difficulties in comparing settlement figures against model calculations, the Department does not believe that variances between model damage figures and historical settlements indicates anything about the reliability of the models, when used as intended.

Comment: One of the independent technical reviewers questioned why the damages calculated by the proposed NRDAM/CME do not agree with those calculated by the original NRDAM/CME for the same spill.

Response: The new NRDAM/CME differs significantly from the 1987 version of the model due to modifications made in compliance with the *Colorado* v. *Interior* remand as well as modeling and database improvements made as a result of the biennial review. Among the most significant differences, the original model assumed a generic study area defined by the user with uniform depth, habitat, and environmental conditions. Today's final NRDAM/CME allows for geographic resolution of multiple habitats, depths, coastline, shore type, currents, ice cover and other environmental condition. The new NRDAM/CME contains much larger biological and economic databases, resolving many more species categories and geographic regions. Also, the new NRDAM/CME contains a restoration submodel and restoration cost database. The Department believes that these and other changes have resulted in significant improvements in the reliability of the calculations of the model.

Comment: One commenter stated that the models were unreliable because NOAA used them to develop proposed OPA compensation formulas that generated unrealistic damage figures.

Response: The Department does not believe that damage figures produced by NOAA's proposed OPA compensation formulas are relevant to the evaluation of either the proposed or final versions of the NRDAM/GLE and NRDAM/CME. On January 7, 1994, NOAA proposed compensation formulas for determining natural resource damages under OPA. 59 FR at 1176–77. These formulas were based on early developmental drafts of the NRDAM/GLE and the NRDAM/CME that the Department made available to NOAA in 1991. The Department has extensively modified both the NRDAM/CME and NRDAM/GLE since 1991. For example, the Department has revised the algorithms contained in the physical fates and biological effects submodels; expanded and updated the biological databases; and revised the chemical and economic databases. Section VI.B of this preamble identifies other major changes that the Department made to the NRDAM/CME and NRDAM/GLE as a result of public comments.

Comment: One commenter stated that the proposed NRDAM/CME dramatically underestimated damages as compared to the compensation table developed by the State of Washington under its natural resource damage laws. The commenter expressed concern that PRPs may use the NRDAM/CME to seek reductions in the State compensation table.

Response: The Department does not believe it is appropriate or relevant to compare the results of type A model runs against the figures in Washington's compensation table, because the type A models and the State table are based on different approaches to damage assessment. The Washington table establishes a pre-set, per-gallon scale of damages. The type A models, on the other hand, estimate the actual effects of the release and then generate a site-specific damage figure based on the cost of restoring injured resources plus selected public economic values lost pending recovery.

With regard to PRPs' potential use of the type A models to undermine the Washington table, the Department would like to emphasize that the type A models were developed specifically for use under Federal law. State or tribal simplified procedures may take into account costs, economic values, or other considerations not reflected in the type A models. As such, the damages produced by the type A models are not an appropriate point of comparison for evaluating State or tribal procedures. The type A models in no way preempt State or tribal procedures that are authorized under and designed to enforce non-Federal laws.

Comment: Several commenters questioned the disparity between the levels of sophistication of different components of the models. Some of the independent technical reviewers noted that the compensable value submodel, unlike the relatively complex physical fates and biological effects submodels, essentially amounted to a look-up table. These reviewers thought that the Department should develop a more dynamic economics model. Other commenters thought that significant disparities in complexity existed even within the physical fates and biological effects submodels.

Response: The Department has attempted to incorporate the best available procedures for modeling all components of the type A models. The Department acknowledges that the levels of intricacy vary throughout the models. These variances reflect the differing degrees of current technology and scientific knowledge. Economic science has not progressed to the point where there are general models of recreational demand that can be readily applied to specific recreational activities at specific locations. This is in distinct contrast to the biological and physical sciences. The physical fates and biological effects submodels are based on parameterizations of known and generally accepted models of physical and biological processes.

Comment: One of the independent technical reviewers stated that the models incorporate some biases that will result in underestimates of damages and other biases that will result in

overestimates. The technical reviewer suggested that the models provide a range of damage estimates that reflect consistent use of conservative assumptions on one end and consistent use of liberal assumptions at the other end. Another independent technical reviewer suggested that the models be modified to perform an uncertainty analysis for each run.

Response: The Department believes it has adequately and appropriately addressed the potential for bias in the NRDAM/CME and NRDAM/GLE. The type A procedures are principally designed to establish a process for trustees to follow if they wish to pursue a natural resource damage claim and obtain a rebuttable presumption in court. In a suit for damages, trustees will need to identify a specific claim. Therefore, the Department has developed type A models that generate a single damage figure rather than a range of possibilities.

Moreover, where commenters, or the Department itself, identified specific potential biases in the proposed models, the Department modified the models to correct for such biases to the extent possible. Where the Department could not eliminate the potential for bias, it identified the simplifying assumptions made in the models that produce that potential. As discussed further below, those assumptions that could result in significant overestimates of damages if they are not reasonable in a particular case are listed in § 11.34 as conditions that must be met if the trustees expect to obtain a rebuttable presumption. Those assumptions that are not likely to result in significant overestimates of damages if they are not reasonable in a particular case, and, in fact, may result in underestimates, are explicitly identified in Section 1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. Section 11.35(a) provides that if a type A procedure is applicable, trustees must determine whether to use type A or type B procedures based on an evaluation of those model assumptions.

As discussed in Section III of this preamble, the type A models are neither expected nor intended to produce damage estimates that ''match'' the results of more complex site-specific assessment procedures. Therefore, the Department has concluded that a traditional uncertainty analysis is not needed.

Comment: Several commenters thought the scope and complexity of the proposed NRDAM/GLE and NRDAM/CME were too great. A few commenters thought the models were so complex and difficult to use that operating them was beyond the ability of untrained users. One commenter thought the technical documents should clearly state the required user qualifications. Several commenters, including some of the independent technical reviewers, suggested improved user interfaces. Some of the independent technical reviewers thought that additional user guidance was needed; one suggested that the Department develop an animated tutorial.

Response: While the Department acknowledges that the NRDAM/CME and NRDAM/GLE are functionally very complex, it does not believe that they require an undue level of expertise to operate. Users must simply be able to: (1) Understand the conditions for use in § 11.34; (2) evaluate the models' simplifying assumptions listed in of Section 1, Volume I the technical documents; (3) evaluate the averaged data included in the models as described in Volumes III through IV of the NRDAM/CME technical document and Volume III of the NRDAM/GLE technical document; and (4) enter correctly the required user-supplied data as described in Appendices II and III of the rule. Users who meet these standards will obtain reliable results regardless of whether they have a full understanding of all the models' components.

As discussed further below, the Department has revised the regulatory conditions for use of the models to clarify a number of points of confusion. Section 1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents now contains a clearer, simpler discussion of all the major model assumptions of which users should be aware when determining whether to use type A or type B procedures. The Department has also rewritten the regulatory discussion of the user-supplied information and moved that discussion into appendices in an attempt to make it easier to read. Volume II of the technical documents includes a revised discussion of how to develop and input the user-supplied data. Finally, the models provide a graphic user interface that has been revised to further simplify the task of the user. While additional guidance might be helpful and may be developed in the future, the Department believes that the current level of guidance is adequate to allow non-expert users to operate the model correctly.

Comment: Some of the independent technical reviewers questioned why the user interface was not consistent with Windows® software.

Response: The Department chose to develop the user interface as a stand-alone product that would not require licensing a copyrighted product such as Windows® software.

Comment: A few commenters complained about the speed of the proposed models. Some commenters called upon the Department to upgrade the computer platform required to run the models. The commenters thought that such an upgrade would enable users to complete model runs in hours rather than days and would allow the models to use more detailed databases, thus increasing accuracy.

Response: In developing the type A models, the Department had to strike a balance between the desire for the speed afforded by high-powered computer equipment and the need to ensure that any type A procedure developed is readily accessible to a wide array of potential users. The Department believes it has struck the appropriate balance in the PC environment.

It is evident from even a cursory review of the technical documents that the models are very complex and perform millions of individual calculations during a run. The Department has made every effort to optimize the models for speed without compromising their accuracy or applicability. Obviously, there continue to be advances in PC technology. For the development of the type A models, it was necessary for the Department to settle on a widely-available computer platform and finalize the rule. While more recent technological developments will allow these models to run faster on improved computer platforms, the Department decided that maintaining the models for use on 386 PCs would not compromise their function or purpose and would keep them readily accessible to potential users.

Model run times are affected by the complexity of the spill (e.g., amount spilled, duration of the spill, and degradation rate of the spilled substance) as much as the computer platform utilized. Nonetheless, for minor spills, most runs are executed in a matter of minutes rather than hours or days even on a 386 PC. The models will take significantly less time to run on a 486 PC or a Pentium® PC, but the user is not precluded from using an older model of computer.

Since the issuance of the proposed rule, the NRDAM/CME has been moved to a 32-bit FORTRAN® compiler. This move allowed the Department to subdivide the habitat grids by a factor of four and increase the number of computational particles used to represent spilled material and biota. These changes should improve the accuracy of the model. The area

modeled in the NRDAM/GLE is much smaller than that modeled in the NRDAM/CME. Therefore, the Department concluded that these changes were not needed in the NRDAM/GLE to increase speed or accuracy.

Comment: One of the independent technical reviewers stated that when he attempted to replicate test runs on the proposed NRDAM/CME he obtained different results.

Response: Users will obtain identical results if, but only if, they use identical inputs. The Department designed the type A models so that they will produce identical results, regardless of the make or model of PC used, if the user-supplied inputs are identical. To accomplish this result, the Department built a table of random numbers into the models' code rather than have the models use the random number generating features of the microprocessor.

Comment: Several commenters, including some of the independent technical reviewers, suggested that the Department include additional categories of damages in the type A models. Commenters recommended that the Department add the following losses to the models: sublethal biological effects; chronic biological effects; wetland losses; nonuse losses (i.e., economic values that are not dependent on use of a resource, such as the value of knowing a resource exists); de facto beach, boating, and fisheries closures; reductions in the quality of boating and beach recreation in the absence of closures; reductions in the quality of recreational fishing unrelated to mortality or closures; and ecosystem functional losses such as reductions in filtration, mineral recycling, and decomposition. These commenters expressed concern that if the models are not expanded to cover additional losses, then type A assessments will consistently underestimate damages. They noted that *Ohio* v. *Interior* and *Colorado* v. *Interior* instructed the Department to allow for the recovery of all reliably calculated losses. Commenters also thought that, in light of the cost of type B procedures, it was disingenuous of the Department to state that trustees could simply use type B procedures to calculate damages for losses not included in the models.

Response: The Department has attempted to include in the models all categories of loss and injury for which adequate, reliable information exists in a format that enables the calculation of damages for the wide range of substances, resources, and geographic areas covered by the models. The Department acknowledges that the type A models do not address all potential losses and injuries that might result from a release and that, in some cases, losses not included in the models may be significant. The Department further acknowledges that *Ohio* v. *Interior* and *Colorado* v. *Interior* instructed the Department to allow for the recovery of all reliably calculated values. The issue, then, is reliability. The exclusion of certain categories of injury and loss from the models was based on the Department's evaluation of whether there was adequate reliable information to support their inclusion.

For example, the Department has considered the comments suggesting the addition of nonuse losses, but continues to believe that the addition of such values is not feasible at this time. As discussed in the proposed NRDAM/CME technical document, most studies of nonuse values do not report marginal nonuse values that would be required for the type A models as they are presently designed. See Section 8.5.2, Volume I of the proposed NRDAM/CME technical document. Furthermore, these studies have tended to focus on the nonuse values of threatened or endangered species. As a consequence, the bulk of available studies are not directly applicable to the estimation of nonuse values that would be lost as a result of the small spills addressed by the type A models.

Furthermore, the final rule explicitly provides that where trustees expect losses that are not addressed by the models, they may consider using type B procedures in addition to a type A procedure, provided that type B procedures are cost-effective, can be performed at a reasonable cost, and do not result in double recovery. The Department recognizes that type B procedures are likely to be significantly more costly than type A procedures and, in some cases, trustees may not be able to perform type B procedures and still satisfy the rule's reasonable cost standard. Nevertheless, the Department does not believe that the cost of performing type B procedures justifies the inclusion in the models of losses for which there is an inadequate basis to determine damages. During future biennial reviews, the Department will reevaluate whether additional information has become available that supports expansion of the categories of losses and injuries included in the models.

Comment: One of the independent technical reviewers stated that additional detail should only be added to the models if it influences the final damage figure.

Response: The ultimate purpose of all the calculations made by the type A models is the determination of a reliable damage figure. Therefore, while reviewing the comments and deciding which changes to make to the models, the Department has focused on whether the suggested changes would significantly improve the reliability of the final damage figure.

Comment: One commenter suggested that trustees be allowed to use simplified procedures developed by States and receive a rebuttable presumption under the CERCLA regulations. Another commenter requested that the Department develop compensation tables for commonly released hazardous substances.

Response: Some simplified State or tribal procedures may well be appropriate for use under CERCLA. However, only a handful of coastal States have developed such procedures. Further, these State procedures have been developed under State laws, which may establish somewhat different objectives and standards than CERCLA. The Department believes it would need to evaluate carefully any particular State or tribal procedure to determine its consistency with CERCLA's regulatory mandate before allowing it to be used and accorded a rebuttable presumption under these regulations. Therefore, the Department decided it was more appropriate to develop its own simplified procedures for the coastal and marine and Great Lakes environments.

The primary advantage of compensation tables appears to be their ease of use. The Department believes that the NRDAM/CME and NRDAM/GLE are simple enough to operate that compensation tables are not necessary. Further, the Department believes that the models will provide a level of site-specific accuracy beyond that which a compensation table could offer.

Although the Department has decided not to incorporate compensation tables or simplified State or tribal procedures in this rulemaking, the Department has begun to evaluate the need for, and feasibility of, additional type A procedures. See 60 FR 24604 (May 9, 1995). The Department will further consider the use of simplified State procedures and the development of compensation tables in that context.

B. Technical Documents

Comment: Some commenters stated that the Department had failed to provide adequate documentation explaining how the proposed models operated and why the Department made the choices it did when developing

different components of the proposed models. One commenter stated that the scope and complexity of the models were too great and suggested that a revised program be developed and accompanied by a simplified synopsis of the technical assumptions and formulas presented in a format more amenable to comment. Commenters cited case law requiring agencies to provide a complete explanation and defense of models used in the development of regulations. The commenters noted that the Department's obligation to provide a full discussion of the type A models was even greater because the models are used to determine monetary liability of particular parties.

Response: The Department acknowledges its duty to provide an adequate explanation and justification of the models and to provide the public with a meaningful opportunity to review and comment on the proposed models. The Department believes it has fulfilled this duty.

The proposed models were accompanied by lengthy and detailed technical documents describing the content, workings, and development of the models. The proposed NRDAM/CME technical document exceeded 2,400 pages in length; the proposed NRDAM/GLE technical document was almost 1,500 pages in length. Also, the preambles to the proposed rules provided a roadmap to the technical documents, highlighting areas of potential concern and identifying where various issues were discussed in the technical documents. The Department made the proposed models and technical documents available on diskette free of charge to anyone who requested them.

To assist commenters in reviewing the models, the Department equipped the proposed models with a user interface that included pull-down menus, ''help'' screens, and graphic displays of the physical environments and user-generated runs of the physical fates submodel. The Department also incorporated pertinent calculations from the physical fates, biological effects, restoration, and compensable value submodels into the printed model output to enable reviewers to evaluate the reliability of the models for incident-specific model applications.

The Department notes that the goal of developing models that calculate compensatory damages for spills throughout the Great Lakes and coastal and marine environments has necessitated a relatively high level of complexity in modeling. The Department recognizes that with models as complex as the NRDAM/CME and NRDAM/GLE some reviewers will always want more information on specific elements while others will be overwhelmed as the documentation becomes more extensive. Although the Department never deliberately omitted any discussion it thought would be of interest to reviewers, the Department did recognize that providing too much information can be just as problematic as providing too little. The Department has tried to be sensitive to the risk that important information can become buried in a mountain of detail.

The Department extended the public comment period on the proposed NRDAM/CME once and on the proposed NRDAM/GLE twice. The total comment periods were seven months for the proposed NRDAM/CME and eleven months for the proposed NRDAM/GLE. Those reviewers left with questions after reviewing the models and technical documents were free to contact Departmental staff at any time during the comment period.

Finally, the Department has provided additional discussion of specific model aspects in the final versions of the NRDAM/CME and NRDAM/GLE technical documents and in this preamble as a result of specific public comments.

Comment: Several commenters, including some of the independent technical reviewers, said that the technical documents were either unclear or difficult to use. Others noted confusing table captions and headings, inconsistencies, incorrect citations, and typographical errors. One commenter suggested that major assumptions for each submodel be placed in bold print at the beginning of each section. One commenter recommended that the technical documents be amended to give examples of when the models might underestimate or overestimate damages.

Response: The Department has reviewed and revised the NRDAM/CME and NRDAM/GLE technical documents to further clarify algorithms, assumptions, and data sources. The Department has also checked the documents for consistency, particularly with regard to terminology and has fixed the noted typographical errors and incorrect citations. Section 1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents now more clearly identifies all the major assumptions of which trustees should be aware when deciding whether to use the models and describes the likely results if the assumptions are not reasonable in a particular case. Further, the discussion of each submodel in Volume I of the technical documents now starts with a list of the assumptions relevant to that submodel.

C. Selection of Assessment Procedures

Comment: The Department received numerous comments on the proposed conditions for use of the type A models. The proposed rules identified a set of primary conditions and a set of secondary conditions. Under the proposed rules, if any primary condition were not met, trustees would not have been allowed to use the type A procedure. If all primary and all secondary conditions were met, trustees would have been required to use the type A procedure for all damages. If all primary conditions but only some secondary conditions were met, trustees could have used a combination of type A and type B procedures.

Some commenters thought the proposed rules were overly prescriptive in dictating which type of assessment procedures trustees may use. These commenters argued that trustees should have greater discretion to determine which procedures, type A, type B, or a combination, are appropriate in a particular case. Commenters expressed concern that the conditions regarding use of the type A procedures were vaguely defined and would invite confrontation and litigation if they were imposed as requirements. These commenters supported expansion of the authority to use type A and type B procedures in combination, but thought the proposed rules still did not provide adequate flexibility. These commenters also stated that the type A procedures were particularly useful when used with selective site-specific studies of impacts not addressed in the type A models.

Other commenters, including one of the independent technical reviewers, thought that the proposed rules gave trustees too much discretion in selecting assessment procedures. Some of these commenters thought that the conditions regarding use of the type A procedures should be clearer and stricter. One of the independent technical reviewers suggested that the Department recharacterize the assumptions made by the models as limits of applicability. One commenter argued that trustees be required to use a type A procedure unless they provide scientific justification for using type B procedures. On the other hand, some commenters expressed concern that the proposed rules would allow excessive use of the type A procedures and suggested making the primary conditions more restrictive.

Several commenters objected to the proposed provision allowing combined

use of type A and type B procedures. The commenters argued that Congress intended the type A and type B procedures to be mutually exclusive. These commenters also thought that combined use of type A and type B procedures would pose significant risks of double recovery of damages and that the proposed rules failed to provide any guidance on how to prevent such double recovery. One commenter stated that combined use of type A and type B procedures was inconsistent with the ''average'' values justification for simplified procedures, since type B procedures would be used to offset type A underestimates without any corresponding offset of type A overestimates. Another commenter expressed concern that if allowed to supplement type A assessments, trustees would spend enormous sums assessing nonuse values for small releases even though such releases are unlikely to produce any meaningful nonuse losses. Some commenters stated that if the final rule allowed use of type B procedures to supplement a type A assessment, then such use should be limited to resources not included in the type A procedure.

Response: The type A models are powerful tools for completing assessments and beginning restoration as quickly and cost-effectively as possible. The Department has sought to balance the utility of making these tools available in the widest possible range of cases against the potential dangers that they may produce unreliable results when stretched beyond their limits or that they may result in double recovery when inappropriately combined with type B procedures.

The Department has carefully reexamined both the proposed conditions regarding use of the models as well as the additional major simplifying assumptions incorporated into the models and described in the technical documents. The Department has concluded that the conditions for use of the models should recognize two different categories of assumptions built into the models. The first category encompasses those assumptions that could result in significant overestimates of damages if they are not reasonable in a particular case. The second category encompasses those assumptions that are not likely to result in significant overestimates of damages if they are not reasonable in a particular case and that may well result in underestimates.

The Department believes it is inappropriate to grant a rebuttable presumption to an assessment performed using the NRDAM/CME or NRDAM/GLE if one of the assumptions in the first category is not reasonable in the particular case. If an assumption in the second category is not reasonable in a particular case, it may be appropriate for trustees to use type B procedures to ensure that the public receives full compensation for its losses. However, the Department believes trustees in those cases should have the option of using the type A models when the costs of type B procedures are not reasonable. The appropriateness of the models in these cases will depend on site-specific factors. The Department has concluded that it is more appropriate to allow trustees to analyze these factors in the context of a particular case than to establish inflexible, overly rigid standards.

Therefore, the Department has identified all the major model assumptions and for each one determined into which of the two categories they fall. Those assumptions in the first category are identified in § 11.34 of the final rule as conditions that must be met if trustees intend to use the NRDAM/CME or NRDAM/GLE and obtain a rebuttable presumption. These assumptions include most of the primary conditions in the proposed rules.

The Department has identified the assumptions in the second category and listed them, along with the other assumptions, in Section 1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. These assumptions include many of the secondary conditions in the proposed rule. Section 11.35(a) provides that if the conditions for use of a type A procedure are met, the trustee must decide whether to use that procedure or use type B procedures by weighing the difficulty of collecting site-specific data against the suitability of these additional assumptions as well as of the averaged data described in Volumes III through IV of the NRDAM/CME technical document, and in Volume III of the NRDAM/GLE technical document.

The Department has eliminated the proposed provision that would have required trustees to use a type A procedure in some cases. That requirement was originally motivated out of concern over potential misuse of unnecessarily expensive and time-consuming type B procedures. 59 FR at 40322. Although the models are cost-effective, reliable tools where applicable, the Department has concluded that trustees should not be prevented from conducting site-specific work if they can do so at a reasonable cost and if the additional costs of performing type B procedures are warranted in light of the degree of additional precision and accuracy that such procedures will provide.

The issue of the legal permissibility of allowing trustees to use both type A and type B procedures for the same release is one that the Department decided and resolved in 1987 and is beyond the scope of this rulemaking. Today's final rule merely expands the use of supplemental type B studies beyond resources not addressed by the type A procedure to include compensable values and injuries of a type not addressed by the type A procedure.

The Department acknowledges that combined use of type A and type B procedures can, in some instances, pose potential double counting problems. However, trustees should not be forced to choose between forgoing compensation for a public loss not addressed by the type A model on the one hand and funding a full-scale, time-consuming, labor-intensive type B assessment of all injuries on the other hand. Instead, the potential problems with combined use of type A and type B procedures should be addressed through limitations designed to protect against double recovery.

The final rule provides that trustees who use a type A procedure may perform additional type B studies only for injuries or compensable values of a type not addressed by the type A procedure. The secondary conditions in the proposed rules have been recast to identify explicitly the injuries and compensable values that are addressed in the type A models and, therefore, may not be supplemented with type B procedures.

Given the vast range of potential scenarios, it is infeasible to develop a single, uniform formula for preventing double recovery. Instead, § 11.15(d) of the existing regulations prohibits double recovery of damages. Also, § 11.36(a)(2) of today's final rule provides that trustees may only perform supplemental type B procedures if such procedures will not result in double recovery. Further, § 11.36(c) requires trustees to provide an explanation in the Assessment Plan of how they intend to avoid any double recovery in the case of combined use of type A and type B procedures. PRPs and the public will have an opportunity to review the trustees' strategy for preventing double recovery when the Assessment Plan is made available for public comment.

The Department agrees with the comment that the type A procedures can be particularly useful when combined with selective studies of impacts not addressed by the models. The Department would like to ensure that

where combined use of type A and type B procedures is warranted, trustees are freed from conducting duplicative assessment procedures. Therefore, the Department has modified the final rule to clarify that when using type B procedures for compensable values that are not included in a type A procedure, but that result from injuries addressed by the type A procedure, trustees need not conduct injury determination and quantification all over again using type B procedures. Instead, trustees may rely on the injury projections of the type A model and simply use one of the type B valuation methodologies authorized by § 11.83 (a) and (c) to compute compensable value.

With regard to the concern about unwarranted type B studies of nonuse values, aside from the implausibility of the scenario suggested by the commenter, the Department notes that calculation of nonuse values using type B procedures is under examination in a separate rulemaking. See 59 FR 23097 (May 4, 1994). Therefore, this rulemaking need not address this issue.

Finally, the Department believes it is appropriate to revise the existing rule to allow supplemental use of type B procedures beyond resources not addressed in the type A models. The public can experience significant and distinct losses associated with the same resource. *Ohio* v. *Interior* emphasized that the regulations should allow for the recovery of all reliably calculated lost values. 432 F.2d at 464. The Department sees no reason to impose an arbitrary distinction between losses associated with different resources and losses associated with the same resource so long as there is no double recovery.

Comment: One commenter suggested that trustees be allowed to use supplemental type B procedures to determine damages for habitats that are not accurately represented in the models.

Response: In cases where the models assign an incorrect habitat designation for a specific area, trustees have the ability to correct that designation and would not need to conduct supplemental type B studies. In cases where releases affect habitats beyond the models' level of spatial detail, trustees may perform supplemental type B studies so long as such studies do not address injuries or compensable values in the categories listed in § 11.36(b) of the final rule. The Department does not believe it is appropriate to expand this authority to conduct supplemental type B studies and still obtain a rebuttable presumption. When such small habitats are affected, the models will nonetheless determine injury and damages for the geographic area in which those habitats are located. If a trustee were to use one of the models and then conduct supplemental type B studies of such a habitat, the trustees would need to adjust the type A damage figure to eliminate any damages calculated for the area over which the habitat is located. The Department has concluded that in the context of a simplified assessment, trustees who wish to obtain a rebuttable presumption should be limited to conducting type B studies for the purposes of addressing additional injuries and compensable values that are not included in the model rather than substituting for damages already calculated by the model.

Comment: A number of commenters thought that trustees should be prohibited from using type A procedures unless all interested trustees agree to a single joint assessment. These commenters stated that such a provision was necessary to avoid the problems of double recovery and improper allocation of damages among trustees. These commenters thought that these problems were more significant for type A assessments than for type B assessments because the type A models provide less detail than type B procedures on the type and location of injured resources and the damages associated with those resources.

Response: The Department acknowledges that the type A models pose a unique problem when trustees do not act jointly. The type A models generate a total damage figure for all affected resources. Therefore, if a trustee acts independently and applies a type A model, the total damage figure generated by the model might include damages for resources that are not under that trustee's jurisdiction.

To address this problem, § 11.42 now requires a trustee to perform a preliminary application of the model before making the draft Assessment Plan available for public review and comment. The trustee must include a summary of the model application in the draft Assessment Plan and make available a copy of the model output. The output of the model does in fact identify the type and location of injured resources. Section 11.31(a)(2) of the existing regulations requires trustees to include in the Assessment Plan a statement of authority for asserting trusteeship for those resources addressed in the Plan. Therefore, PRPs and other interested members of the public will have an opportunity to comment on whether any of the injured resources identified in the model output are beyond the scope of the trustee's jurisdiction.

Also, § 11.44(e) provides that if a trustee is aware of reliable evidence that a type A application covers resources beyond his or her trustee jurisdiction, the trustee must either: (1) Have the other trustees who do have jurisdiction over those resources join in the type A assessment; or (2) eliminate any damages for those resources from the claim for damages.

Furthermore, the Department strongly encourages trustees to work together to ensure that natural resource damage assessments remain focused on restoring the injured resources rather than debating over which trustee has jurisdiction over them. As noted by some of the commenters, § 11.32(a)(1) of the existing regulations requires a trustee to notify all other interested trustees before beginning an assessment and encourages all trustees to cooperate and coordinate. Also, § 11.15(d) of the existing regulations prohibits double recovery of damages.

The issue of inter-trustee coordination extends beyond this rulemaking to the overall administrative process for conducting all assessments. The potential for overlapping claims exists whenever trustees conduct separate assessments, regardless of whether type A or type B procedures are used. The Department has initiated a biennial review of the administrative process for conducting assessments. The Department will be further examining the issue of inter-trustee coordination during that review. 59 FR at 52752.

Comment: A few commenters stated that PRPs should be ensured a meaningful opportunity to participate in the selection of assessment procedures. These commenters requested that PRPs be given a chance to review trustees' assumptions and reasoning. Commenters also expressed support for cooperative trustee-PRP assessments.

Response: The Department agrees that PRPs should have an opportunity to participate in selection of assessment procedures. Section 11.32(a)(2)(iii)(A) of the existing regulations already requires trustees to invite PRPs to participate in the development of the type and scope of the assessment as well as the performance of the assessment procedures. Today's final rule does not change that requirement. Section 11.32(c) requires trustees to make their Assessment Plans available for public review and comment. The proposed rule required trustees to include in their Assessment Plans documentation of their decision whether to use a type A procedure, type B procedures, or both. Section 11.31(b) of today's final rule

now makes more explicit the trustees' duty to provide a detailed explanation of their rationale for using a type A procedure, type B procedures, or both. Also, § 11.35(d) now clarifies that trustees may change their decisions about the types of procedures they use based on public comments.

Comment: Many commenters addressed specific proposed conditions for use of the models. Some commenters questioned the condition regarding whether the data in the models reasonably represented the spatial and temporal distribution of affected biological resources. One commenter suggested that this condition was inconsistent with the habitat editor. Another commenter requested clarification of the term ''reasonably represented.'' This commenter expressed concern that the condition seemed to require trustees to collect baseline data, which would defeat the intent of requiring minimal field observation in type A procedures.

Response: The Department has reexamined this proposed condition regarding use of the models. The condition addressed two different model assumptions. First, the condition addressed the assumption that the release did not affect any small but important environments beyond the level of spatial detail of the model. Second, the condition addressed the assumption that species biomass is averaged spatially and temporally. The Department has concluded that if the first assumption is not reasonable in a particular case, then the model will most likely underestimate, rather than overestimate, damages. Therefore, the Department has eliminated this assumption from the conditions for use listed in § 11.34 of the final rule. Instead, the Department has identified the assumption in the NRDAM/CME and NRDAM/GLE technical documents as one of the factors for trustees to consider when deciding whether to use type A or type B procedures, once they have established that the conditions set forth in § 11.34 are met. See Section 1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. The Department has clarified the second assumption, concerning species biomass, and included it in § 11.34 as a condition that must be met if trustees intend to use the models and obtain a rebuttable presumption.

The habitat editor does not conflict with either of these assumptions. The final rule allows trustees to change the habitat designation for an entire existing grid cell. However, the rule does not allow trustees to redraw the boundaries of the grid cells or modify the species biomass for a particular habitat. Even with correct habitat designation, edited or through the built-in designation, the models may not reflect small habitats or populations with densities that differ from the seasonal average.

The Department acknowledges the confusion generated by the term ''reasonably represented.'' The term was not intended to require trustees to conduct field surveys to collect baseline data. Instead, it was designed to address cases where information already existed about baseline conditions and such pre-existing information differed significantly from the data in the model. Section 11.34(e) now simply provides that a trustee may not use the models if he or she is aware of reliable evidence that, for species expected to represent a significant portion of the claim, the species biomass is significantly lower than the species biomass assigned by the models.

Comment: A few commenters noted that the models may significantly underestimate damages when the released substance causes chronic or sublethal effects, when sensitive habitats or life stages are affected, when animals aggregate for feeding or reproduction, or when long-term effects, such as reproductive impairment or changes in food web structure, are expected.

Response: The Department acknowledges that the type A models may not accurately calculate total damages in the situations identified by the commenters. However, the Department has included provisions in the final rule to address these situations. Section 11.35(a) provides that if a type A procedure is applicable, trustees must determine whether to use type A or type B procedures based on an evaluation of the model assumptions listed in Section 1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. One of the listed assumptions is that there are no affected environments beyond the spatial detail of the models. This assumption will alert trustees to the potential for underestimating damages where sensitive habitats are affected. Another listed assumption is that species biomass is averaged spatially and temporally. This assumption will alert trustees to the potential for underestimating damages when animals aggregate. Finally, the rule explicitly identifies the injuries addressed by the type A models; therefore, trustees will have notice that they will need to perform supplemental type B procedures if they wish to address chronic or sublethal biological injuries.

Comment: Some commenters thought that trustees should be allowed to use the models only if the release is a single event. These commenters expressed concern that in the absence of such a requirement, trustees could use a type A procedure to assess one release in a multi-release incident and use type B procedures to assess the other releases. The commenters thought that such a practice would result in double counting because some of the injuries predicted for one release would already be accounted for in the assessment of another release. These commenters also thought that the rule should be rewritten to clarify that the type A models can be applied only to releases of a single substance. The commenters noted that without this change, similar double counting problems could arise from multiple applications of the models.

Response: The Department has concluded that the model assumption that the release is a single event need not be made a condition for use of the models. Instead, Section 1, Volume I of the technical documents notes that the models assume that each spill is an independent, short-term event.

Section 11.15(d) of the existing regulations already prohibits double recovery of damages. In the case of a multi-release incident, if trustees choose to use a type A model for one release and then conduct type B studies for the other releases, they will be required to ensure that the type B procedures do not result in double recovery. The Department acknowledges that in some cases it may be difficult for trustees to satisfy this requirement. However, the Department believes that in those multi-release cases where trustees can tailor their type B studies to address only the effects of the releases not assessed by the type A model, they should have the opportunity to do so.

With regard to releases of multiple substances, the rule now provides that trustees must select and assess only one of the substances that was released. See Appendices II and III. This requirement will eliminate double counting problems. In fact, toxicity of mixtures has been found to be additive or synergistic in aquatic environments for a wide variety of substances. See Section 4, Volume I of the NRDAM/CME technical document. Thus, this requirement may actually result in underestimates of damages. However, the Department believes that in cases of mixtures when the cost of using type B procedures is not reasonable, trustees should have the option of using a type A procedure rather than forgoing all compensation.

Comment: A few commenters addressed the use of the models for

substances not specifically identified in the database. Some commenters supported giving trustees flexibility to use the models for such substances provided that they identified a proxy that was included in the database and documented the reasons why the use of that proxy was appropriate. Other commenters expressed concern that allowing use of proxies would add a significant range of discretion given the number of different physical and chemical attributes that must be considered when identifying a proxy. Some commenters, including one of the independent technical reviewers, suggested that the Department expand the oil database.

Response: The Department has concluded that allowing the use of proxies for hazardous substances without significant guidance on selection of such proxies would raise serious concerns about the uniformity and reliability of the type A model results. Moreover, developing guidance on selection of proxies would be impractical given the extremely wide range of hazardous substances and the diversity of their relevant attributes. Therefore, for chemical releases, trustees may only use the models if the released material is one of the specific chemicals listed in the database.

As discussed in Section I.C. of this preamble, use of the models for oil discharges is governed by NOAA's OPA rule rather than by today's final rule. However, the Department notes that it has expanded the database to include 33 types of oils that cover a broad range of chemical and physical characteristics.

Comment: Some commenters stated that trustees should be allowed to use the type A models and obtain a rebuttable presumption for releases that did not originate in, but later migrated into, a coastal or marine or Great Lakes environment. These commenters argued that the type A models could accommodate such releases. On the other hand, one commenter thought that such use should not be allowed because there are no data on conditions outside the boundaries of the type A models.

Response: The Department has concluded that the type A models can produce reliable damage figures for releases that do not originate in, but do migrate within, the boundaries of the models provided that the user supplies appropriate data inputs. So long as the user supplies data inputs that reflect conditions at the point that the substance enters the model boundaries, the models are just as capable of computing reliable damages as they would be if the release had actually started at that point. In such cases, the models will start their simulations at the point that the released substance enters water within a geographic region represented in the models. The only potential problem is that the models will not account for the effects produced before the release entered the model boundaries, a consideration that may support use of type B procedures in some cases. However, the Department believes trustees should have the option of using the models to assess such releases when the cost of performing type B procedures to develop a more complete damage figure is not reasonable.

Therefore, the rule allows trustees to use the models for releases that occur outside the boundaries of the models so long as the user-supplied inputs appropriately reflect conditions at the point that the substance entered such waters rather than the point of the original release. Appendices II and III specify that when using the models for releases that originate on land or outside the model databases, trustees must adjust the data inputs.

Comment: One commenter said that the definition of ''minor'' was vague, but supported the Department's discussion of it and the proposal to allow trustees discretion to define ''minor'' on a case-by-case basis. Other commenters, including one of the independent technical reviewers, thought that the Department should define ''minor.'' One commenter suggested that the rule require trustees to justify their determination of whether a release is minor with scientific documentation. Another comment recommended the Department define ''minor'' based on spill size, prediction of affected area, or resulting damage estimates.

Response: In light of Congressional intent to restrict use of type A procedures to minor releases and after considerable analysis and deliberation, the Department has decided to impose a specific dollar cut-off for use of the models to obtain a rebuttable presumption. The final rule provides that if the model output indicates damages in excess of $100,000, then trustees who wish to obtain a rebuttable presumption must either: (1) limit the portion of their claim calculated with the type A procedure to $100,000; or (2) compute all damages using type B procedures. The Department believes this provision establishes an appropriate standard of fairness for allowing trustees to receive a rebuttable presumption for damages calculated by the NRDAM/CME or NRDAM/GLE given the current level of experience with these models.

The language and legislative history of CERCLA indicate that Congress intended the type A procedures as a tool for obtaining a rebuttable presumption in cases of minor releases. Thus, the Department included a provision in the proposed rules that prohibited trustees from using the models to obtain a rebuttable presumption unless the release was minor. The proposed rule provided no definition of ''minor,'' and the Department indicated in the preamble to the proposed rules that it had been unable to develop a uniform standard for all substances and areas encompassed by the models. See 59 FR at 40330 and 63313. However, after reviewing the comments, the Department has concluded that given the significance of this term and the fact that type A procedures were intended as simplified procedures requiring limited analysis by trustees, it is appropriate to provide clear guidance.

The Department evaluated a number of different approaches to defining ''minor.'' First, the Department reviewed the language and legislative history of CERCLA. The Senate Report that accompanied the predecessor bill to CERCLA states:

> [A] simplified type of regulation is necessary to effectively deal with damage assessment in most ''minor'' releases of hazardous materials * * *. The other type of regulations [type B] would be employed in large or unusually damaging releases and would be used to guide the site-specific damage assessment. S. Rep. No. 96–848 at 86.

However, nothing in the legislative history indicates what Congress meant by ''minor.''

Next, the Department considered basing the definition on the technical limitations of the NRDAM/CME and the NRDAM/GLE for modeling large or highly toxic spills. However, sensitivity analyses of the models failed to reveal any clear stages at which the model assumptions became invalid.

The Department then considered relying upon existing standards developed in other contexts of environmental law. The U.S. Coast Guard has developed a volume-based system for classifying oil spills for purposes of spill response. See 40 CFR 300.5 (minor discharge of oil is one of less than 1,000 gallons to inland waters or 10,000 gallons to coastal waters). The U.S. Environmental Protection Agency (EPA) is responsible for developing a parallel rating system for hazardous substance spill response. While EPA has developed a qualitative system, this system does not provide the type of clear, quantitative limits that the Department believes are needed in this context. See 40 CFR 300.5 (minor release of hazardous substance is one that poses minimal threat to public

health or welfare of the U.S. or the environment).

Next, the Department considered basing a definition of minor on the point at which type B procedures can no longer be performed at a reasonable cost. However, because trustees have rarely pursued damage claims for smaller spills, the Department was unable to develop reliable estimates of the cost of conducting type B procedures in such cases.

Therefore, the Department was left to make this policy decision about the upper limit on applicability of type A procedures without the benefit of clear empirical standards or legal precedents. The Department has chosen to base this limit on its sense of when it is no longer ''fair'' to allow trustees to obtain a rebuttable presumption using the NRDAM/CME or NRDAM/GLE as opposed to performing type B procedures. The Department believes that, given the current level of experience with these models, $100,000 represents a reasonable cut-off for their use. As more experience is gained with these models, the Department will reconsider this cut-off in future biennial reviews. Further, because this regulatory cut-off is based on considerations of fairness rather than the inherent reliability of the models, the Department wishes to emphasize that although use of the models to calculate damages above $100,000 is not entitled to a rebuttable presumption, such use may nonetheless be appropriate in other contexts, such as settlement negotiations or litigation without the benefit of the rebuttable presumption.

Finally, the Department recognizes that in some instances the models may project damages in excess of $100,000, yet it may not be reasonable to perform type B procedures. The Department believes that trustees should be allowed the option of claiming damages up to $100,000 in such cases instead of forgoing all compensation. Therefore, the Department has eliminated the proposed rule condition that type A procedures only be used for minor releases and instead imposed a cap on the level of damages that trustees can claim through use of a type A procedure and still obtain a rebuttable presumption.

Comment: Several commenters thought that the proposed condition requiring uniform subsurface currents would render the NRDAM/CME inapplicable to all spills in Massachusetts, New Hampshire, and Maine.

Response: The Department acknowledges that the condition regarding subsurface currents may limit the applicability of the NRDAM/CME in some circumstances but notes that it does not render the model inapplicable to all locations where subsurface currents are not uniform. The models use vertically averaged currents and assume that the speed and direction of horizontal transport is uniform over depth at a specific latitude and longitude. The models do include randomized motion in the vertical dimension, but not directed motion. The vertically averaged current is essentially a current that provides the correct net transport averaged vertically. If the transport of the released substance cannot be reasonably represented by a vertically averaged current, then the NRDAM/CME's projections may not be reliable. For example, substances with high densities, such as sulfuric acid, may sink rapidly through the water column so that the principal mass is transported in the direction of the subsurface current. However, in many cases, such as when a substance remains at or near the surface or sinks slowly, subsurface currents will not affect the fate of the spilled substance. In these cases the model can reliably predict damages. Therefore, the rule allows trustees to use the NRDAM/CME, even if subsurface currents are not uniform, so long as they are not expected to significantly affect the level and extent of injuries.

D. User-Supplied Information

Comment: Several commenters suggested changes to the proposed models and rules that would require trustees to confirm injury. These commenters asserted that the proposed models merely assume injury and that the proposed rules inappropriately failed to require field verification of this assumption. The commenters noted that CERCLA limits recovery to damages that ''result from'' a release. These commenters argued that this limitation requires that trustees conduct field studies that prove that an injury actually occurred and that it was caused by the release in question.

A number of commenters thought that Congress intended traditional tort law standards of causation to apply to natural resource damage cases and cited case law in support of this position. Some commenters noted that *Ohio* v. *Interior* rejected a challenge to the Department's strict acceptance criteria for determining injury under the type B procedures and upheld the Department's interpretation that CERCLA adopted traditional causation standards. 880 F.2d at 471. The commenters stated that CERCLA does not create a different standard of proof of causation when type A procedures, as opposed to type B procedures, are used.

Several commenters observed that CERCLA calls for type A procedures that involve ''minimal'' rather than ''no'' field observation. The commenters thought that the Department was engaging in sheer speculation when it asserted in the August 8, 1994, notice of proposed rulemaking that requiring confirmation of injury in type A assessments would be unduly burdensome. Finally, the commenters stated that none of the steps that trustees must take before applying a type A model, including the Preassessment Screen Determination, satisfy the required standard of causation.

Response: The type A models do not ''assume'' that injury occurs. Using both the information provided by the trustees and the biological and environmental information about the spill site contained in the model databases, the models perform millions of calculations to determine whether or not the release has caused an injury. The models project the distribution of the released substance over space and time, track the changing toxicity of the substance over that space and time, and simulate the movements of biota throughout the area around the release. The models only conclude that injury has occurred if biota are exposed to the released substance at concentrations and durations that exceed acute toxicity thresholds. If such thresholds have not been exceeded, the models conclude that there has been no injury. The models can and have projected that no injury resulted from particular releases. In such cases, the models determine that damages equal zero.

The issue is not whether the Department is attempting to excuse trustees from their legal requirement to prove causation; the Department agrees that trustees must demonstrate that injury resulted from a release. Rather, the issue is whether trustees should be allowed to use the type A models to make that demonstration. The Department believes that it is appropriate to allow trustees to use a type A model to demonstrate injury without on-site verification of the model projections.

There is a tension between the statutory provision requiring trustees to demonstrate that injury ''resulted from'' a release and the provision requiring the development of simplified assessment procedures that involve ''minimal field observation.'' As noted in the cases cited by commenters, the requirement that trustees demonstrate that injury resulted from the release indicates that

Congress intended that natural resource damage liability be compensatory. PRPs are to be held liable not just because they are responsible for a release but because they are responsible for a release that caused an adverse effect. On the other hand, by requiring the development of type A procedures, Congress recognized that assessment work can be expensive and time-consuming. In the case of minor releases, it is often not cost-effective or feasible to conduct more than minimal field observations. The Department has struggled to resolve the tension between these two statutory requirements by developing type A procedures that rely on computer models to predict actual site-specific effects to the maximum extent practicable but do not require on-site verification of the models' injury predictions.

Although the regulations do not require trustees to verify the injury projections of the type A models, they do require trustees who use a type A model to make several determinations that require field observations. Before trustees can proceed with a type A procedure, they must perform a Preassessment Screen Determination in which they establish if assessment work is warranted. Existing § 11.23(e) requires trustees to make a preliminary determination that the following conditions have been met:

A release of a hazardous substance has occurred; Natural resources under their trusteeship have been or are likely to have been adversely affected;

The quantity and concentration of the released substance is sufficient to potentially cause injury;

Data sufficient to pursue an assessment can be obtained at a reasonable cost; and

Response actions will not sufficiently remedy the injury.

If the trustees determine that these conditions are met, they must then demonstrate that the released substance entered the water, which is the only pathway considered by the models. Trustees must develop information on ambient environmental conditions at the site of the release and on the extent of response actions. Also, trustees must evaluate whether potentially affected resources are addressed by the model.

The Department agrees that these determinations in and of themselves do not establish causation. They are not intended to do so; causation is demonstrated by the models. However, these determinations do fulfill the standard of minimal field observations. The Department notes that Congress chose to use the word ''observations'' rather than ''studies,'' ''surveys,'' or ''analyses.'' Therefore, the Department interprets ''minimal field observations'' to be information that is readily or routinely collected following a release. The Department rejects the argument that the language of CERCLA requires on-site verification of causation, since observations would often be inadequate to determine causation. For example, the released substance may sink or disperse into the water column, precluding visual methods for documenting pathways and exposure. Furthermore, the potentially exposed resources may be difficult and costly to sample (e.g., endangered species, marine mammals, or subtidal organisms). In other instances, the persistence of the substance, or the remote location of the release, may prevent trustee scientists from reaching the spill site in a timely manner to conduct assessment work.

Moreover, today's final rule does not establish a new standard for proof of causation. The regulations did not require trustees to verify the injury projections of the original NRDAM/CME. The existing regulations require trustees to confirm exposure before implementing type B studies, but not type A procedures. Today's final rule does include language in § 11.31(c)(1) clarifying that the confirmation of exposure requirement only applies to type B procedures. The original type A rule contained the same substantive provision, only worded differently. See 52 FR at 9064. This final rule simply rewords and relocates the existing provision.

Even when trustees use type B procedures, there are some circumstances under which the existing regulations allow them to use models to determine injury to surface water, groundwater, and air. See 43 CFR 11.64(b)(6), 11.64(c)(8), and 11.64 (d)(2). The existing regulations also allow trustees who perform type B procedures to use models to demonstrate that a groundwater or air pathway exists between the site of the release and injured biological resources. See 43 CFR 11.63(c)(5)(ii)(C) and 11.63(d)(4). Demonstration of a pathway is an integral part of establishing causation.

The Department acknowledges that the existing regulations do not explicitly allow trustees who use type B procedures to demonstrate biological injury based on models alone. However, as *Ohio* v. *Interior* recognized, the language and legislative history of CERCLA are ambiguous as to the standard of proof of causation. 880 F.2d at 470. Nothing in the statutory language prohibits the Department from establishing different standards of proof of causation under type A and type B procedures, and the Department believes that in light of the statutory description of type A procedures, different standards are warranted. In fact, as discussed above, the legislative history of CERCLA suggests that the Department would have been justified in developing a look-up table or compensation formula as a type Aprocedure. Instead, the type A models use both site-specific information provided by the trustees and biological and environmental information about the spill site contained in the databases to approximate more precisely the actual effects of the release.

Finally, the Department notes that the final rule has been revised to require trustees to perform a preliminary application of the model and make the results available for public comment before presenting a damage claim. Therefore, PRPs will have an opportunity to evaluate the injury projections. They can then decide whether they have information that indicates that the projections are wrong and that the user inputs need to be modified or that type B procedures should be used.

Comment: The Department received several comments on the wind inputs. Some commenters expressed concern about the adequacy of the proposed rule language allowing trustees to supply one set of wind data for a 30-day period. These commenters noted that wind data were critical to correct functioning of the models and requested that trustees be required to supply actual hourly data. One commenter noted that such data are readily available from the National Climatic Data Center. These commenters also thought that actual wind data should be supplied for the entire duration of the model application because of gross oversimplifications in the data supplied by the models when the user-supplied wind data run out. One of the independent technical reviewers suggested that users be allowed to enter wind data in their choice of units.

Response: The Department agrees that one set of wind data for an entire 30-day period may not be adequate in all cases. Trustees are free to supply hourly wind data; however, the Department also believes that requiring trustees to do so in all cases would be onerous. Therefore, the Department has modified the final rule to require trustees to supply data on prevailing wind conditions for each day of the 30-day period. Recognizing that the type A procedures were intended to provide simplified procedures requiring minimal analysis by trustees, the Department has concluded that it is

appropriate to establish a uniform time frame for entry of wind data. Wind speed and direction are most relevant to the simulation of the surface trajectory. Released substances will generally only float for a few days or weeks before they sink or go ashore. Therefore, the Department believes that 30 days is an appropriate time frame for the vast majority of releases to which the type A models will be applied. Users are free to supply more than 30 days worth of wind data if they choose but are not required to do so. If a simulation continues past 30 days and the user has only supplied 30 days worth of data, the models will supply climatological wind data. With regard to the units of measurement for wind data, the Department notes that users are allowed to enter wind data measured either in knots or in meters per second. The Department believes this provides users with appropriate flexibility.

Comment: Several commenters addressed the currents inputs to the proposed NRDAM/CME. Some commenters, including a few of the independent technical reviewers, found it difficult to enter currents data and suggested that default values be made available. On the other hand, one commenter thought that the tool for supplying currents data in the proposed NRDAM/CME was already too simplistic. One of the independent technical reviewers noted a ''bug'' in the program.

Response: Currents have a profound impact on the physical fate of spilled substances and are highly variable. Provision by the model of a single set of default values for currents would adversely affect the reliability of the model. Therefore, the Department believes it is appropriate to require users to supply some level of site-specific data on currents. However, the Department is also committed to ensuring that the NRDAM/CME remain accessible to a wide range of potential users and, thus, recognizes the need to avoid excessively complicated user inputs. The Department has revised the currents entry tool to make it easier to use and to correct the ''bug.'' The Department has also provided additional guidance on developing and entering currents files in Volume II of the NRDAM/CME technical document.

Comment: Some commenters objected to the proposed provision allowing trustees to decide whether or not to have the models consider ice cover. These commenters stated that the rule should require trustees to have the models consider ice cover if ice is present during or after the release.

Response: The Department believes that the ice model contained in the NRDAM/CME and NRDAM/GLE reasonably reflects average ice conditions. However, the Department has modified the final rule to provide that when trustees have reliable evidence that ice was not present at the spill site, they must disable the ice modeling function.

Comment: A few commenters addressed the data inputs for response actions. One commenter thought that the models should take into account the effects of spill prevention and containment measures required under OPA and other laws. Some commenters stated that trustees should only be required to supply the volume of the released substance that was removed during the first 24 hours after the release. These commenters noted that the types of acute effects considered by the models should have occurred within that first 24-hour period.

Some commenters thought that limiting the data inputs to the first 24 hours would also alleviate the problem with the NRDAM/CME identified in the December 8, 1994, preamble. In that preamble, the Department noted that there may be cases where the proposed NRDAM/CME would not subtract the full volume removed even though users had provided full and accurate information about removal actions. This problem arose because the proposed model required users to specify the location and time frame of the removal. The proposed model then subtracted the mass removed at the time and location specified by the user. If the user specified that mass was removed from a location before the time that the model projected the substance would reach that location, then the model was unable to subtract any removed mass. See 59 FR at 63307–08. Another commenter expressed concern about this problem and suggested modifying the NRDAM/CME so that in such a situation the volume of the released substance actually removed would be subtracted from the nearest location where the model predicted that an equivalent volume of the substance could be found at that time.

Response: The final rule and models do account for the effects of successful spill prevention and containment measures. The models calculate damages only for the volume of substance that entered the water, was not removed, and caused injury. Therefore, any material prevented from entering the water as a result of voluntary or mandatory spill prevention or containment measures would not be considered by the models.

With regard to entry of data on removal that occurred more than 24 hours after the initial release, the final rule requires trustees to specify the time of the removal. Therefore, even for injuries that do occur within the first 24 hours, entry of the total volume removed would not result in an underestimate of damages because the models will take into consideration that the removal did not occur entirely within the first 24 hours. The Department assumes that the commenter's concern is that the models will underestimate damages if they subtract the entire volume removed because only the removal during the first 24 hours would reduce the likelihood of acute injury. However, not all direct effects considered by the models will occur within the first 24 hours after the release.

To address the problem identified in the December 1994 preamble, the Department has modified the final rule language addressing the required data input for response actions. Appendix II now states that when developing the data input on response actions, trustees must specify a geographic area that encompasses the entire surface water and shoreline area over which the spilled substance was likely to have spread. This requirement should ensure that the NRDAM/CME will subtract the full volume of spilled material that was removed during response.

Comment: Numerous commenters addressed whether users should be allowed to modify the model databases. One commenter suggested that the models would be too labor-intensive if trustees were expected to edit numerous databases. However, most commenters supported retaining the habitat editor in the final version of the models, noting the prevalence of default values in the habitat database. Some commenters, including one of the independent technical reviewers, stated that the Department should continuously update the model databases to ensure that they reflect current information. Other commenters expressed doubt that the Department could conduct such updates in a timely manner. These commenters thought that model accuracy would be increased if trustees were allowed to edit not only the habitat designations but also other data such as species biomass, baseline fishing mortality rates, commercial fish prices, and restoration costs. These commenters noted that PRPs would be protected from potential misuse of the editing feature by trustees because the input data would be subject to challenge. Some commenters recommended various mechanisms for allowing users

to substitute more precise or up-to-date site-specific information. For example, one commenter suggested creating an administrative process for obtaining variances from the model parameters or data.

Response: The Department acknowledges that allowing users to revise the models' databases would enable fine-tuning to better reflect site-specific conditions. On the other hand, Congress specifically mandated the development of type A procedures to simplify assessments and minimize fieldwork. The more trustees are expected to edit the model databases, the less the type A procedures fulfill this mandate and the closer such procedures approach the data-gathering requirements of type B procedures.

Therefore, the Department has decided to allow trustees to modify, under some circumstances, the models' default values for water temperature, total suspended sediment concentrations, mean settling velocity of suspended solids, air temperature, and habitat type. However, trustees may not make any additional modifications to the databases if they intend to obtain a rebuttable presumption.

The proposed rules included provisions allowing trustees to supply site-specific values for water temperature, total suspended sediment concentrations, mean settling velocity of suspended solids, and air temperature. The Department continues to believe that these parameters are highly variable and can profoundly affect the physical fate of released substances. Therefore, trustees should be allowed to change the default values for these parameters if they have more accurate data.

The Department has also concluded that retention of the habitat editor is appropriate given the importance of habitat designations to the total damage figure and the prevalence of default habitat designations in the models. Also, despite specific solicitations in both notices of proposed rulemaking, relatively few commenters supplied revised habitat information to the Department and some State commenters specifically stated that they had been unable to review the habitat designations.

The Department does not believe that the habitat editor requires excessive effort to operate. First, trustees are not required to edit habitat designations. Second, while the task could be substantial if a single user attempted to edit the large regions covered by the models, it is not so labor intensive for the area actually affected by any single spill. The Department also notes that trustees often perform habitat mapping as part of pre-spill planning, which should further expedite habitat editing. Once edited, the revised habitat designations may be saved within the models and used again for future model applications. However, trustees who save such redesignations would still need to justify those redesignations in any future Assessment Plans.

With regard to other model databases, the Department believes that allowing additional editing would undermine Congress' intent for developing type A procedures. Allowing other edits would require users to make additional conforming changes that would complicate use of the models. For example, changing the fisheries biomass or parameters would require recalculation of egg and larval abundance using the model equations. Changing wildlife abundances would require recalculation of lost wildlife viewing values.

The final rule no longer requires use of the type A models. Therefore, when trustees have, or are provided with, evidence that the model databases are inaccurate for a specific incident, they are free to use type B procedures, provided they can do so at a reasonable cost. When trustees or PRPs already have site-specific information indicating that model data are inaccurate, the cost and effort associated with conducting type B procedures, and in turn the need for a type A procedure, should be reduced.

The Department does not have the resources available to support an administrative process for reviewing petitions for variances from the computer model parameters or databases. However, the Department is statutorily required to review and update the models every two years and, thus, will be incorporating more up-to-date information as it becomes available. Also, the Department notes that the models already update the compensable value and restoration cost databases to account for inflationary effects through application of the implicit price deflator. Finally, the Department notes that while the results of model runs made with customized changes beyond those identified in the rule would not receive the rebuttable presumption for damage claims made under CERCLA, they may nonetheless be reliable and useful in other contexts, such as settlement negotiations or litigation without the benefit of the rebuttable presumption.

Comment: A few commenters addressed the implicit price deflator data input. In response to the Department's solicitation of comment on whether the proposed rules should be modified to require trustees to supply the implicit price deflator for the Gross Domestic Product (GDP) instead of that for the Gross National Product (GNP), one commenter indicated that use of the implicit price deflator for the GNP should be retained. Another commenter stated that the Department should change the base year from 1987 to 1992.

Response: The Department has decided to retain the GNP implicit price deflator as the index with which to adjust past dollar amounts to current dollar equivalents. Because GNP refers to income that is available to U.S. residents, it is appropriate for analyses that are related to the use of that income, such as expenditures for environmental restoration. GDP, on the other hand, refers to income that is derived from production within the U.S., regardless of whether that income is available to U.S. residents or accrues to non-U.S. residents. For more information regarding GNP and GDP, readers are referred to the August 1991 issue of the Survey of Current Business available from the Bureau of Economic Analysis, U.S. Department of Commerce. Also, the Department has updated the index numbers in the models to accommodate the change in base year from 1987 to 1992.

Comment: One of the independent technical reviewers questioned the user inputs to the proposed NRDAM/CME concerning boat closures. The technical reviewer thought that it might be difficult for trustees to estimate the number of boats affected by the closure.

Response: As discussed in Section VII.P of this preamble, the Department has eliminated the calculation of damages for lost boating from the NRDAM/CME.

Comment: A few commenters responded to the Department's solicitation of comment on whether users should be allowed to supply a site-specific discount rate and, if so, how they should determine the correct rate. These commenters stated that the models should use a fixed discount rate but that the fixed rate should be three percent rather than the seven percent rate included in the proposed models.

Response: The Department believes that the appropriate discount rate is the consumer's rate of time preference for natural resource services. This is the rate at which individuals are willing to trade natural resource services today for similar natural resource services in the future. The Department further believes that the real (inflation-adjusted) rate of return on U.S. Treasury bills is a reasonable proxy for this rate of time preference. An analysis of real rates of return on U.S. Treasury bills reveals an

indicated annual discount rate of three percent. Therefore, the Department agrees with the commenters that future lost use values should be discounted at a three percent rate. This discount rate has been incorporated in the models.

The Department believes that use of a fixed discount rate is appropriate in the context of a simplified procedure. Further, the Department believes it is unlikely that the rate will change significantly over the next two years. During the biennial review, the Department will reexamine this issue.

E. Physical Fates

Comment: Several commenters, including some of the independent technical reviewers, thought the physical fates submodel was well developed and well tested. Another commenter stated that the proposed models produced spill trajectories that resembled actual spill events. Conversely, one commenter experienced difficulty with the models' trajectory component noting that, during some trial runs, the spill did not move.

Response: The Department acknowledges and appreciates the supportive comments concerning the physical fates submodel. Physical fates modeling is a technical discipline that has received extensive study. In reply to the trajectory difficulty, the Department notes that the model's spill trajectory is dependent upon the user's entry of wind and current data. Spilled material does not move during simulations if the user does not supply wind and current data.

Comment: Several commenters, including some of the independent technical reviewers, were disappointed by coarse resolution of most habitat grids in the NRDAM/CME. These commenters complained that the limited resolution results in the loss of consideration of critical shoreline habitats.

Response: The Department has improved the resolution in the NRDAM/CME by a factor of four through use of a new compiler and additional memory.

Comment: Several commenters claimed the proposed models used inadequate and nonrepresentative data on the physical and chemical properties of hazardous substances and oil and provided references to additional data sources. The commenters stated that the chemical and physical data on gasoline and diesel oil, particularly the sulfur content in diesel oil and vapor pressures in gasoline, do not accurately represent the products in use today. One of the independent technical reviewers stated that the relative toxicities used in the models for No. 6, No. 2, and crude oils do not agree with experiment results reported in the literature. Several commenters also concluded the Department inappropriately applied the same degradation rates to the nine oils included in the models (except for No. 2 diesel oil). They could not substantiate the model degradation rates, and concluded they were invalid. One of the independent technical reviewers suggested that the Department update the parameters for oils. Some commenters also thought that the models relied on overly simplistic and outdated modeling techniques.

Response: The Department found the physical and chemical parameters included in the models for hazardous substances to be in agreement with commenters' independent literature search, except with regard to the partition coefficient for epichlorohydrin. After reviewing the literature, the Department has decided to substitute the proposed parameter for this substance.

The Department has also increased the number of oils and petroleum products included in the models to a total of 33 and has revised the physical and chemical parameters for oils based on the most recent literature. The degradation rates for oils in the models apply to acutely toxic low molecular weight components. Thus, they are consistent for all oils. The Department reviewed the accuracy of these data and documented all sources in the technical documents when revising the oil database. For further information, see Section 2, Volume III of the NRDAM/CME and NRDAM/GLE technical documents.

The Department does not agree that the modeling techniques used are either outdated or overly simplistic. The Department has never intended the physical fates submodel, or any of the other submodels, to provide a comprehensive treatment of all known physical, chemical, and biological processes occurring in aquatic environments, nor is such treatment necessary for the limited purposes of the type A procedures. Instead, the modeling techniques employed are intended to reasonably approximate the most relevant processes pertaining to the fates and effects of spills that occur in aquatic environments based on readily available user input data.

Comment: One commenter thought that the models overstated wildlife injuries by inappropriately treating chemicals less dense than water as slicks. The commenter also stated that the proposed models' predictions of oil and chemical slicks failed to account for many of the physical processes that affect the size of the surface slicks.

Response: The models do treat all chemicals that are lighter than water as ''slicks.'' However, chemicals that are very soluble, such as ethanol and ammonia, will very quickly mix into the water column. Thus, chemicals that are highly soluble do not remain on the surface long enough to have any direct effect on wildlife at the water surface.

The Department disagrees that the models do not adequately account for the physical processes affecting surface slicks. The major processes affecting the size of surface slicks are spreading, evaporation, and entrainment, all of which are simulated in the models. For further discussion, see Sections 3.3 through 3.5, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

Comment: One commenter referred the Department to the Ohio spill database as an additional source of information.

Response: The Department took this database into consideration when determining the types of spills to use for the sensitivity analysis of the NRDAM/GLE.

Comment: One commenter questioned whether the use of varying grid sizes makes the NRDAM/GLE less accurate for spills in areas of large grid size.

Response: The Department designed the grid sizes to represent the Great Lakes habitats at a resolution required by the local spatial variability. Areas with more spatial variability have smaller grids and higher resolution. The areas with large grid sizes are the open lakes where fine detail is not necessary. Thus, the NRDAM/GLE is not less accurate in the areas where grids are largest.

Comment: One commenter questioned why the Department did not incorporate the U.S. Army Lake Survey grid in the NRDAM/GLE.

Response: Development of the NRDAM/GLE grid required the representation of spatially varying habitats and depths as well as the contours of the connecting channels within a regular rectangular grid system. The U.S. Army Lake Survey grid does not consistently meet this requirement. Moreover, the Department has no reason to believe that use of the U.S. Army Lake Survey grid would significantly improve the reliability of the NRDAM/GLE.

Comment: A few commenters, including one of the independent technical reviewers, thought that the Department should use three-dimensional hydrodynamics models. Several commenters thought the

proposed type A models unrealistically assumed that currents were uniform with depth; unjustifiably failed to incorporate three-dimensional currents modeling; and inappropriately failed to account for the effects of wind-driven turbulence mixing processes that increase mixing as high winds make the water surface rough. One commenter stated that a three-dimensional hydrodynamics model was needed to account for the effects of seiches (i.e., occasional and sudden oscillations of the water of lakes, bays, or estuaries caused by wind or changes in barometric pressure).

Response: The NRDAM/CME and NRDAM/GLE use a three-dimensional transport model. The transport model assumes that currents are uniform vertically at each horizontally defined location. If the Department did include a three-dimensional current dynamics model in the NRDAM/CME and NRDAM/GLE, then users would need the assistance of expert hydrodynamic modelers to operate the type A models. For example, three-dimensional current dynamics models are dependent on physical forces at the boundaries of the modeled area, which the user would be required to enter. The Department believes that imposing such complex modeling requirements would conflict with the statutory directive to develop simplified assessment procedures.

The models utilize vertically averaged currents with the assumption that horizontal transport is uniform in speed and direction over depth at a given location in horizontal space (i.e., at a given latitude and longitude). One of the conditions for use of the models is that subsurface currents either are not expected to significantly affect the level and extent of injuries or are reasonably uniform with depth in the area of the spill. The models also include randomized motion in the vertical dimension, but not directed motion in the vertical. Thus, the currents carrying spilled material must be representable in a manner consistent with this assumption of the models.

The vertically averaged current is essentially a current that provides the correct net transport, averaged vertically. If the transport of spilled material cannot be reasonably represented by a vertically averaged current, the condition for use would not be met and the model would not be applicable. However in many cases, three-dimensional representation of current dynamics would not significantly change the damages calculated by the models. For example, for substances of low density, such as toluene, that remain at or near the surface, the present current dynamics model adequately addresses physical fates.

The Department recognizes that seiches occur in the Great Lakes. The Department has not, however, included such processes in the NRDAM/GLE because these processes are not a significant transport process for determining the physical fate of spilled substance in the Great Lakes. Further, any change in the location of a shoreline brought about by a seiche is likely to be small and should not have a significant effect on the injuries calculated by the model.

Comment: One commenter thought that the models should not include liquid asphalt. The commenter noted that liquid asphalt hardens and sinks to the bottom quickly, and can be completely removed by dredging.

Response: The Department agrees that the models are not designed to estimate damages for substances such as liquid asphalt. The models assume that oils and petroleum products float initially, although they may subsequently entrain, adsorb to particles, and sink. Liquid asphalt does not act in this manner and, thus, has not been included in the databases.

Comment: One commenter criticized the NRDAM/CME's treatment of ice, stating that the model inappropriately assumes that ice is always a solid mass.

Response: The model does not assume that ice is always a solid mass. For a discussion of how the models treat ice, see Section 3.11, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

Comment: Some commenters thought a smooth function relating requisite thickness to spillet diameter would be more realistic than the step function proposed in the models.

Response: Not enough quantitative information is available to develop a smooth function. Available data are, in fact, in the form of a step function. Further, given the available data and the steepness of the relationship between mortality and dose in the pertinent range, the form of the function would not significantly affect the reliability of the model calculations.

Comment: One of the independent technical reviewers noted that the proposed NRDAM/CME treated wetlands as water cells and questioned why they were not oiled as other shorelines.

Response: Wetlands are either fringing or extensive in the model. ''Fringing'' wetlands are those which form narrow wetlands along shorelines. ''Extensive'' wetlands, on the other hand, are those sufficiently large to encompass a majority of the grid cell. For fringing wetlands, oiling occurs in the same manner as for other shorelines. For extensive wetlands, slicks keep moving across the area, as they do in water, but they can oil wetland biota in the same way as they do in fringing wetlands. Oil may accumulate in sediments in all cells, by partitioning onto suspended sediments and sinking.

F. Species Distribution and Abundance

Comment: Several commenters thought the default habitat designations in the NRDAM/CME generally provided an inadequate representation of coastal and marine habitats. Others recommended specific changes such as including habitat data available in existing or upcoming studies. One commenter provided specific habitat data for New York and New Jersey. Another commenter requested that the Department use information that would be available from the upcoming Texas Natural Resource Inventory.

Response: As stated in the notices of proposed rulemaking, the Department recognized the shortcomings of the default habitat designations and specifically solicited comment on those designations. See 59 FR at 40330 and 63314. The notices also provided technical instructions on transmitting information to the Department about suggested changes to the default habitat designations. The Department has reviewed and revised the habitat designations in the NRDAM/CME based on technical data provided to the Department for the coastal and marine waters of New York and New Jersey. The Department did not receive other specific recommendations for changing the default habitat designations within the format requested.

The Department recognizes that additional habitat data are continually becoming available. However, the Department needed to finalize the data in the models and chose not to delay issuance of the models to incorporate recent or upcoming studies, such as the Texas inventory. During future biennial reviews, the Department will update the habitat designations to reflect newer information. Meanwhile, today's final rule allows trustees to change the default habitat designations. As further studies provide better data, trustees may substitute such data for the default values included in the models using the habitat editor function.

Comment: One commenter stated that shoreline types in the NRDAM/GLE should include a cohesive (clay) component. The commenter also thought that rocky shoreline should be

changed to either rocky bluff or cobble beach.

Response: The Department does not believe that changes to the shoreline types are necessary. The suggested changes would have little impact on the reliability of the damage figure since biological injuries are not calculated based on shoreline designations. The models use shoreline type to approximate the oil retention on shorelines. Further, the distinct holding capacities for these shoreline types are unavailable but could be expected to fall within the holding capacities of the shoreline types already represented within the NRDAM/GLE.

Comment: One commenter provided maps of habitat types for Michigan and suggested that wetlands in the connecting waterways be hand-edited.

Response: Although the Department appreciates the effort provided by the commenter, the grid scale of the information was of a much smaller resolution than that contained in the NRDAM/GLE and could not be directly applied to revisions of the habitat grids. The Department believes the NRDAM/GLE habitat designations are consistent with the maps provided, were such information consolidated at the larger NRDAM/GLE grid scale. As a result, the default habitat designations were not revised in the NRDAM/GLE, and the Department has not hand-edited the habitat maps of the connecting waterways.

Comment: Some commenters, including one of the independent technical reviewers, thought that the models should map the location of critical habitats, such as bird colonies or rare communities and plants.

Response: The Department does not believe it is appropriate, in the context of developing simplified type A procedures, to attempt to map all critical habitats and rare communities throughout the entire geographic region covered by the models. The models were developed based on an assumed average abundance of biota by habitat within a biological province. The Department believes that if a release is expected to affect a critical habitat or rare community that is not adequately represented by the models, then use of type B procedures should be considered.

Comment: A number of commenters, including some of the independent technical reviewers, identified and suggested the Department fill data gaps in fish abundance. Several commenters believed the fish abundance data in the models were based on commercial catch data that were not generated with sound scientific methods and are known to have low accuracy. The commenters stated that the abundance data were inconsistent with catch data provided by Federal and State fisheries agencies and, thus, did not account for variability in fish populations. The commenters questioned the level of care and effort that had gone into estimating total lake fish stock data in the NRDAM/GLE.

Response: The Department notes that fishery statistics are collected to fulfill a variety of different research and management needs. For the purposes of these models, fish biomass abundance was required. However, such data were not uniformly available for all species and all geographic regions covered by the models. As a result, the Department drew upon available data from State and Federal fishery management and research organizations and extrapolated where needed to fill gaps. The criteria used for the selection and use of available data are outlined in Section 6.3, Volume I of the NRDAM/CME technical document. For all stocks where the National Marine Fisheries Service (NMFS) or State agencies have performed a stock assessment, these stock sizes were used. The Department used biomass surveys if stock assessments were not available. The Department used catch data only if these other data sources were unavailable. Thus, the data are consistent with that collected by Federal and State agencies and represent the best available data for each species included. Since the most valuable species in terms of total catch are also the most studied, data are likely to be more accurate for valuable species. Damages resulting from less significant species in the catch are typically insignificant.

Where the Department had to use catch data to estimate biomass, it used both commercial and recreational catch data compiled by NMFS, the Federal agency charged with assessing and regulating fisheries stock. These catch data are the best available source of information. The Department used commercial catch data as the sole source of information only where there was not a significant recreational fishery.

The Department did attempt to account for variability in fish populations. The areal extent of a species and its seasonal movements are based on life-history information for that species. Some species do not in fact move seasonally. Those that do are indicated in the database. In some cases, catch from large areas is represented in smaller areas if the life history warrants. In other cases, the data are not supportive of regional specificity. Also, some stocks do vary annually to a significant degree. For stocks where data were available, averages for the most recent three years were used. The models are designed to represent an average year.

Considerable care and effort went into estimating total lake fish stock data in the NRDAM/GLE, as documented in Section 3, Volume III of the NRDAM/GLE technical document. The Department considered both the data available and the species behavior in terms of habitats utilized by season.

Comment: Some commenters, including a few of the independent technical reviewers, questioned the wildlife abundance data sources used for determining hunting and trapping losses. One commenter thought that some abundance data from one area were used inappropriately to represent abundances in other areas. For example, the commenter noted that the study by Onuf (1987) was used inappropriately to extrapolate bird abundances over the entire west coast; and that the study by Breuggeman (1989) was used inappropriately to extrapolate marine mammal abundances to both the California coast and to Galveston Bay. Another commenter questioned the references to Bellrose (1980), specifically as applied to trumpeter swans in Prince William Sound.

Response: The Department has obtained additional sources of bird abundance data for the west coast and has incorporated those data into the wildlife abundance database of the NRDAM/CME. Also, the Department has revised the abundance data for Galveston Bay to include more recent data on dolphins. The Department has included additional osprey data and updated the eagle and harbor seal data. Further, the Department has deleted data for mysticetes (baleen whales) for provinces 4, 5, and 7. The Department applied data in Bellrose (1980) only where no other data were available. The Department has now replaced most references to Bellrose (1980) with more recent data. In particular, the Department has updated data for Prince William Sound based on a 1990 to 1995 waterbird survey. For further information, see Section 5, Volume IV of the NRDAM/CME technical document.

Comment: One of the independent technical reviewers thought that the definition of subtidal wetland was unclear and recommended that intertidal seagrass be added as a habitat type.

Response: Subtidal wetlands are the subtidal shallow waters in and around extensive wetlands. The Department has amended the NRDAM/CME technical document to include this more precise

definition of subtidal wetlands. See Table 4.4, Volume I, of the NRDAM/CME technical document. The Department has also included intertidal seagrass as an additional habitat type.

Comment: A number of commenters, including one of the independent technical reviewers, thought that use of province-wide abundance figures was inappropriate given the sizes of the provinces. An independent technical reviewer suggested that provinces be subdivided. Another commenter stated that grid-specific wildlife abundances should be used where such data are available.

For west coast wildlife densities, one commenter noted that the NRDAM/CME's provinces are not consistent with spatial strata within which seasonal densities of a species are relatively uniform. The commenter noted that this can result in wildlife densities that are orders of magnitude too high in some cases or too low in others.

Another commenter pointed out that the estimates of wildlife seasonal densities for the west coast were uniformly high and the numbers generated by extrapolation of density may exceed entire world population for many species. The commenter provided recent survey density data for birds and mammals. One of the independent technical reviewers suggested that the Department update data on west coast bird abundances.

Response: The wildlife data for the west coast and Gulf of Alaska were completely revised with more recent and actual survey data provided by one commenter. Wildlife data for other provinces were also updated with more recent information. These corrections have eliminated the extrapolation errors noted. The Department believes the revisions made to the database have sufficiently addressed the possible need for subdividing province-wide abundances. For further information, see Section 5, Volume IV of the NRDAM/CME technical document.

Comment: One commenter thought the way east coast province-wide wildlife abundances were distributed to the available individual habitats within NRDAM/CME grids resulted in an underrepresentation of wildlife abundances within the habitat grids. The commenter noted that individual habitat grids cannot hold enough habitat area to add up to the assumed provincial totals. The commenter suggested adding a multiplication factor to correct for the underrepresentation of habitat area, and resulting proportionate underrepresentation of wildlife abundances.

Response: The habitat grid will, by the fact that it is rectangular, never precisely represent actual shore length, which is curved. However, the Department notes that the NRDAM/CME's grid resolution has been increased by a factor of four and the habitat data for the area in question (provinces 11 through 13) have been revised based on information provided to the Department. These revisions have significantly improved the precision of the shore length estimate. The Department considered the commenter's suggestion of using a multiplication factor to correct shore width. However, such a multiplier would affect the manner in which the physical fates submodel addresses the oiling of shorelines and induce additional error into the calculations performed by the model. Thus, the multiplication factor method was not employed.

Comment: A few commenters, including some of the independent technical reviewers, suggested that monthly rather than seasonal averages be used where such data are available. Commenters noted that use of monthly averages was particularly important for migratory species.

Response: Adequate data do not exist at this time for most species to incorporate monthly averages. As more data become available, the Department will consider incorporating monthly averages in the models during future biennial reviews.

Comment: One commenter questioned the reliability of the abundance data in the proposed NRDAM/CME and offered different data from State wildlife agencies and available literature. The commenter recommended the following changes to the databases: modification of data for pigeon guillemots and kingfishers in Puget Sound and the Straits of Juan de Fuca (province 51) based on 1994 census data by Washington State; deletion of data on puffins along the New Hampshire coast; modification of data on bald eagles and osprey in Maryland based on Maryland's 1994 census; modification of data on pelicans and bald eagles in Florida based on the Florida Natural Resource Department's estimates; and addition of data on Loggerhead and Kemp's Ridley turtles for the Gulf of Mexico and Galveston Bay.

Response: The Department acknowledges that some errors occurred during the compilation of the wildlife abundance database, and additional information and data sources have been identified as a result of the public's review of these models. In fact, the Department specifically sought the assistance of the public on the wildlife abundance data. See 59 FR at 40330 and 63314. The Department has made a number of changes to the databases as a result of the public comments and now believes that the abundance data are more reliable.

In response to the specific data comparisons made by the commenter, the Department has updated the data for province 51 and revised seabird abundances for the northeast. Puffins are no longer included in province 2, but are present in province 3, offshore New Hampshire and Maine. The State of Maryland's 1994 census data are more recent and have been used. The Florida Natural Resource Department's 1994 estimates for pelican and bald eagles are more recent and have been used. The Department has not included the data for Loggerhead and Kemp's Ridley turtles in the offshore Gulf of Mexico since these species are not found in waters greater than 200 meters deep (NOAA 1985). Also, no data documenting abundances of these turtles in Galveston Bay are available. For further information, see Section 5, Volume IV of the NRDAM/CME technical document.

Comment: A commenter thought the wildlife abundance data were generally biased.

Response: The Department believes that the data used in the models represent the best available information collected by independent scientists and government agencies.

Comment: One commenter noted that the assumption of even distribution and random movement of biota may not be true. For example, the commenter noted that fish eggs and larvae are not randomly distributed.

Response: Although some biological populations may not be evenly distributed and may not move randomly across large areas encompassing multiple habitat types, the Department believes that, for purposes of these models, it is reasonable to assume that populations are randomly distributed within a single habitat type.

Comment: Several commenters noted that the proposed wildlife mortality model assumed that a wildlife species redistributes itself uniformly over its habitat each and every day. The commenters thought this assumption was not justifiable and would tend to overstate wildlife mortality.

Response: The Department believes that, for purposes of these models, it is reasonable to assume that a wildlife species redistributes itself uniformly over its habitat each day. Habitat area within the models is of a size on the order of an individual's actual home range. Each individual does tend to

cover its home range each day, either for feeding or territorial purposes. Thus, populations do redistribute themselves daily.

Comment: A commenter noted that the models' assumption that the density of a species in its designated habitat is constant throughout a given province could result in overestimates of actual mortalities for those provinces with multiple grids.

Response: The Department does not believe that this assumption leads to overestimates for provinces with multiple grids. The biological database assigns the densities of species on all appropriate designated habitats regardless of the number of grids contained in the province. However, losses occurring in one grid are not distributed across grid boundaries and, thus would not overestimate losses.

Comment: A commenter thought the NRDAM/GLE technical document should specify the time frame duration for all assumptions about species density.

Response: The model assumes that species densities are uniform by season. The abundance tables clearly specify that density figures are provided on a seasonal basis. See Tables III.3.17 through III.3.27 and III.3.40 through III.3.50, Volume III of the NRDAM/GLE technical document.

Comment: A commenter noted that several of the groups of marine birds and mammals used in the NRDAM/CME could be eliminated, based on documentation of relative lack of vulnerability to oil spills.

Response: The Department acknowledges that some groups of marine birds and mammals are not as sensitive as others to the effects of oil spills. However, the model also evaluates indirect effects (e.g., via the food web) for both oil and chemical spills, which could be significant in certain scenarios.

Comment: One commenter stated that the species contained in the NRDAM/CME should be limited to those for which reliable abundance data exist, or those that are threatened or endangered.

Response: The NRDAM/CME is limited to those species for which reliable abundance estimates were available. Section 6, Volume I of the NRDAM/CME technical document explains the criteria the Department used to establish the estimates. The Department included threatened or endangered species where data were available. However, in light of the limited range of injuries and compensable values considered by the models, if injuries to these species are significant, trustees should consider using type B procedures instead of a type A procedure.

Comment: One commenter addressed species abundance in New York Harbor. The commenter was unable to match the species abundance data for New York Harbor with that of the Erwin and Korschger (1979) reference cited. The commenter also stated that inaccuracies in abundance data resulted from a failure to adequately identify habitat types.

Response: The Department has rechecked the data and made revisions, as appropriate, using the Erwin and Korschger (1979) source and other more recent sources. The results of the retabulated data are contained in Section 5, Volume IV of the NRDAM/CME technical document.

The wildlife abundance data contained in the databases are province-wide abundances and, thus, are independent of the habitat grids and the habitat types assigned to the grid cells. Table 6.4, Volume I of the NRDAM/CME technical document contains the areas of habitat used for all calculations of wildlife abundances. Further, the habitat grids for New York Harbor have been revised based on comments submitted by the States of New York and New Jersey.

Comment: Another commenter stated that Great Lakes wildlife abundances should be based on a more thorough review of the literature and thought that Burt (1976) was an inappropriate source of data. The commenter recommended that the models incorporate site-specific data wherever they are available instead of applying average values for several provinces.

Response: The Department has incorporated site-specific information into each of the lake provinces. The Department used Burt (1976) only if more province-specific data were not available. Public commenters supplied no additional data on wildlife abundances in the Great Lakes. Further, the Department conducted a thorough search for published and unpublished data and located no additional sources of data. When abundances were highly variable among lake province-specific sources of equal validity, the Department averaged available data to reduce the error associated with the estimates. Professional judgment, based on life history information for the species in question, was used to determine how available data would be applied.

Comment: Some commenters disagreed with the statement in the proposed NRDAM/CME technical document that oysters are one of the most important species in southern Maine and New Hampshire.

Response: The commenter appears to have misinterpreted the data contained in the proposed technical document. The Department acknowledges that NMFS does not list commercial oyster fisheries in northern New England; however, there is a small recreational fishery for oysters. Thus, they are not commercially important but do have recreational significance.

Comment: One commenter asserted that shrimp is by far the most significant catch in South Carolina. The commenter also thought that roughtail rays, orange filefish, and scad were overly abundant in the database relative to shrimp.

Response: The Department could not find any Federal or State stock assessments or biomass surveys for shrimp, roughtail rays, orange filefish, or scad in South Carolina. Therefore, the Department based the abundance data for these species on NMFS commercial catch statistics. The NMFS catch data do not support the statement that shrimp are the most significant catch in South Carolina. Shrimp are a significant part of the inshore catch for many of the reporting areas, but are not common in offshore areas. The database includes all species for which NMFS catch data were available. Roughtail rays do form a large percentage of the catch by weight; however, they are not as significant economically as shrimp and, thus, are not as highly valued in the model. Orange filefish and scad are not major portions of the catch and the model accurately reflects that.

Comment: One commenter questioned why the NRDAM/CME did not include lobster in New York Harbor.

Response: The Department could not find any Federal or State stock assessments or biomass surveys of lobster in New York Harbor; therefore, the Department relied on NMFS commercial catch statistics. The NMFS commercial catch statistics do not show any catch for lobster in New York Harbor.

Comment: One commenter sought clarification of several aspects of the discussion of young-of-the-year modeling in the NRDAM/CME technical document. The commenter questioned the meaning of the term ''stable distribution;'' the connection between young-of-the-year and the adult stocks; and the meaning of the term ''monthly mean,'' since no monthly mean abundances are present in the young-of-the-year database.

Response: The term ''stable'' means constant in time. The Department has clarified the NRDAM/CME technical document on this point. See Section

4.3.2, Volume I of the NRDAM/CME technical document. The Department has also expanded the NRDAM/CME technical document to explain the connection between adult stock and young-of-the-year. See Section 6.5, Volume I of the NRDAM/CME technical document. The Department has modified the derivation of young-of-the-year abundance estimates so that such abundances are estimated on a daily basis for the first year of life and averaged for each month. See Section 6.5, Volume I, and Section 3, Volume IV of the NRDAM/CME technical document.

Comment: One commenter questioned how the NRDAM/CME could determine the young-of-the-year surviving the first year of life under equilibrium conditions without knowing the first year natural mortality rate.

Response: The NRDAM/CME calculates the number of one-year-old individuals needed to replace the fished stock, assuming equilibrium populations. Thus, the actual numbers of eggs and larvae are not calculated or needed. The model is calculating the percentage of one-year-old animals lost because of the spill.

Comment: Given that the abundance of a species may be seasonal, one commenter questioned how it was possible that the natural mortality rate and the fishing mortality rate are constant for members of a species group within and across years, as the equation for young-of-the-year requires.

Response: The natural mortality rates and the fishing mortality rates apply to the species population (stock) regardless of location and abundance. Stock abundances apply on a province-wide basis. The abundances in a specific province may vary by season due to migration of stock in and out of different provinces. Therefore, there is no inconsistency between using a constant mortality rate over time and using abundance figures that vary by season. For further discussion, see Section 6.5, Volume I of the NRDAM/CME technical document.

Comment: One commenter thought the young-of-the-year database in the NRDAM/CME was incomplete, noting that there are several species groups in the adult database that are absent in the young-of-the-year database.

Response: Certain species, such as anadromous fish, do not spawn in marine habitats. Thus, there may be adults present in a given province without young-of-the-year present.

Comment: One commenter questioned whether forage fish production was nonexistent outside of structured habitats as assumed in the database for California provinces 40 through 47.

Response: The NRDAM/CME does not assume that forage fish production is nonexistent outside of structured habitats. The food web model includes forage fish, in particular planktivorous forage fish, in open water habitats.

Comment: One commenter questioned the inclusion of goldfish as representative herbivorous forage fish in wetlands in the proposed NRDAM/GLE technical document.

Response: The Department used goldfish in the table to which the commenter refers simply as an example, because it is one of the few truly herbivorous fish. Most forage fish feeding on the bottom are omnivorous.

Comment: One commenter thought the proposed NRDAM/CME technical document was unclear how zooplankton production was determined since no zooplankton production values were presented in the biological database.

Response: The NRDAM/CME calculates zooplankton production based on a percentage of phytoplankton production. The technical document has been clarified. See Section 4.4, Volume I of the NRDAM/CME technical document.

Comment: A commenter noted that the rates of production for planktivorous forage fish were not provided in the NRDAM/CME biological database and questioned how primary production for these fish was calculated.

Response: The NRDAM/CME calculates planktivorous forage fish production based on a percentage of zooplankton production. The technical document has been clarified. See Section 4.4, Volume I of the NRDAM/CME technical document.

Comment: One of the independent technical reviewers questioned why several bait fish species were not included in the models.

Response: The Department did not include such species because it could find no quantitative data for such species.

G. Toxicity and Mortality

Comment: Some of the independent technical reviewers stated that the biological effects submodel was logical and well conceived for assessing the effects of minor spills. However, other commenters asserted that the submodel suffered from an overall lack of supporting data and questioned the methods used for calculation of mortality and toxicity data. One commenter noted that bioassay studies measuring the lethality of oil and petroleum mixtures directly were preferable to the oil toxicity assumptions used in the models and thought such information must surely be available. Another commenter asserted that laboratory bioassays overestimate metals toxicity and that the Department should consult EPA's Water Effects Ratio studies on binding capacity in natural waters. A few commenters thought that the models' treatment of metals speciation was overly simplistic. Another commenter maintained that the proposed toxicity values were too high compared with EPA water quality criteria. Further, the commenter suggested the Department refer to EPA sediment quality criteria for benthic organisms.

Response: The Department believes that the biological effects submodel incorporates the best available mortality and toxicity data. The Department has not been able to locate bioassay data on the toxicity of hydrocarbon products that have been developed under carefully controlled conditions, with constant aromatic concentrations in the water. Also, oil and petroleum products are highly variable in their percent composition and bioassay results. Very few studies have addressed oil toxicity and, therefore, the Department has not used direct bioassay data on oils in the models. See Section 4.2.3, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

Laboratory bioassays more closely correspond to dissolved metal concentration toxicity than total metal concentration in the water. The models estimate dissolved metal concentrations, and these are the concentrations assumed to be causing the injuries. Thus, the models address metal speciation to the extent possible, without incorporating a complex speciation model. Further, even such a complex speciation model could not be coupled to appropriate toxicity data at the present time, as is well noted in EPA and other literature.

EPA's water quality criteria would not be an appropriate basis for the models' toxicity calculations. The toxicity data in the models are mean values for acute response. Water quality criteria are designed to be lower than any concentration found to have either an acute or chronic response for even the most sensitive species. Thus, the water quality criteria should be lower than the models' toxicity data. EPA sediment quality criteria are evaluated in Section 4.2.1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

Comment: One commenter provided a highly technical review of the proposed toxicity model. The commenter noted that it was the commonly accepted toxicity model currently used in

environmental toxicology. The commenter encouraged the Department to apply chemical- and species-specific values to the alpha and gamma terms in the toxicity algorithm.

Response: The Department appreciates the in-depth review of the toxicity model provided by the commenter; however, insufficient data exist at this time to make the recommended changes. To the extent possible, the Department has used gamma values that are chemical-specific and alpha values that vary by class of chemicals. See Section 4.2.1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

Comment: One commenter questioned the accuracy of the toxicity calculations of the proposed NRDAM/GLE, particularly with regard to releases of metals. The commenter provided information on a series of test cases in the Niagara River that the commenter ran using the proposed NRDAM/GLE.

Response: Based on the information provided, the Department believes the test cases run by the commenter may not provide an appropriate basis for evaluating the NRDAM/GLE. The NRDAM/GLE was not designed to address multiple releases from various sources over a number of years. It appears that the commenter may have run the cases with the accumulated mass of contaminants as if that mass had resulted from single event spills of short duration. Also, the model was not designed to evaluate long-term chronic exposures to hazardous substances.

The Department does agree, however, that pure metals are not correctly modeled by the NRDAM/CME and NRDAM/GLE. The toxicity data for these metals are based on bioassay studies that measured the dissolved metal ion concentrations in water. Such toxicity data are not representative of the chemical state of the metal that would occur under natural environmental conditions. As a result, the Department has deleted all pure metals from the chemical databases.

Comment: Some commenters, including one of the independent technical reviewers, expressed concern about the models' failure to account for the additive toxicity of aromatics in oils.

Response: The Department has modified the NRDAM/CME and NRDAM/GLE to include an additive toxicity model that accounts for the combined lethality of similar acting aromatics in oils. The Department used the information identified by one of the commenters to construct this additive toxicity model. See Section 4.2, Volume I of the NRDAM/CME and NRDAM/GLE technical documents for the specific algorithm used and further clarification of the changes made.

Comment: Several commenters noted examples, primarily for metals, where the proposed NRDAM/CME used toxicity thresholds that were lower than naturally occurring water solubilities. The commenters suggested these errors were due to the Department's inappropriate use of freshwater toxicity data in saltwater environments.

Response: Comparison of the salt- and freshwater databases for those chemicals where data existed showed no significant differences in toxicity values given the variability of such data. However, the Department has deleted those chemicals where a difference would be expected (i.e., those making up salinity such as sodium).

The toxic thresholds in the models are only used as switches to end the calculations of the physical fates submodel. When the physical fates submodel determines that concentrations are below this level in all locations, it stops running. The threshold is the concentration that would cause one percent mortality at 30 degrees Celsius after 96 or more hours of exposure for the most sensitive species group. The biological effects submodel calculates the actual mortality for each species group based on duration of exposure and temperature. The proposed technical documents contained an incorrect list of the toxic thresholds actually used by the models. The documents have been corrected. See Table III.2.1, Volume III of the NRDAM/CME and NRDAM/GLE technical documents.

The toxicity data in the database, including the threshold values, apply to dissolved concentrations, not total concentrations. For chemicals that are highly partitioned, such as metals and nonpolar organics, the dissolved concentrations will be a small fraction of the total. The physical fates submodel partitions chemicals in both the water column and the sediments. Only dissolved chemical in the water column or in the sediment pore water causes toxicity in the models. Thus, the toxicity values should not be compared to total concentrations in water, but rather to the dissolved portion only. This accounts for the discrepancies perceived by the commenter when comparing thresholds to total metal background concentrations. The Department has eliminated all chemicals with a solubility below the toxic threshold.

Comment: One of the independent technical reviewers thought that the use of toxicity values based on acute toxicity laboratory tests could underestimate toxic effects, because in acute tests involving up to 96 hours of exposure, animals are typically not fed. Thus effects result from water-borne exposure only. The technical reviewer concluded that the models may be inappropriate for spills of hydrophobic organic compounds where most of the exposure would be through contaminated food.

Response: The Department agrees that the models may not fully capture the effects of a spill that contaminates food sources. The Department has revised the technical documents to clarify this point. See Section 4.2.1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

Comment: One of the independent technical reviewers thought that the models should account for the incremental effects of spills on existing levels of contamination.

Response: The Department did consider inclusion of background contamination data in the models. However, data sources were insufficient to include such information for the entire area covered by the models. As a practical matter, background contamination present at the spill site before a spill would lower the threshold for effects by the spill. Thus, not including background contamination in the models is likely to underestimate injuries. However, the Department believes that in cases where background contamination is significant but the cost of using type B procedures is not reasonable, trustees should still have the option of using a type A procedure.

Comment: Commenters suggested that rather than use average exposure concentrations in the plume, the models should evaluate mortalities that accrue from the actual cumulative exposure. One of the independent technical reviewers thought that it was not meaningful to estimate fractions of animals killed and recommended that the models round up fractional mortalities to total animals killed.

Response: Inadequate data currently exist to estimate effects of cumulative exposure. Further, the computational complexities and the potential size of the internal, intermediate data files are effectively beyond the capacity of currently available PCs. Instead, the biological effects submodel performs multiple iterative runs, using different randomized algorithms, and then averages the results of these runs to avoid anomalous model outputs and increase reliability. See Section 4.3.1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

The model is intended to generate valid mortality estimates for portions of

populations rather than discrete deaths of individual animals. Therefore, fractional mortality figures are appropriate.

Comment: One commenter thought the portions of the NRDAM/CME and NRDAM/GLE technical documents pertaining to the use of particles to represent biological populations were unclear. The commenter sought clarification of how the models operate when the particles hit a physical boundary within the models. The commenter also sought clarification of the fate of particles and their exposure history during a change of seasons. The commenter believed there should be exposure memory for particles representing those species whose density is constant across seasons. The commenter further supported the use of multiple iterative runs to minimize the variability error caused by using a finite number of particles to represent a population and by limiting particle movements on a daily basis.

Response: Particles may be transported out of a grid at the downstream edge and ''created'' as previously unexposed particles at the upstream edge. Particles intersecting land are reflected back into the water. At the change in seasons, the models assume that new individuals are present (at pre-spill abundances) and do not carry over the exposure history from the past season. The past season's injuries are tabulated and the exposure history for the new season is set at zero. Therefore, in a case where exposure extends across the seasonal boundary, the time of exposure would be underestimated. The technical documents have been clarified on these points. See Section 4.3, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. The Department agrees that multiple runs of the same scenario will give a better prediction of damages than a single run. Thus the models' internal procedures average multiple runs to arrive at a damage figure.

Comment: Several commenters generally criticized the proposed models' wildlife mortality calculations. Some commenters maintained that the models fail to adequately distinguish among effects of different types of compounds and questioned the application of wildlife mortality probabilities to substances other than crude oil since the only supporting data sources were for crude oil.

Response: The Department considers the wildlife mortality model to be reasonable, scientifically justified and consistent with experience in actual spill events. The probabilities of wildlife mortality used by the models are based on data obtained from observations of real spills. Some modifications have been made to the probability values based on more recent information.

The Department acknowledges that the supporting data sources for wildlife mortality do address crude oil. However, the Department believes that the models adequately account for the differences between crude oil and other petroleum products by calculating wildlife exposure dose based on the oil thickness and slick size. The mortality threshold is based on the exposure dose that is sufficient to cause an observable effect in experimental studies. If the exposure level exceeds the threshold, then wildlife mortality is assumed. For example, petroleum products that spread to sheen quickly, entrain, and/or evaporate have much less effect on wildlife in the models than thick, long-lasting oils, such as crude oil. Thus, the models account for differences among hydrocarbon-based oils and products through the physical fates submodel and the exposure algorithm. This algorithm is further explained in Section 4.3.4, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

Comment: Some commenters contended that no data were available to support mortality rates for raptors. Commenters also questioned the extrapolation of sea otter mortality probabilities to polar bears.

Response: The Department considers the eagle mortality rates to be appropriate for raptors in general. Mortality of eagles and other raptors as calculated by the models generally results from contact with slicks in shallow waters and along shorelines, and both eagles and other raptors occupy such areas to similar degrees. The eagle mortality rates used in the models are also supported by evidence from the Exxon Valdez spill. Further, osprey behave very much like eagles. Thus, the Department believes it is reasonable to use the same mortality rate for eagles and osprey.

The Department recognizes that no explicit data are available on the probability of polar bears dying from spills. However, the Department believes that it is appropriate to use the same probability for all furbearers because the mechanisms of exposure and toxicity, namely ingestion of oil through grooming, are similar.

Comment: One commenter thought that the NRDAM/GLE should use a 90 to 95 percent mortality rate for ducks contacting heavy oil, as the proposed NRDAM/CME did.

Response: The Department has modified the NRDAM/GLE to include duck mortality rates that are consistent with those in the NRDAM/CME. Based on recent information, the Department has incorporated a 99 percent mortality rate in both models for those ducks that are exposed to a spill over the threshold dose. See Section 4.3.4, Volume I of the NRDAM/GLE technical document.

Comment: Commenters noted an apparent lack of correspondence between numbers of marine birds the models estimated to be killed, and numbers killed based on actual wildlife recoveries and detailed damage assessments. One commenter believed that the mortality counts for birds impacted by oil spills in Florida appeared low in almost all cases. Commenters suggested an alternative hindcast model for wildlife mortality estimation that was used for the T/V Puerto Rican, Apex Houston, Nestucca, and Exxon Valdez oil spills.

Response: The Department believes that the apparently low mortalities observed by the commenter were due to the low abundance data for certain bird species contained in the proposed biological database for the Florida coast. The Department has revised the wildlife database for the Florida coast based on additional information provided by commenters. Model runs conducted with the revised wildlife abundance database no longer reveal large discrepancies. See Section 5, Volume IV of the NRDAM/CME technical document.

Also, the Department has revised the probability of mortality for aerial divers using hindcasts, as suggested. See Section 4.3.4, Volume I of the NRDAM/CME technical document.

Comment: Several commenters, including one of the independent technical reviewers, generally questioned the oil mortality probabilities and suggested that they be calibrated to data from actual spills, noting that the wildlife mortality probabilities in the proposed models were inconsistent with experience in the Exxon Valdez spill.

Response: The mortality probabilities included in the models are based in part on data from actual spills. Very little data exist on the natural resource effects of small spills of the type addressed by the type A models. Therefore, it is impossible to determine the need for calibration. Nonetheless, the Department did consider data on physical fates and biological effects collected after the Exxon Valdez spill when evaluating the NRDAM/CME's mortality predictions. Bird and marine mammal injuries estimated by the

model provide reasonable agreement with estimated kills caused by the spill.

Also, the commenters may not have correctly interpreted how the model calculates wildlife mortality. The commenters inferred that the wildlife mortality probabilities are multiplied times all animals at risk, and include populations for all of the northern Gulf of Alaska in the total population at risk. Instead, the model only multiplies the probabilities times the animals actually encountering oil and receiving a dose above the threshold value. Thus, the population ''at risk'' in this sense is orders of magnitude lower than the commenter's suggested value.

Comment: Several commenters asserted that the models overestimate wildlife injuries by failing to account for weathering of oil, the effect of temperature, and the fact that light products like gasoline and other floating chemicals would be readily washed from the coats of furbearers.

Response: The physical fates submodel does account for weathering. Evaporation, degradation, and entrainment reduce the area and thickness of slicks, which in turn reduces the frequency with which wildlife will be exposed to oil doses large enough to induce effects. See Section 3.5, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. For example, extremely volatile compounds evaporate so quickly that their surface slicks have essentially no effect on wildlife.

The Department does not think that temperature is likely to have a significant effect on mortality rates. While one effect of oiling is a decrease in thermal conductance of fur and feathers, it is generally thought that the predominant toxic effects result from ingestion of oil during grooming. See Section 4.3.4, Volume I of the NRDAM/CME technical document. Also, animals are adapted to the climate in which they live. Thus, a tropical species suffers from hypothermia at a higher temperature than subpolar species.

Finally, the light products and chemicals contained in crude oil are widely recognized to be the more toxic components. The light products and chemicals are hydrophobic, and so would not be washed from fur by seawater. Given the same dose, in terms of mass of hydrocarbons, these products are expected to have similar effects to crude oils.

Comment: One commenter thought that the proposed 10 percent mortality rate for terrestrial mammals was too high.

Response: The Department agrees that the proposed mortality rate of 10 percent was too high and has reduced it to 0.1 percent. The Department considers this revised rate to be reasonable as compared to the mortality rate for seals. The NRDAM/CME assumes a seal mortality rate of 1.0 percent based on hindcast projections using Exxon Valdez data. Seals continuously inhabit open waters and shorelines, whereas terrestrial wildlife inhabit shorelines only a portion of the time. Therefore, terrestrial mammals would be expected to have lower rates of encountering spills and, thus, lower mortality rates.

Comment: Commenters suggested the models grossly overestimate fish mortality from oil spills by overestimating dissolved hydrocarbon concentrations. These commenters particularly took issue with the Department's assumption that total aromatic hydrocarbon content of a spill remains the same by percentage before and after the spill. These commenters cited studies showing that weathering results in little of the hydrocarbon content entering the water column.

Response: The Department does not think that the models overestimate fish mortality resulting from oil spills. Aromatics in oils are known to cause the most acute toxicity. See Section 4.2.3, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. The physical fates submodel separately tracks dissolved aromatics of two molecular weight size classes: (1) monoaromatic benzenes and (2) diaromatic compounds. These aromatics do volatilize rapidly in the models. Thus, relatively little of these aromatics end up in the water column and cause toxicity. See Section 3.5, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

Also, the models do not assume that the percent composition of total aromatic hydrocarbons remains constant in the spilled substance. The Department has clarified the text of the technical documents on this point. See Section 4.2.3, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

Comment: Commenters asserted that it is too simplistic to use a mean LC50 (the concentration at which 50 percent of test organisms die within a defined time period) for the whole taxonomic class of fish or for all plants, algae, or angiosperms. Further, commenters maintained that the Department failed to provide information sufficient to evaluate the statistical relationships involved.

Response: The NRDAM/CME and NRDAM/GLE technical documents contain detailed descriptions of the process the Department used to derive average toxicity parameters. Researchers have found that the LC50 for one species is a reasonable predictor of toxicity for other species within the same family and that, in many cases, cross-family correlations are also significant. See Sections 4 and 7, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. Also, the administrative record for this rulemaking includes additional material on the derivation of average toxicity parameters.

Available information is insufficient to disaggregate further the toxicity values used in the models. Disaggregation of the few data available would increase the error in the model result because of the uncertainties associated with individual data points. For plants, algae, or angiosperms, available data in EPA's AQUIRE database support the use of a mean LC50 value. There are insufficient data to quantify differing values by plant group. The Department does not believe that use of more specific plant values would significantly improve the reliability of the model damage figure because the model damage figures are not sensitive to the value assumed, within the range of observed data for a given chemical.

Comment: A few commenters generally criticized the Department's approach to assessing fish mortality from toxicity data using statistically averaged values, asserting that information necessary to review the adequacy of such an approach was not included in the proposed technical documents. One of the commenters noted apparent inconsistencies between the values used in the models and the values in the AQUIRE database. Another commenter asserted that unless the Department could demonstrate that the oil toxicity algorithms in the revised NRDAM/CME were more accurate than those in the original NRDAM/CME issued in 1987, the Department should return to the original algorithms.

Response: The Department believes it has provided sufficient information and opportunity to review the approaches used to calculate fish mortality and to derive the toxicity data contained in the databases. Section 4, Volume I of the NRDAM/CME and NRDAM/GLE technical documents explains how the models calculate fish mortality. Section 2, Volume III of the NRDAM/CME and NRDAM/GLE technical documents provides toxicity values for each substance contained in the chemical databases and the source of information used to derive those values. Due to the volume of material, the Department has

not included in the technical documents all of the raw data and statistical analyses that were compiled for each toxicity value. However, the sources of the raw data, such as AQUIRE, are available to the public. Also the methods used to derive the statistically averaged toxicity values are consistent with those commonly used in aquatic toxicology. The toxicity values used in the model are based on all literature in the AQUIRE database as of November 1991. The AQUIRE database has not been updated since that time. The commenter appears to have reviewed only a limited range of data in the AQUIRE database.

Finally, the Department believes that the revised NRDAM/CME is an improvement over the original NRDAM/CME and more accurately calculates oil toxicity. The technical documents explain all oil toxicity values used in the models. See Section 4.2.3, Volume I, and Section 2, Volume III of the NRDAM/CME and NRDAM/GLE technical documents. The toxicity parameters are for dissolved aromatic hydrocarbons of less than 200 molecular weight, which is what the models calculate as the toxic material. Literature estimates are for whole oil, total petroleum hydrocarbons, or water soluble fractions, and thus are inapplicable to and higher than those for the dissolved low molecular weight fraction.

Comment: One commenter noted that the susceptibility of developing fish eggs and larvae to toxic substances changes over time and sought clarification whether the models account for seasonal variations in toxicity.

Response: The Department recognizes that the susceptibility of fish eggs and larvae to toxic substances may change with age. However, the Department does not think that sufficient research data have been compiled to quantify a change in toxicity by age of eggs and larvae for all the species groups and chemical substances contained in the chemical database. Therefore, the models have not been revised to account for this potential effect.

Comment: Some commenters, including one of the independent technical reviewers, criticized the models for failing to account for the effects of avoidance of a spill by fish.

Response: The Department acknowledges that some portion of fish populations may avoid spills of some types of chemicals. However, the Department was unable to identify adequate quantitative data on this phenomenon to include it in the models at this time.

Comment: One of the independent technical reviewers thought the NRDAM/CME should account for the fact that fish and macroinvertebrates may be exposed to intertidal contamination when the tide is in.

Response: The model does account for tidal inundation in its calculation of the water column plume. Contamination in the water may move into intertidal areas when water is present over them. When the tide goes out, the plume is transported out as well.

Comment: One of the independent technical reviewers thought the fish swimming speeds used in the proposed models were extremely low.

Response: The Department believes that the swimming speeds incorporated in the models are appropriate for the time step involved. The models use these speeds as distance moved in a single direction in an individual time step. Direction is randomized, so that after many time steps, motion is random. The rates are low because of the time step used. Otherwise, there is too much migration of fish in the models. For further discussion, see Section 4.3.1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

Comment: One commenter questioned the accuracy of the statement in the proposed NRDAM/GLE technical document that short duration disturbances of biota are not evaluated in light of the fact that the model specifically focuses on acute injury.

Response: The statement in the technical document to which the commenter refers simply addresses the model assumption that seasonal biological abundances do not change for reasons other than the spill. See Section 4.1.2, Volume I of the NRDAM/GLE technical document.

Comment: One commenter stated that the Department had made an unsubstantiated assumption that, for wildlife, death of parent animals will necessarily lead to death of immature animals. However, other commenters stated that, according to the equations in the proposed technical documents, the models fail to account for lost future harvest of young that are killed as a result of the death of their parents. A few commenters thought the models assumed that the spill occurred at the time of fledging and that the time of fledging is constant for all species. Some commenters also thought that the hatching and fledging times presented in the database were excessive.

Response: The models assume that if adult birds or mammals are killed while their young are dependent upon them, then the young will be lost as well. See Section 4.5.2, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. The models do not assume that the spill occurs at the time of fledging or that the time of fledging is constant for all species. The wildlife life history parameters used by the models include the age (in months) at which young are fledged or weaned, not the month of the year in which they are fledged or weaned. The fledging and weaning ages in the database are the ages at which young become independent. See Section 4, Volume IV of the NRDAM/CME technical document, and Section 3.6, Volume III of the NRDAM/GLE technical document.

A substantial volume of literature addresses the parental care of young birds and mammals and the inability of those young to survive without parents. See Section 4, Volume IV of the NRDAM/CME technical document, and Section 3.8.4, Volume III of the NRDAM/GLE technical document. The Department believes it has provided ample documentation to substantiate that the death of parent animals does result in the death of young that are dependent on them.

H. Loss of Production

Comment: One of the independent technical reviewers stated that direct oiling can kill seagrass and thereby reduce habitat function. The technical reviewer suggested that the models account for the effect of oiling on submerged macrophytes such as seagrass and kelp.

Response: The NRDAM/CME calculates the sublethal loss of production and the acute lethal effects to subtidal seagrasses and other submerged macrophytes exposed to concentrations of dissolved oil in the water. However, evidence of oil coating and smothering macrophytes that are under water or in floating beds, does not appear to be available. The Department does not consider smothering of subtidal seagrass to be likely given that oil slicks float on the water surface and wave action would flush the oil from floating beds. Therefore, the Department has not included the coating and smothering of subtidal macrophytes as an injury calculated by the model.

Intertidal seagrass habitats have been added to the NRDAM/CME as a new habitat type. The Department recognizes that intertidal seagrass can be coated by oil and smothered. Research studies have shown saltmarsh plant mortalities to occur from exposure to oil thicknesses of 14 millimeters. As a result, oiling of intertidal seagrass beds over a threshold thickness of 14

millimeters is considered lethal to seagrass, which is consistent with the model's treatment of oiling effects on other intertidal habitat types. See Section 4.3.3.2, Volume I of the NRDAM/CME technical document.

Comment: One commenter thought that the proposed method of estimating post-spill recovery of macrophyte primary production was adequate for the purposes of the NRDAM/CME. However, the commenter suggested that the Department consider adjusting the sigmoidal function used to estimate the rate of biomass production so that the maximum rate of production occurs at one-half of the pre-spill biomass level.

Response: The Department acknowledges the limitations of available data to specifically define the shape of the recovery curve for macrophyte production. However, the model results are not sensitive to the specific shape of the recovery curve; therefore, further effort to refine the curve is not likely to result in significantly improved reliability.

Comment: A few commenters, including one of the independent technical reviewers, thought the models should consider the effects of compensatory growth (i.e., enhanced production due to the removal of inter- and intra-species density-dependent growth-limiting factors). These commenters stated that the models would overestimate production losses unless compensatory growth were considered. The commenter also suggested that, for lower trophic levels, the models should use the upper 75th percentile of the available LC50 or EC50 (i.e., the concentration at which growth is reduced by 50 percent) values rather than the mean of the LC50 and EC50 values.

Response: The Department acknowledges that compensatory growth is not addressed within the models. However, the Department does not believe that production losses are overestimated as a result. For the small spills for which the models were designed, density-dependent growth and survival effects are likely to be insignificant. Further, density-dependent effects of large changes in fish population sizes have been difficult to quantify because of large natural variations and other ecological forces. The known disturbances that enhance productivity in ecosystems are natural events to which the ecosystem adapts rather than hazardous substance spills.

The selection of only the upper 75th percentile of the LC50 and EC50 data would arbitrarily exclude toxicity data that may be representative of all sensitive and nonsensitive organisms in the field. Instead, the use of only the higher LC50 data would likely be representative of only the direct mortality to nonsensitive organisms.

Comment: One of the independent technical reviewers recommended that the Department adopt a habitat-based approach to calculating the loss of production. Under this approach, each grid would have an associated biomass per unit area, and if that grid were oiled, an assumed percent of yield would be lost.

Response: The models do use a habitat-based approach in the calculation of lost production. Each contiguous grid cell of the same habitat type within the grid has an associated biomass per unit area. The models calculate a percentage loss of biomass for the defined habitat type based on concentration and time of exposure. Biomass losses are summed and multiplied times the fishing mortality rate within the habitat type to calculate the lost yield. See Sections 4.3 and 6.2, Volume I of the NRDAM/CME technical document, and Sections 4.3 and 8.2.2, Volume I of the NRDAM/GLE technical document.

Comment: Several commenters stated that the models rely on assumptions about ecological and exposure processes that are inconsistent with actual environmental conditions and could result in inflated damage estimates. Some commenters thought that the models inappropriately assume that ecological communities are evenly distributed both temporally and spatially. Several commenters disagreed with the model assumption that all demersal young-of-the-year are attached to the bottom and thought that this assumption would overestimate injury. Some commenters stated that the assumption that the depth of bioturbation is always 10 centimeters would also lead to overestimates of injuries. One of the independent technical reviewers thought that the models should account for vertical migration.

Response: Ecosystems have the resilience to adapt to a number of unpredictable disturbances. Further, most small spills do not appear to significantly alter ecosystem structure or the temporal distribution of populations. The purpose of the models is to evaluate effects of spills small enough that they do not significantly alter ecosystem structure and dynamics. The Department believes it is reasonable to assume stable temporal distributions and that such an assumption is not inconsistent with actual environmental conditions during small spills. Therefore, the models continue to assume temporal distribution is constant by season for fish and shellfish and by month for young-of-the-year.

The models do not assume even spatial distributions of ecological communities. The abundance data contained in the biological database were developed assuming evenly distributed species abundances within a particular habitat and biological province occupied by the species, and within a given season or month. The species abundance data are assigned to the models' biological computational particles. Abundances of young-of-the year change monthly between habitats, provinces, and portions of the water column (pelagic, demersal or benthic), as appropriate to the species' life history. Therefore, the particles do not represent abundances that are evenly distributed spatially.

The Department acknowledges that a small portion of demersal young-of-the-year are potentially carried by currents. However, for the purposes of these models, the Department believes it is reasonable to assume that all demersal young-of-the-year are attached to the bottom. See Section 4.3.2, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. If any demersal young-of-the-year did in fact drift with the current, they would likely be more exposed to the released substance, which would also be moving with the current. Therefore, if the assumption that all demersal young-of-the-year are attached to the bottom is not reasonable in a particular case, the models are likely to underestimate rather than overestimate damages.

Also, simulation of vertical migration would require substantial additional modeling. The Department does not believe that adding such complexity would substantially improve the reliability of the final damage figure.

In some contaminated, and thus ecologically stressed, habitats, the depth of bioturbation may be less than 10 centimeters. However, for most regions covered by the models, the Department believes it is reasonable to assume a depth of 10 centimeters, since most estuarine and marine sediments are relatively uncontaminated. Contrary to the commenters' assertion that this assumption may cause an overestimate in pore water concentrations in areas where bioturbation is small, the dilution of contaminants over the assumed depth of 10 centimeters could underestimate pore water concentrations and injuries.

Comment: Some of the commenters, including one of the independent technical reviewers, thought the food web model was crude. For example, the independent technical reviewer

questioned the assumption that all biota are equivalent as food sources. Another commenter stated that the model provided only a rough approximation of upper trophic-level production losses attributable to spill-related reductions in primary productivity.

Response: The Department acknowledges that the food web model is generalized for all aquatic habitats, but believes it is reasonable for the purposes of the NRDAM/GLE and NRDAM/CME. The food web model provides a reliable approximation of spill-related upper trophic-level production losses due to lost primary productivity. The Department believes that development of a more sophisticated, geographic-specific food web model would not significantly improve the reliability of the final damage figure.

Comment: One of the independent technical reviewers thought that the consumption rate parameters contained in the food web model should vary seasonally.

Response: Seasonal changes in lower trophic-level production rates and in temperature already partially provide a seasonal effect in the models. The Department does not believe that further refinement would significantly improve the reliability of the final damage figure.

I. Catch and Bag Losses

Comment: Several commenters addressed the methods used to translate fish mortality and wildlife mortality into reductions in catch and bag. Commenters noted that a correct translation was needed because mortality is not a sufficient basis for damages if it does not result in a quantifiable reduction in the services provided by the resources. Some commenters thought the proposed single-species approach to modeling fishery complexes and ecosystems was simplistic but adequate for the purposes of the type A models. Other commenters argued that predictions of catch and bag losses were wholly unreliable and resulted in inflated estimates of service losses.

Some commenters stated that the models sometimes predict a catch loss that exceeds the prediction of total mortality. These commenters asserted that inaccurately high fishing rates in the proposed NRDAM/GLE lead to the estimation that 50 to 70 percent of some fish species would be caught in a single year. Commenters complained that lost wildlife bag predictions failed to account for regional differences. Some commenters thought that failure to consider hunting regulations would inappropriately result in the calculation of losses even when hunting is prohibited. Commenters also criticized the use of uniform annual hunting mortality rates that do not assume any particular underlying daily patterns that would produce such rates.

Response: The type A models calculate lost catch based on a standard fisheries model. See Section 4.5.1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. Fishing mortality is an instantaneous rate, the coefficient of an exponential, first-order ''decay'' curve. The nature of this equation is that an instantaneous fishing mortality rate of one corresponds to an annual harvest of 63 percent of the standing stock abundance present at the beginning of the year. The models account for growth of animals over the year they are harvested. Thus, the harvest may exceed the standing stock biomass present at any given time if the growth rate of the species is high. An annual harvest rate of 63 percent of standing stock abundance at the beginning of the year is not equivalent to a 63 percent catch of all the fish species stock cumulatively available throughout the year. The fishing mortality rates assumed in the database are based on best available fisheries statistics estimated by NMFS and State fisheries management agencies.

The models apply hunting mortality rates to a population, i.e., a stock or group of interbreeding animals. See Section 4.5.3, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. The hunting mortality rate in the models is simply the probability of being hunted successfully at some time and place over one year of life. Therefore, the models need not consider exactly where or when the animals are actually taken during a given year or whether hunting seasons are open or closed at the spill site. The Department derived the hunting mortality rates from tagging studies. A considerable amount of literature shows that birds and mammals have similar hunting mortality rates per animal (or per 100 animals) throughout North American populations due to migratory behavior and biological limits on productivity. See Section 4, Volume IV of the NRDAM/CME technical document. Therefore, the models use per-animal rates that are justifiably constant in time and space.

Comment: Some commenters thought it was inconsistent for the models to assume that a fish species may be present or absent in certain seasons while also assuming that fishing and natural mortality rates are constant and act continuously on the population throughout the year.

Response: The models include fishing and natural mortality rates that apply to stocks, which may move seasonally. The rates apply to the entire population of fish within the provinces occupied by a given stock no matter whether they are present or absent from particular locations at different times of the year.

Comment: One commenter thought that the fish biomass figures used in the calculation of predation rates should reflect the entire stock, not just the exploitable stock biomass.

Response: The models do, in fact, use the total stock biomass in these calculations.

Comment: A few commenters noted that the yield model assumes that the biomass of each fish species is uniformly distributed over the entire province in which it is found, while the figures in the database reflect the actual distribution of the stock. The commenters further noted that if a species did not extend throughout the entire province, then this assumption would lead to an overestimate of loss of yield.

Response: The Department chose province boundaries to minimize this source of error in the models. Additionally, there are three sub-areas (habitats) within each province with unique fishery biomasses. See Section 6.3, Volume I of the NRDAM/CME technical document.

Comment: A few commenters raised questions about the interplay between the user-supplied information on closures and the models' spill-related mortality predictions. The commenters noted that the models do not adjust fishing mortality rates when there is a closure. Commenters suggested that users be allowed to make such an adjustment to avoid underestimating recovery periods.

Response: The Department believes the assumption of a constant fishing mortality rate is reasonable for purposes of calculating recovery periods after minor spills. Only very large changes in fishing would be measurable in the population over the long term. For minor releases, it is unlikely that extended closures will occur.

Comment: One commenter questioned the yield formulas in the proposed NRDAM/CME technical document and offered alternative formulas. The commenter noted that the proposed equations appeared to be missing the final year's contribution to yield.

Response: The Department has reviewed the alternative formulas offered by the commenter and has concluded that they are more precise. The Department has modified the final versions of the models accordingly. The

models continue to calculate losses through the last year after the spill effects where killed individuals would have lived and died naturally. The Department has clarified the language of the technical documents on this point. See Section 4.5.1, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

J. Habitat Restoration

Comment: Several commenters thought that the proposed methodology for calculating habitat restoration costs was so flawed that the Department should eliminate such damages from the models. These commenters identified four major flaws in the methodology that, taken together, render it invalid: (1) The models' acute toxic threshold is unrealistically low, leading the models to overestimate the size of the areas needing restoration; (2) the models often overestimate the time necessary for natural recovery; (3) the models select specific physical restoration measures without regard to their feasibility; and (4) the Department overestimated the fixed costs for small spills.

Response: As discussed in more detail below, the Department believes that the methodology for calculating habitat restoration costs is reliable. Therefore, the Department has retained the methodology in the final versions of the NRDAM/CME and the NRDAM/GLE subject to the revisions described in Section VI.B of this preamble.

Comment: Several commenters said the Department had failed to consider adequately the feasibility or the cost-effectiveness of the specific restoration actions included in the models. For example, commenters argued that sediment capping in deep water is not a proven technique and that the cost of such capping is highly site-specific. Therefore, these commenters thought that deep-water capping should be eliminated from the models. Commenters also thought that the Department had failed to substantiate its claim that the types of habitat restoration actions considered by the models are in fact the most cost-effective. Some commenters, including one of the independent technical reviewers, thought the Department had unduly limited the range of restoration actions the models consider, and should have included off-site restoration, partial rehabilitation, and other mitigating actions.

Response: The Department has concluded, based on an extensive literature review, that all restoration options considered by the models are technically feasible. For additional discussion see Sections 5 and 12, Volume I of the NRDAM/CME technical document, and Sections 5 and 9, Volume I of the NRDAM/GLE technical document.

Sediment capping in deep water is technically possible. The models calculate damages based on the cost of capping only if toxicity in sediments of an entire grid cell is so persistent that recovery following capping would be faster than natural recovery. The Department believes that in such cases, sediment capping is appropriate. The Department has attempted to account for site-specific factors relating to offshore capping by including cost figures that take into consideration the different distances that equipment and sediments must be transported.

The Department also carefully evaluated a wide range of possible habitat restoration actions, including replacement of the affected resources with other resources, acquisition of equivalent resources, natural recovery, and other technologies. Based on this evaluation, the Department believes that it has identified the most cost-effective types of habitat restoration that can reasonably be included in models of this type.

With regard to off-site restoration, the Department acknowledges that after recovering damages through the use of a type A procedure, trustees may well decide that the recoveries are best spent on off-site actions, such as the purchase and enhancement of nearby property to provide equivalent habitat to that lost. However, the availability of nearby land of the same habitat type as that injured, the cost of any available land, and the need for and feasibility of any actions to make the land equivalent in quality to that lost are all highly site-specific factors. The Department does not believe that adequate data are currently available to include off-site restoration among the list of restoration actions evaluated by the models. With regard to partial rehabilitation, the Department has improved the resolution of the NRDAM/CME by a factor of four, which allows the restoration submodel to consider restoration of much smaller geographic areas.

Comment: One commenter noted that techniques for reestablishing freshwater macrophyte beds of wild celery have been well demonstrated and should be separately included in the NRDAM/GLE.

Response: The NRDAM/GLE does evaluate actions to restore wild celery beds but does so through consideration of a single type of restoration action for all aquatic bed habitats. The Department does not think the differences between the techniques for restoring various types of aquatic beds necessitate the development of distinct per-unit restoration costs for each type.

Comment: Several commenters said that the models grossly overestimate the size of the areas to be restored because they use unrealistically low toxicity thresholds. To illustrate this point, commenters noted that the models assign a toxicity threshold to cupric chloride that is less than 1/40th its normal concentration in saltwater. These commenters argued that a spill of cupric chloride would have to spread over a huge area before it would dissipate below the toxic threshold, which would then necessitate restoration over a similarly huge area.

Response: The toxicity thresholds included in the models merely serve as switches to end a model run. When the physical fates submodel determines that concentrations of the released substance are below the threshold level for that substance in all locations, it stops running. The threshold is the concentration that would cause one percent mortality at 30 degrees Celsius after 96 or more hours of exposure in the most sensitive species group. When calculating habitat restoration costs, the restoration submodel will examine all areas over which the spill has spread but will only calculate the cost of active restoration if it would result in lower compensable value than natural recovery. Compensable value is generated only when there is mortality or loss of production. The biological effects submodel calculates mortality and loss of production not on the basis of the toxicity thresholds but rather on the basis of mean LC50 and EC50 values. Therefore, the toxicity thresholds do not determine the extent of habitat restoration. Further, the models will only include the cost of active restoration in the final damage figure if such active restoration passes the cost-benefit test discussed below.

Comment: There were several comments concerning the models' predictions of recovery times. One of the independent technical reviewers suggested that the recovery times be modified. Another commenter noted that recovery times are very uncertain and that relatively small adjustments can have significant effects on estimates of total losses. Several commenters said the proposed restoration submodel generally overestimated the time required for natural recovery. Some commenters stated that the NRDAM/CME appeared to incorporate recovery times for seagrass beds and coral reefs that exceeded the literature values listed in the proposed NRDAM/CME technical document. Other commenters

questioned the lack of data for saltmarsh wetlands and mudflats and criticized the Department's use of identical recovery times for mudflats and sandy beaches.

Response: The Department believes that the scientific literature supports the recovery times for seagrass beds, coral reefs, saltmarsh wetlands, and mudflats contained in the NRDAM/CME. Further, the recovery periods included in the NRDAM/CME for seagrass beds and coral reef are consistent with the literature cited in the technical document. See Section 4.3.3.2, Volume I of the NRDAM/CME technical document.

Comment: One commenter questioned the Department's assumption that reproduction of fish and wildlife species resumes normal levels as soon as toxicity is no longer present.

Response: The Department recognizes that substances may cause sublethal or chronic injuries that affect reproduction after concentrations have dropped below acutely toxic levels. However, the models do not attempt to address the effects of such sublethal or chronic injuries. If trustees believe such injuries are likely to be significant, they should consider conducting type B studies instead of, or in addition to, a type A procedure.

Comment: There were a few comments about the inclusion of fixed restoration costs in the models. Some commenters, including some of the independent technical reviewers, thought that the fixed cost figure was too low; other commenters thought it was too high. One of the independent technical reviewers thought different fixed costs should be applied depending on the type of habitat affected.

Response: Trustees who use a type A procedure will have to develop a restoration plan once they obtain compensation for the natural resource injuries. See 43 CFR 11.93(a). The proposed models included a fixed cost of $18,300 to cover restoration planning costs. The Department recognizes that the extent of the restoration planning costs for each particular case may vary dramatically. Such costs depend on whether the trustees intend to implement the restoration actions chosen by the model or develop other restoration actions. The costs also vary depending on the complexity of the selected restoration actions. In light of the highly site-specific nature of restoration planning costs, the Department has chosen to eliminate them from the models.

Nevertheless, § 11.15(a)(3) of the regulations, which is not changed by this rulemaking, allows trustees to recover the reasonable and necessary costs of an assessment. These costs include ''[a]dministrative costs and expenses necessary for, and incidental to * * * restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning.'' 43 CFR 11.15(a)(3)(ii). Therefore, trustees who use a type A procedure and wish to recover restoration planning costs may develop their own estimates of such costs and include them as assessment costs in the demand presented to the PRPs under revised § 11.91(a).

Comment: One commenter was generally concerned about the quality of the Department's information-gathering efforts on habitat restoration techniques, noting the lack of current references in the technical documents. The independent technical reviewers recommended that the Department update the per-unit restoration cost data included in the models.

Response: NOAA conducted an extensive literature search on natural resource restoration while developing guidance documents in connection with its natural resource damage assessment rulemaking under OPA. The Department has updated the per-unit restoration costs included in the models based on information compiled through this NOAA effort as well as other recent information. Also, as discussed below, the Department has revised the habitat restoration actions evaluated for structured habitats (i.e., wetlands, seagrass, macroalgal, coral, mollusk, and reef).

Comment: A few commenters thought that the costs of upland disposal of sediments in the proposed NRDAM/GLE inappropriately failed to factor in long-term operation and maintenance.

Response: The model includes the per-unit costs that a commercial facility would charge to accept sediment for disposal. These costs are one-time costs charged by the commercial facility and, thus, should include the facility's anticipated long-term operation and maintenance costs. Trustees would not incur any additional long-term costs.

Comment: Some of the independent technical reviewers thought that the NRDAM/CME incorrectly assumed that seagrass replanting and oyster reef seeding would entail destruction and subsequent reestablishment of the entire habitat. These technical reviewers also thought this assumption would produce a bias against invoking habitat restoration because habitat restoration of this nature will generally result in compensable value in excess of that which would occur under natural recovery.

Response: The Department has reevaluated the habitat restoration actions included for seagrass beds, invertebrate reefs, and other structured habitats and decided that in certain circumstances it would be technically feasible and more cost-effective to perform restoration actions that are less invasive than replacement of substrate. Therefore, the Department has revised the NRDAM/CME to include two potential restoration actions for such habitats. Where the sediments are sufficiently contaminated, the restoration submodel evaluates substrate replacement or capping followed by replanting or reseeding of the vegetation or invertebrate structure. Where sediments are not contaminated but mortality of the structural habitat has occurred, the submodel evaluates replanting or reseeding alone. The submodel evaluates each affected grid cell. See Section 12.2, Volume I of the NRDAM/CME technical document.

Comment: One commenter thought that the Department had inappropriately based freshwater wetland restoration alternatives for hazardous substance releases on oil-related experiences.

Response: The Department did not base freshwater wetland restoration for hazardous substance releases on data relating to oil spills. In fact, data on freshwater wetland restoration arises almost entirely out of non-oil experiences. See Section 5.7, Volume I of the NRDAM/GLE technical document.

Comment: One commenter noted that removal and replacement of soils and vegetation is subject to failure and, even if ''successful,'' results in different habitat.

Response: The Department agrees that removal of substrate and replanting can result in failures and the emergence of different habitats. The Department developed recovery rates and per-unit restoration costs that account for such risks.

Comment: One commenter objected to the inclusion of washing and steam cleaning as restoration alternatives, noting that such actions caused injury during the Exxon Valdez response.

Response: The Department has retained washing and steam cleaning as a potential shoreline habitat restoration alternative in the NRDAM/CME. The Department agrees that washing and steam cleaning cause injury but believes that inclusion of such alternatives in the model is appropriate subject to the decision criteria used by the models. When the model evaluates these alternatives, it assumes that the actions will destroy the habitat. The model will only select these alternatives if,

notwithstanding their deleterious effects, they nonetheless result in lower compensable value than natural recovery. In coastal and marine environments, the tidal flux creates a distinct shoreline habitat that is not present in the Great Lakes. Therefore, the NRDAM/GLE does not include shoreline washing and steaming.

Comment: One commenter disagreed with the statement in the proposed NRDAM/GLE technical document that fish production is not negatively affected by dredging.

Response: The Department acknowledges, and the models recognize, that dredging of a habitat reduces egg and larval fish production in the dredged habitat to zero initially, and then production follows vegetative and benthic recovery. The models simply assume that adult fish production is unaffected.

K. Assimilative Capacity Restoration

Comment: Several commenters argued that assimilative capacity restoration costs are not legally recoverable. A number of commenters thought that inclusion of damages for lost assimilative capacity was overly speculative. These commenters stated that the presence of a spilled substance only causes a meaningful reduction in assimilative capacity if the resource will be required to assimilate more of a similar substance in the same area before the spilled substance degrades. The commenters argued that the type A models merely assume that assimilative capacity has been reduced. Some of these commenters thought that the assumption of an actual reduction in assimilative capacity is particularly troubling in the case of minor spills. The commenters noted that if type B procedures are used, trustees would be required to demonstrate an actual reduction in assimilative capacity. One commenter noted that *Ohio* v. *Interior* had stated that a procedure that permitted unduly speculative assessments would not constitute a best available procedure under CERCLA. 889 F.2d at 462.

Response: The issue of whether lost assimilative capacity is a legally permissible category of damages was decided and resolved by the Department in 1986 and is beyond the scope of this rulemaking. The only issues that the Department is considering in this rulemaking are: whether the type A models adequately demonstrate a loss of assimilative capacity; and, if so, whether the models accurately compute the costs for restoring that loss. The Department believes that the assimilative capacity restoration costs computed by the final NRDAM/CME and the NRDAM/GLE are based on demonstrable, rather than speculative, losses.

Assimilative capacity is an ecosystem's ability to repair itself by digesting, degrading, transforming, absorbing, or otherwise eliminating the pollutants placed in it. The Department recognizes that there are contrasting views of the nature of assimilative capacity. The purist position is that no materials placed in aquatic environments will ever simply disappear. Some substances cannot be broken down and will reenter and recycle through the ecosystem even if they have no detrimental effects. Other substances may be completely digested in the ecosystem and transformed into harmless or naturally occurring elements. This digestion, however, will consume some of the ecosystem's resources (e.g., dissolved oxygen) at the expense of natural processes and components of the system. Thus, following this purist approach, all additions to a water body will change it to a greater or lesser degree, and the only way to ensure restoration of the equilibrium in the ecosystem is to eliminate or remove all introduced material.

Recognizing, however, that absolute removal of a discrete spilled substance can be impractical, if not impossible, some experts have adopted a more pragmatic approach. Under this approach, the assimilative capacity of a water body is usually viewed in relation to some water quality standard or level of service. In other words, assimilative capacity is the ability of a water body to absorb a particular pollutant up to the point where certain detrimental effects are realized.

The Department carefully considered both the purist and pragmatic approaches to assimilative capacity. Based on this consideration, the Department included in the proposed type A models a methodology for computing assimilative capacity restoration. After reviewing the public comments, the Department has modified that methodology to ensure that the models more accurately quantify assimilative capacity losses. The Department believes that the modified methodology is appropriate for inclusion in the models.

The Department does not believe that recovery of damages for lost assimilative capacity using the type A models is speculative. Trustees are authorized to recover damages to restore injured resources to their baseline conditions. Baseline is measured in terms of the services that the injured resources would have provided in the absence of the release. See 43 CFR 11.70(a). The assimilation of pollutants is a real service provided by natural resources and is well-founded in scientific literature. Assimilative capacity will be reduced whenever a release occurs. Releases use some of the assimilative capacity of aquatic environments and so long as the pollutants remain in the environment, some portion of assimilative capacity—a service provided by the natural resource—is lost. The Department does not agree that reduction in assimilative capacity is dependent on a subsequent release of the exact same substance in the exact same area. A release reduces assimilative capacity regardless of subsequent spill events.

Nevertheless, the Department recognizes that there are practical limitations on measuring and addressing assimilative capacity loss, particularly in the context of a standardized procedure for minor releases. The issue, then, is not whether there is a reduction in assimilative capacity but, rather, the extent of the reduction and the type of actions that are appropriate to restore the lost assimilative capacity. As discussed above, assimilative capacity can be seen as the ability to absorb pollutants up to a threshold where detrimental effects occur. The type A models focus on injury to biological resources. Therefore, the threshold for meaningful loss of assimilative capacity now built into the models is mortality or loss of production resulting in compensable value. Releases that generate compensable value related to mortality or loss of production have, by definition, exceeded the assimilative capacity of the ecosystem. In the case of such releases, the models estimate the cost of restoring assimilative capacity. The cost is based on the removal of a mass equivalent in toxicity to the amount of the spilled substance that remains after concentrations have fallen below acute toxicity thresholds and after any habitat restoration actions are completed. Such removal will return the aquatic system to a state that is functionally equivalent to its baseline condition. When there has been no acute mortality or loss of productivity, the models do not calculate any assimilative capacity restoration costs.

Comment: Some commenters asserted that the models fail to take into account how spatial, temporal, and chemical factors affect the assimilative capacity and function of a resource.

Response: The Department has modified the models to account more fully for the factors affecting

assimilative capacity. The extent of assimilative capacity reduction depends on how long a substance remains in the environment. The proposed versions of the type A models did not consider degradation rates when computing lost assimilative capacity. The Department has modified the models to correct for the degradation rate of the released substance relative to the degradation rates of the contaminants found in the sediment at the sites at which dredging is presumed to occur. See Section 5.4.4, Volume I of the NRDAM/CME and NRDAM/GLE technical documents. The Department believes that this modification, along with the models' methodology for ensuring that the removed mass is equivalent in toxicity to the released substance, adequately account for the different factors affecting assimilative capacity.

Comment: Several commenters objected to basing assimilative capacity restoration costs on the cost of dredging projects outside the area affected by the release. The commenters complained that there was no relationship between these dredging projects and the injured resources. One commenter asserted that inclusion of these damages was motivated by a desire to circumvent the normal appropriations process for funding dredging projects unrelated to the spill. Commenters, including one of the independent technical reviewers, observed that at dredging sites with heavy contamination, less material would have to be dredged than at sites with lower levels of contamination. These commenters noted that this method generates dramatically different figures for different geographic areas and that such differences were unfair because they were unrelated to the spill. A few commenters stated that since the Department seems to believe that assimilative capacity is affected over extremely large areas, the models should base damages on the lowest dredging cost for any of the provinces.

Some commenters, including one of the independent technical reviewers, also argued that it would be more cost-effective to calculate damages based on prevention of wastewater discharges from point sources, such as publicly owned treatment works (POTWs). Another commenter suggested that the rule allow PRPs the option of determining and implementing more cost-effective methods of restoring lost assimilative capacity rather than paying the damages calculated by the models.

Response: The Department agrees that the method for restoring lost assimilative capacity should be reasonably related to the actual release and cost-effective. The Department believes that the methodology included in the final type A models meets both these standards. Biota are potentially exposed to the released substance throughout an entire biological province; therefore, the Department evaluated potential dredge sites on a province-wide basis. Within each province, the Department focused on National Status and Trends (NST) sites and International Joint Commission (IJC) areas of concern because there are considerable data available on the sites and because they are heavily contaminated. The higher the toxic mass per volume at a site is, the cheaper is the cost of dredging sediment equal in toxicity to the remainder of the released substance. Therefore, for each province, the Department determined which NTS site or IJC area of concern had the highest toxic mass per volume and used that site to develop assimilative capacity restoration costs. See Section 13, Volume I of the NRDAM/CME technical document, and Section 9.4, Volume I of the NRDAM/GLE technical document.

Had the Department restricted dredging to areas closer to the site of the release, the costs would likely have increased significantly, because the levels of contamination in those areas would be lower than at NST sites and IJC areas of concern. On the other hand, had the Department considered NST sites and IJC areas of concern well beyond the boundaries of the province in which the release occurred, the dredging would be less clearly related to the actual release.

The Department considered using the cost of preventing discharges from point sources, such as POTWs, as a possible basis for assimilative capacity restoration costs. However, the Department was unable to locate adequate data on point source discharges for toxic chemicals. Commenters presented no additional information that would enable the Department to develop assimilative capacity restoration costs based on reducing point source discharges.

With regard to allowing PRPs to develop alternative methods of restoring lost assimilative capacity, the objective of the type A models is to provide a sum certain on an inexpensive, expedited basis. Allowing PRPs to develop alternative restoration methods, providing trustees with an appropriate opportunity to evaluate the feasibility and adequacy of the PRPs' proposal, and giving the public a chance to review the proposal could undermine this objective. Where the models predict significant assimilative capacity restoration costs, PRPs who believe that they could restore lost assimilative capacity in a more cost-effective manner than that predicted by the type A models would have the option of funding type B procedures or pursuing an appropriate settlement with the trustees.

Comment: One commenter thought that loss of assimilative capacity was a legitimate basis for recovery but stated that damages for the loss should be characterized as compensable value rather than restoration costs.

Response: The Department believes that the damages for lost assimilative capacity are correctly categorized as restoration costs rather than compensable value. Under the existing regulations, compensable value is the economic value that the public loses until the injured resources recover. See 43 CFR 11.83(c)(1). The type A models calculate damages for lost assimilative capacity based not on economic value lost to the public but rather the cost of restoring baseline services.

Comment: One commenter noted that the proposed NRDAM/CME in some cases predicts that more of the substance will remain in the environment than was spilled in the first place.

Response: This result was caused by a coding error that the Department has corrected in the final version of the NRDAM/CME.

Comment: Commenters noted that, contrary to assertions in the August 8, 1994, and the December 8, 1994, notices of proposed rulemaking, the models do compute habitat restoration costs and assimilative capacity restoration costs for the same release.

Response: The models compute assimilative capacity restoration costs for any toxic mass that remains in the environment either because no habitat restoration action is taken or because habitat restoration does not fully remove the toxic mass. The preamble and technical documents have been clarified. See Section 5.4.4, Volume I of the NRDAM/CME and NRDAM/GLE technical documents.

Comment: One commenter noted that there are now 43, not 42, IJC areas of concern in the Great Lakes.

Response: At the time that the proposed NRDAM/GLE was being developed, there were only 42 IJC areas of concern. As more IJC areas of concern and NST sites are identified, the Department will consider updating the models in future biennial reviews. However, it was not feasible for the Department to revise the NRDAM/GLE to account for this one additional site within the available time frame.

Comment: One commenter questioned the use of standardized sediment LC50s

based solely on bulk sediment concentrations.

Response: The LC50s used in the models are for pore water concentrations, not bulk sediment concentrations.

Comment: One commenter stated that the proposed NRDAM/GLE generated inappropriately high assimilative capacity restoration costs for releases of metals. The commenter thought these inappropriate costs resulted from underestimating the rate at which metals attenuate in the Niagara River and Lake Ontario. The commenter stated that metals fall to the bottom, are buried, and pose no toxicity threat.

Response: As discussed in Section VII.G of this preamble, the Department has eliminated all pure metals from the chemical database. For metal compounds, the Department believes that the NRDAM/GLE adequately accounts for attenuation. The model calculates the fate of the released substance by partitioning the dissolved fraction from the particulate fraction in both the water and the sediments. The LC50s used in the model for assimilative capacity calculations are limited to those for dissolved chemicals.

L. Restocking

Comment: Several commenters questioned the reasonableness of the methodology for invoking and calculating restocking costs. A few commenters thought that the proposed NRDAM/CME should not include restocking costs for species, such as dolphins, polar bears, eagles, and alligators, that have never been and are unlikely to be restocked after a spill. These commenters stated that including restocking costs for such species was particularly troubling in light of the weakness of the model's underlying estimates of mortality for these species. Further, the commenters thought the Department's restocking cost estimates for captive breeding programs, in some cases, came from unpublished sources and lacked real-world precedent. The commenters noted, for example, that there was no reason to assume that osprey and raptors cost the same to restock as eagles. Finally, another commenter considered the salmon restocking costs included in the proposed NRDAM/CME to be unrealistically high.

Response: The Department agrees that it is highly unlikely that trustees would restock polar bears and, thus, has deleted polar bear restocking costs from the NRDAM/CME. The Department has limited the rest of the restocking component to those species that are actually available from hatcheries or commercial suppliers and used the actual market prices of acquiring such species. The Department believes that this approach adequately ensures that the restoration costs in the model are realistic and reasonable. The Department has added Table 12.7 to Volume I of the NRDAM/CME technical document to present the data obtained from the International Animal Exchange, Inc.

Bald eagles and other raptors have been restored by hand-rearing hatchlings in a number of States. The models use the same costs for all raptors because the activities and effort required are similar for all species. The eagle restocking cost may be considered a general figure for all raptors.

The Department has revised the calculations for fish restocking costs in the NRDAM/CME. The proposed NRDAM/CME used an average size for all salmon species. The final model uses species-specific parameters for salmon in each of the three applicable provinces. See Table 12.6, Volume I of the NRDAM/CME technical document.

Comment: One commenter questioned the assumed source of restocked animals, noting that simply moving animals from one location in the wild to another would still leave the public with a net loss.

Response: The Department believes that translocation of animals in the wild may, under some circumstances, be an appropriate restoration action. However, for purposes of the type A procedures, the Department chose to consider only restocking of captive-bred animals, the cost of which is generally lower than the cost of translocation in the wild. See Table 12.7, Volume I of the NRDAM/CME technical document.

Comment: One commenter thought that it would be more appropriate to consider predator control than restocking for canvasback and redhead ducks in the Great Lakes.

Response: After recovering damages through the use of a type A procedure, trustees may well decide that the recoveries are better spent on predator control rather than restocking. However, the feasibility, effectiveness, and methods of predator control are highly site-specific. The Department does not believe that adequate data are currently available to include predator control among the list of restoration actions evaluated by the models.

Comment: One of the independent technical reviewers thought the restocking scenario described in the proposed NRDAM/CME technical document would result in a net loss of fish and wildlife.

Response: The scenario does not result in a net loss of fish and wildlife because the model calculates a loss and allows only one-to-one replacement, with correction for restocking survival, of missing individuals. The Department has clarified the technical document. See Section 5.4.3, Volume I of the NRDAM/CME technical document.

Comment: One of the independent technical reviewers noted that the proposed NRDAM/CME technical document stated that only fish that would be caught are restocked in the model. The technical reviewer thought that all fish killed should be restocked, not just those ultimately caught.

Response: The models assume that all fish and shellfish killed are restocked, if stocks are available. The technical document has been clarified. See Section 5.4.3, Volume I of the NRDAM/CME technical document.

Comment: One of the independent technical reviewers thought that the models should grant habitat restoration priority over restocking.

Response: The models decide whether to invoke habitat restoration independently from the decision whether to restock. Therefore, prioritization is not necessary.

M. Consideration of Costs and Benefits of Active Restoration

Comment: Numerous commenters, including some of the independent technical reviewers, criticized the models for failing to consider whether the various active restoration alternatives were warranted in light of the relationship between the benefits of those actions and the costs of the alternatives. Some commenters offered examples where the models computed restoration costs that were millions of dollars or hundreds of times greater than estimated compensable values. Many commenters thought that the models should incorporate a decision rule to screen out restoration actions that would impose grossly disproportionate costs.

Response: As it indicated in the March 25, 1994, type B rulemaking, the Department believes that the relationship between costs and benefits is an important factor in selecting an appropriate restoration action. See 59 FR at 14271. The Department acknowledges that the proposed rules and models did not explicitly address this factor. After careful consideration, the Department has revised the models to perform a cost-benefit analysis of habitat restoration and restocking actions.

If the relevant active habitat restoration alternative would reduce

compensable value or if restocking is possible, then the submodel performs a cost-benefit test of these forms of active restoration. The submodel compares the total costs of active habitat restoration and restocking against the measured benefits of such restoration (i.e., compensable value assuming natural recovery minus compensable value assuming active restoration). If the costs exceed ten times the measured benefits, then the submodel assumes, for purposes of generating a damage figure, that natural recovery, rather than active restoration, will be used to reestablish baseline conditions. If the costs do not exceed the measured benefits by ten times, then the submodel assumes, for purposes of generating a damage figure, that habitat restoration and restocking will be implemented.

The Department determined in the March 25, 1994, rulemaking that although cost-benefit considerations are an important factor in selecting an appropriate restoration action when a trustee uses type B procedures, the exact determination of how to evaluate this factor should be resolved on a case-by-case basis. Therefore, 43 CFR 11.82(d) lists the relationship between costs and benefits as one of several factors that trustees must evaluate before selecting a restoration action when using type B procedures. The Department continues to believe that this is the most appropriate approach in the type B context. However, in the type A context, where a model, rather than the trustees, determine the range and type of restoration actions on which to base the damage claim, and where the intent is to minimize the level of analysis that trustees must conduct, the Department believes it is appropriate to impose a bright-line standard.

The Department has concluded that the evaluation of the costs and benefits of active habitat restoration and restocking versus natural recovery should focus on incremental costs and benefits. Therefore, the models compare the total costs of active habitat restoration and restocking against compensable value assuming natural recovery minus compensable value assuming active restoration.

When determining what an appropriate cost-benefit ratio would be in the type A context, the Department considered the dicta in *Ohio* v. *Interior* suggesting three-to-one as a possible ratio. See 880 F.2d at 443–44, n. 7. However, the NRDAM/CME and NRDAM/GLE quantify only a very narrow range of compensable values. Thus, the Department does not believe that a three-to-one ratio is appropriate. Therefore, the Department was left to make this policy determination without the benefit of clear empirical standards or legal precedents. The Department has selected a ratio of ten-to-one based on its sense of fairness and reasonableness.

Although the models do impose a uniform standard, the Department continues to believe that a truly ''correct'' cost-benefit ratio depends on site-specific factors. The standard contained in today's models is not intended to suggest that a similar ratio is appropriate in a type B context but rather has been included in recognition of the unique nature of the type A procedures. Even when trustees use type A procedures, if the ratio is exceeded, they may nevertheless conclude that compensable values assuming natural recovery as determined by the models will not provide adequate funding for necessary restoration actions. In such cases, trustees are free to calculate damages using type B procedures.

Finally, the Department has chosen not to apply the cost-benefit test to assimilative capacity restoration. The Department believes that assimilative capacity does have an economic value. However, the Department is unaware of any economic study that calculates the consumer surplus or economic rent associated with assimilative capacity. Accordingly, the Department has not included assimilative capacity in the cost-benefit test since its inclusion does not affect the calculation of compensable values.

N. Damages for Fishing and Hunting Losses

Comment: Some of the independent technical reviewers noted that closures to recreational fishing represent a change in access rather than in catch rate. These technical reviewers thought that random utility models (RUMs) should be used to value both the changes in catch rates and in access, noting that RUMs are designed to capture substitution across sites.

Response: The Department acknowledges that recently evolved techniques for resource valuation could potentially improve the calculation of damages in the models. However, inclusion of such techniques would require considerable additional work, including the development of a RUM describing recreational choices across the broad geographic regions covered by the models and a database containing the parameters required as inputs to the RUM. The Department has concluded that such additional work is not feasible at this time. The Department may reconsider this issue in future biennial reviews of the models.

Comment: Commenters objected to the calculation of damages for lost recreational fishing on the grounds that the Department had failed to link the injury to a reduction in services by using trip values rather than marginal (per fish) values. Other commenters, including some of the independent technical reviewers, noted that all species are assigned to a single mode of recreational fishing. They stated that data are available on percentage caught by each mode, and recommended these data be included in the models to weight the recreational fishing values.

Response: Though not fully explained in the proposed NRDAM/CME and NRDAM/GLE technical documents, the Department established the link between the injury and a reduction in services by calculating average trip values (dollars of trip value per kilogram of fish caught) and then adjusting these values by applying ratios of average trip values to marginal values (additional trip value per fish caught) that were obtained from studies that have compared these values. The Department has revised the technical documents. See Section 9.3.4, Volume I of the NRDAM/CME technical document, and Section 6.3, Volume I of the NRDAM/GLE technical document.

The Department acknowledges that additional data on percentage of fish caught by different modes of fishing are becoming available. However, due to the fact that the majority of species in a particular area tend to be caught by a dominant mode of fishing and that there are not always major differences between values in the various modes of fishing, the Department does not believe that weighting recreational fishing values using data on percentages caught by each fishing mode would significantly improve the reliability of the final damage figure. As additional data become available, the Department will reconsider this issue in future biennial reviews.

Comment: One commenter noted that, in an attempt to maximize total utility, anglers tend to reduce the number of fishing trips they take as the marginal utility from fishing falls in response to a reduction in the catch rate. This commenter argued that the models should, therefore, account for reductions in participation in addition to reductions in catch. The commenter suggested that the models estimate reductions in participation for spills that exceed some given threshold volume.

Response: The Department believes that, while participation in fishing activities may be affected by moderate or large-scale spills, small spills are

likely to affect primarily the quality of such activities. Specifically, the Department believes that the principal effect of small spills on recreational anglers is a reduction in catch rather than a reduction in fishing trips. The commenter appears to agree with this position by suggesting that the models account for reductions in participation for spills over a given threshold size. However, where participation is reduced, trustees may conduct supplemental type B studies.

Comment: One commenter thought that the models inappropriately assumed that species that lacked catch data had no recreational value.

Response: The Department recognizes that there may be species for which catch data are not available that nevertheless have recreational value. However, the only fish-related compensable value that the models compute is for lost harvests. Without catch data, the models cannot determine lost harvests and, thus, cannot compute compensable value. If an injured fish species has values unrelated to harvest, then trustees may conduct supplemental type B studies to capture those values.

Comment: A few commenters, including some of the independent technical reviewers, thought that the lost recreational fishing and hunting values used in the models were outdated.

Response: The Department has not updated the recreational fishing and hunting values in the models. The Department will revisit this issue during the next biennial review.

Comment: One of the independent technical reviewers questioned why the hunting values included in the proposed models did not account for the effects of changes in effort.

Response: The Department is not aware of any evidence that effort changes in cases of minor spills.

Comment: Some of the independent technical reviewers recommended that the Department include habitat equivalency analysis (HEA) in the models.

Response: HEA is a method of determining damages for interim losses that does not require the explicit calculation of the economic value lost by the public. Instead, HEA bases damages on the cost of obtaining or creating additional acreage that would provide the same habitat services as that lost pending recovery of the injured resources. While HEA has merit, the Department has elected not to pursue its inclusion in the type A models at this time. The use of HEA to compute compensation for interim losses is an issue that extends beyond this rulemaking. HEA is currently not listed as one of the type B methodologies for calculating compensable value, although the regulations do allow use of additional unlisted methodologies if they meet certain criteria. The Department is conducting a biennial review of the type B methodologies and will be examining the use of HEA in that context. The Department believes that inclusion of HEA in a type A procedure should await the resolution of the biennial review of the type B procedures. Also, the availability and cost of obtaining habitat equivalent to that injured is highly site-specific. The Department currently does not have adequate data to incorporate HEA into the models.

Comment: Commenters objected to the method used to value lost subsistence fishing. The commenters stated that the proposed NRDAM/CME does not clearly define subsistence anglers and inappropriately assumes that the full value of the subsistence resource is lost without considering substitutes. In addition, the commenters argued that the proposed NRDAM/CME measures subsistence loss by the gross cost of an alternate food supply (rather than considering net subsistence losses) and adjusts the costs to account for supposed differences in protein between store-bought and wild-harvested fish based on a study of birds, not fish. Several commenters thought that inclusion of damages for lost subsistence fishing was legally impermissible. On the other hand, one of the independent technical reviewers noted that subsistence hunting, not only subsistence fishing, is significant in Alaska and should be included in the model.

Response: The Department acknowledges that the proposed NRDAM/CME failed to clearly define subsistence anglers, failed to consider substitutes, and inappropriately measured subsistence loss as the gross cost of an alternate food supply. All of these shortcoming raise significant questions about the reliability of the model's calculation of compensable value for subsistence loss. Data are unavailable at this time to correct these problems. Therefore, the Department has decided to delete subsistence losses from the NRDAM/CME. Because the Department has decided to delete subsistence losses for technical reasons, it is not necessary for the Department to address the legal permissibility of trustees recovering natural resource damages for subsistence losses.

Comment: Some commenters, including some of the independent technical reviewers, objected to the inclusion in the models of damages for loss of commercially harvested fish and furbearers. These commenters rejected the explanation that inclusion of damages for such losses was designed to compensate the public for lost economic rent. The commenters noted that the government does not in fact charge rent for commercial harvests and concluded that the public, therefore, does not incur any loss of economic rent. Commenters argued that the models were not capturing the public's lost economic rent but rather were inappropriately calculating the commercial users' private losses, which are not recoverable as natural resource damages under CERCLA. The commenters cited *Satsky* v. *Paramount Communications, Inc.* for the proposition that trustees may only bring claims ''for injuries to interests which all citizens hold in common.'' 7 F.3d 1464, 1470 (10th Cir. 1993). The commenters argued that private economic interests, such as commercial losses, are not interests that all citizens hold in common. Citing various floor debates on the Superfund Amendments and Reauthorization Act, the commenters argued that Congress intended the double recovery prohibition to bar natural resource damage claims for losses that are subject to private recovery. Commenters also noted that if damages for such losses are retained in the models, then serious double recovery problems arise because commercial users will assert overlapping claims.

Response: The type A models include damages for lost commercial harvests in order to capture lost economic rent. The issue of whether lost economic rent is a legally permissible category of damages was decided and resolved by the Department in 1986 and is beyond the scope of this rulemaking. The only issues that the Department is considering in this rulemaking are: whether economic rent is, in fact, generated by commercially harvested species; if so, whether the type A models correctly calculate any loss of that economic rent resulting from releases covered by the models; and whether the rule adequately protects against double recovery.

In the preamble to the original type B rule, economic rent is defined as ''the excess of total earnings of a producer of a good or service over the payment required to induce that producer to supply the same quantity currently being supplied.'' 51 FR at 27691. In other words, economic rent for commercially harvested resources is the fee that commercial harvesters could pay to the government and still find harvesting economically feasible.

Commercial harvesters invest capital in equipment (e.g., gear, traps, and boats). This capital could have been liquidated and put to another use, such as investment in a bank. Therefore, commercial harvesting is worthwhile only if the harvester receives a price for the harvest that both covers labor and fuel costs as well as provides a reasonable return on capital. To the extent that the harvester receives a price that exceeds costs plus a reasonable return on capital, the government could charge a fee and the harvester would continue to engage in harvesting. Thus economic rent is generated.

The Department believes that economic rent is being generated by commercially harvested fish and wildlife. The one situation in which economic rent is clearly eliminated is when natural resources are exploited to the point that all profits, including economic rent, have been competed away. This situation arises when commercial harvests are not regulated and, thus, harvesters have free and unlimited access. Economic theory predicts that in such cases harvesters will ignore both the value of the resources for future use as well as the costs of crowding. Fisher, A.C., Resource and Environmental Economics, New York: Cambridge Univ. Press, 1981.

One way of preventing this situation and generating economic rent, is to charge fees. Currently, resource managers do not generally charge fees except to cover administrative costs of processing permits. See, e.g., Magnuson Act, 16 U.S.C. 1854(d). However, resource managers do regulate commercial harvesting through limits on the gear that may be used, limits on the length of the harvest season, catch restrictions, tradeable permits for limited entry or individual catch quotas, and other programs. For example, NMFS has recently established a pilot program to buy back fishing permits to restore stocks of cod, haddock, and flounder in the Atlantic Ocean. These programs are designed to protect the resources for future use. The Department believes that these programs do in fact curb overexploitation of stocks and thus prevent profits (including economic rent) from being driven down to zero. For example, Alaska salmon and herring fisheries are regulated with tradeable entry permits. The aggregate value in 1988 of all permits in the salmon, herring, and herring roe fisheries was $925 million.

Market prices are largely set on a national or international basis. Therefore, in the case of minor spills, it is unlikely that market prices will change. Also, total biomass effects should be limited for minor spills, thus it is unlikely that there will be long-term effects on the catchability of resources. Finally, the Department believes it is reasonable to assume for minor spills that the same number of commercial harvesters will continue to expend the same amount of economic resources to conduct harvests and that the markets for the necessary labor and capital inputs to commercial fishing are competitive. Therefore, the type A models compute damages based on the harvesters' forgone revenue, which is the market price the harvesters could have received at the time the resources would have been harvested. The Department believes that this figure will capture lost economic rent.

With regard to potential double recovery, the Department acknowledges that in some cases commercial harvesters may bring private causes of action that include economic rent. As noted above, resource managers generally do not charge fees to capture economic rent; therefore, when commercial harvesters sell their harvests they obtain a profit that includes economic rent. Under OPA, commercial harvesters have a specific private cause of action. CERCLA does not grant commercial harvesters a private cause of action. However, some commercial harvesters, such as commercial fishermen in coastal waters, probably do have private causes of action for hazardous substance-related injuries under State law or common law. When commercial harvesters bring a claim for lost profit it will most likely include economic rent. Therefore, if trustees also bring a claim for lost economic rent there will be a potential double recovery problem.

The governmental regulation of commercial fish and wildlife harvest implies a public concern that these resources be managed in order to sustain their contribution to economic productivity. The public's value for commercial harvesting is further reflected in express policy statements that the government is committed to promoting resources' contribution to economic productivity. See, e.g., Fish and Wildlife Act of 1956, 16 U.S.C. 742a. Therefore, when there are reductions of commercial harvests, the public suffers a loss.

If commercial harvesters can and do bring a private cause of action, then the harvesters may be fully compensated and the public's interest in promoting commercial harvests may be satisfied. If harvesters are compensated for full social losses, then trustees should not recover separate damages for lost economic rent. However, in some cases commercial harvesters may not have a private cause of action or their recoveries may be subject to geographic or temporal limitations. For example, commercial harvesters may be limited to recovering damages incurred during the period of formal closure, or incurred in the area closed or in the area in which fish were directly exposed to the released substance. See, e.g., *Golnoy Barge Co.* v. *M/T Shinoussa*, Civ. No. H–90–2414, 1993 WL 735038 (S.D. Tex. Aug. 17, 1993). In other cases, commercial harvesters may choose not to bring private causes of action. If commercial harvesters do not obtain direct full compensation, then the public's interest is not satisfied and the trustees may bring a claim for lost economic rent.

For minor releases where damages may be relatively low and data establishing injury and causation may be difficult to obtain, the Department believes that it is unlikely that commercial harvesters will go to the expense and trouble to pursue a legal claim. Therefore, the Department has retained the calculation of lost economic rent in the models. However, to prevent double recovery, § 11.44(d) provides that if the trustee is aware of reliable evidence that a private party has recovered damages for commercial harvests lost as a result of the release, the trustee must eliminate from his or her claim any damages for such lost harvest that are included in the lost economic rent calculated by the model. When the Assessment Plan is made available for public review and comment, PRPs and commercial harvesters will have an opportunity to alert trustees to any private actions for lost commercial harvests.

Comment: A few commenters, including some of the independent technical reviewers, thought that the prices used to calculate damages for lost commercial harvests were invalid because they did not account for seasonal and regional variations. Commenters also stated that the data used were from 1984 through 1988 and should be updated.

Response: The models account for seasonal and regional differences in commercial prices to the extent possible given available data. In the Great Lakes, pelt prices were available on a State-by-State basis. The Department used these prices to develop average prices for each of the Great Lakes. In the coastal areas, pelt prices were available only on a regional basis.

At the time the Department performed the bulk of the work on the commercial fisheries component, 1984 through 1988

was the most recent 5-year period for which final statistics were available for the offshore zone in which the catch occurred (rather than ports where harvest was taken). The Department decided to average the figures over a five-year period to eliminate short-term variability. The Department believes that the commercial fishing statistics currently incorporated in the models are reliable. However, as additional data become available, the Department will consider updating the models during future biennial reviews.

O. Damages for Lost Wildlife Viewing

Comment: One commenter supported the proposed approach for calculating damages for lost wildlife viewing as reliable and reasonable. However, most commenters criticized the approach. Commenters noted that the Department itself appeared to have serious reservations about the approach. A number of commenters thought that the approach would consistently underestimate damages; others thought that damages would be overestimated. Some commenters stated that the Department's methodology for calculating wildlife viewing losses was so unreliable that such losses should be deleted from the models.

Several commenters thought it was incorrect to assume that a given reduction in wildlife population would produce a comparable reduction in the wildlife seen. Thus, the commenters concluded that the Department was unable to link the injury to a reduction in services. The commenters further stated that the calculation used inappropriate assumptions and studies to calculate the value of a wildlife viewing trip on a per-animal basis.

A few commenters thought the values appear arbitrary since they vary so widely by province. One commenter suggested that the wide variations in province values be eliminated either through the use of uniform average values or through the deletion of extreme values. On the other hand, some commenters thought the models did not adequately account for the variable characteristics of affected sites.

Response: In the notices of proposed rulemaking, the Department solicited comment on a number of aspects of the proposed methodology for determining damages for lost wildlife viewing. 59 FR at 40328–29 and 63311–12. Based on its careful consideration of the comments it received, as well as its own reexamination of the models, the Department has modified the methodology and believes that it is sound.

Wildlife viewing is one of the most significant direct use services that wildlife provide to humans. Inclusion of lost wildlife viewing damages in the type A models necessitated that the Department draw conclusions about the relationship between changes in wildlife populations and changes in the perceptions of wildlife by viewing participants. There is no known empirical research that indicates how participants perceive changes in wildlife populations. The proposed models assumed that a given percentage reduction in wildlife populations results in the same percentage reduction in the wildlife seen by participants.

The Department has determined that percentage reductions in wildlife viewing perception could be lower or higher than the percentage reduction in wildlife populations. For example, a wildlife population may consist of 100 animals yet the public may only perceive, on average, 50 of those animals. If a spill were to kill 50 percent of the population, then the public's perception of the population would be reduced by 20 percent if the 50 killed animals included only 10 of the animals the public normally sees. However, if the 50 killed individuals included 30 of the animals the public normally sees, then the change in perception would be 60 percent. Therefore, in the absence of empirical evidence on the subject, the Department has decided to assume that percentage reductions in wildlife viewing perception are equal to percentage reductions in wildlife populations.

When determining how a given reduction in the number of animals viewed affects the value the public derives from viewing, the Department relied on the only available studies that identified a marginal value for wildlife viewing (Loomis et al. (1989) and Cooper and Loomis (1991)). The Department believes that these studies are reliable. The Department acknowledges that one of the studies dealt with trips that were not taken primarily for the purpose of wildlife viewing. However, contrary to the assertions of some commenters, the studies specifically examined how changes in the number of animals seen affected the value of the trips. Therefore, the wildlife viewing values used in the type A models do not reflect any other non-viewing aspects of recreational trips.

The biological effects submodel quantifies wildlife mortality in terms of the number of animals killed. Therefore, the Department needed to develop per-animal viewing values. The Department developed such per-animal values by using Loomis et al. (1989) and Cooper and Loomis (1991) to establish the relationship between changes in wildlife seen and changes in value and by using FWS' National Survey of Fishing, Hunting, and Wildlife-Associated Recreation to establish total viewing values for particular species. The Department first estimated the total value of wildlife viewing at ocean- or lake-side for an entire State. Then the Department allocated this total value among species and wildlife individuals within species that reside along the State's ocean- or lake-side. For further discussion of this methodology, see Section 8.4, Volume I of the NRDAM/CME technical document, and Section 6.4.1, Volume I of the NRDAM/GLE technical document.

The Department recognizes that the per-animal viewing values assigned by the models for some species vary widely by province. However, the Department has concluded that these variances are not errors that need to be corrected but, rather, reflect actual and relevant regional differences. The value that the public derives from viewing a particular animal in a particular area depends on how many people engage in wildlife viewing in that area and how many animals of that type there are to view in that area. Therefore, the models appropriately contain relatively low per-animal values for species that are abundant and for areas with low participation in wildlife viewing. Conversely, the models contain higher per-animal values for less abundant species and for areas with higher wildlife viewing participation.

Not only are the regional variances in per-animal values appropriate, but also, such variances do not lead to unrealistic differences in the damage figures calculated by the models for particular releases. When determining damages for a particular release, the models calculate damages for lost wildlife viewing based on the probability that the release will kill wildlife. The probability that an animal will come into contact with, and be killed by, a release is directly related to the wildlife abundance in the area affected by the release. In areas with low wildlife abundance, minor releases would have a low probability of killing wildlife. Therefore, although the per-animal values in these areas may be significantly higher than in areas of high abundance, the actual damage figure may not be.

Comment: Some commenters contended that the methodology for calculating viewing damages relies on assumptions that overstate the number of wildlife viewing trips to affected

areas. Some commenters also claimed that the Department had used unreliable survey data to derive per-animal viewing values. Several commenters thought the models used outdated data.

Response: The Department has revised the wildlife viewing damage component of the models to reflect more recent data. When developing the proposed models, the Department used FWS' 1985 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation. This survey was updated in 1991. The Department has revised the final models to reflect this update. FWS has conducted wildlife-related recreation surveys roughly every 5 years since 1955. The results of these surveys are widely disseminated and are relied upon both by governments and by private individuals for a range of purposes. The Department believes it is appropriate to use these surveys to determine participation rates for wildlife viewing as well as the value of wildlife viewing trips.

Comment: A few commenters, including some of the independent technical reviewers, suggested that the proposed models be expanded to account for viewing losses incurred by individuals other than residents of coastal counties. One commenter stated that in Michigan, regional populations are not concentrated either in lake shore counties or at substantial distances inland and suggested that the NRDAM/GLE incorporate lost wildlife viewing on a two-county deep basis. One of the independent technical reviewers noted that the absence of damages for lost viewing by out-of-State tourists was a significant problem in Alaska.

Response: The Department has revised the NRDAM/CME to account for impacts on the populations of coastal States rather than just coastal counties. See Section 8.4, Volume I of the NRDAM/CME technical document. Wildlife viewing damage calculations in the NRDAM/CME rely on State-level estimates of participation rates for wildlife viewing at the ocean. The Department believes that it is more appropriate to apply these State-level participation rates to State populations than to county populations in the NRDAM/CME.

The Department has not applied the participation rates in the final NRDAM/GLE to the entire State population due to the existence of alternative recreation sites in other parts of the Great Lakes States. Instead, the Department has generally limited the participation rate to the populations of lake-side counties in the NRDAM/GLE. In a few instances involving very narrow counties, the Department has gone beyond the lake-side county to include residents of areas within an average one-way trip distance from the provinces where injury occurred. Statewide average participation rates were used in the NRDAM/GLE due to a lack of reliable data at the county level.

The Department recognizes that out-of State visitors may experience viewing losses; however, adequate data are not currently available to incorporate such losses into models. As more data become available, the Department may reconsider this issue in future biennial reviews. Meanwhile, the rule allows trustees to conduct supplemental type B studies to assess damages for such losses.

Comment: Some commenters, including a few of the independent technical reviewers, suggested including viewing losses incurred by individuals under the age of 18. One commenter noted that the Department had relied on wildlife participation survey data supplied by individuals 16 years or older but used population data that only included individuals 18 years or older.

Response: The Department has revised the models to include viewing losses experienced by individuals 16 years of age and older.

Comment: Some commenters, including a few of the independent technical reviewers, thought that spills could affect not only the quality of the wildlife viewing trips but also the number of trips taken. These commenters thought the models should account for this effect.

Response: Adequate data are not currently available to incorporate damages for lost participation in wildlife viewing. Further, while participation in wildlife viewing may be affected by moderate or large-scale releases, minor releases, for which the type A models are designed, are likely to affect primarily the quality of such activity. As more data become available, the Department may reconsider this issue in future biennial reviews.

Comment: A few commenters thought the models did not account for all species that had viewing value.

Response: The Department believes that the species addressed by the models account for the vast majority of viewing values.

Comment: One commenter noted that the deaths of migratory species could result in viewing losses in locations beyond the spill site and thought that the models should account for such losses.

Response: The Department acknowledges that releases can result in off-site viewing losses; however, adequate data are not currently available to incorporate such losses into models. As more data become available, the Department may reconsider this issue in future biennial reviews. Meanwhile, the rule allows trustees to conduct supplemental type B studies to assess damages for such losses.

Comment: Some commenters asked whether the models considered the effect of closures on wildlife viewing losses.

Response: The models do not address the effect of closures on wildlife viewing. The models only compute mortality-related wildlife viewing losses.

P. Damages for Beach and Boating Closures

Comment: The Department received several comments on the proposed NRDAM/CME's methodology for calculating damages for beach closures. A few commenters thought that the Department had made unsubstantiated and questionable assumptions in estimating beach visitation. Some commenters, including one of the independent technical reviewers, claimed that the Department had failed to account adequately for differences in visitations and values associated with different beach types and different seasons. One independent technical reviewer stated that beach visitation is highly variable within provinces, and that more localized visitation data could be mapped in a GIS from survey data.

Response: The Department could not locate adequate data to develop separate per-person values for visiting Federal beaches versus non-Federal beaches. However, the Department believes the NRDAM/CME adequately accounts for differences between the two types of beaches through the use of different visitation figures. A sample of monthly visitation data was taken from representative beaches in each economic province. This sampling was designed to account for differences in visitation that exist between economic provinces. The Department also collected separate visitation data for National Seashores and other public beaches. The user is required to enter the type of beach affected (National Seashore or other public beach) as an input to the NRDAM/CME. Further, before the compensable value submodel applies an average beach use value to the estimated loss in beach use, the submodel adjusts the value to account for seasonal variations. The NRDAM/CME uses seasonal variations in the duration of beach visits as a reasonable approximation of the seasonal variations in beach use values. Data on the duration of beach visits were available

for National Seashores, but not for other public beaches. Therefore, the Department applied the National Seashore duration data to other public beaches. For further discussion, see Section 10, Volume I of the NRDAM/CME technical document.

Comment: Several commenters raised concerns about valuation of beach closures in the proposed NRDAM/GLE. Some commenters criticized the use of studies of saltwater beaches to value Great Lakes beach use. A few commenters stated that the studies the Department used to value Great Lakes beach use were outdated. Other commenters complained that the NRDAM/GLE used the same values for Federal and non-Federal beaches.

Response: In the NRDAM/GLE, the per-day value of beach recreation is based on the average of several values reported for general beach recreation. The Department acknowledges that basing beach-related recreation values on studies carried out exclusively at Great Lakes locations would have been ideal. However, no such studies were available. Intuitively, beach recreation on the Great Lakes combines some aspects of seashore beach recreation with some aspects of freshwater beach recreation. Therefore, the Department used a range of studies, including both studies of saltwater beach recreation as well as studies of freshwater beach recreation.

The Department believes that the data used are still the best available. If additional data on the value of beach-related recreation in the Great Lakes become available, the Department will consider incorporating such data in the NRDAM/GLE during future biennial reviews.

Data limitations required that the Department make assumptions concerning the distribution of monthly trips to non-Federal lake shores. The NRDAM/GLE assumes that the distribution is identical to the distribution of monthly trips to National Lake shores. See Section 6.4.2, Volume I of the NRDAM/GLE technical document.

The Department could not locate adequate data to develop separate per-person values for visiting Federal beaches versus non-Federal beaches. However, the Department believes the NRDAM/GLE adequately accounts for differences between the two types of beaches because the per-person values translate into different per-meter values for Federal and non-Federal beaches.

Comment: Some of the independent technical reviewers were confused by the discussion in the proposed technical documents on consideration of substitutes when valuing beaches. They recommended that values from appropriate studies be selected based on an understanding of the welfare economics of substitutes. Specifically, they expressed concern over the Department's use of studies of loss of beach use over large regions. The technical reviewers thought that such studies would not account for individuals' ability to substitute one beach for another within a given region and, thus, would not correctly capture the value of particular beaches.

Response: The Department did use studies that account for the effect of substitution. See Section 10.3.2, Volume I of the NRDAM/CME technical document.

Comment: One of the independent technical reviewers suggested that losses on private beaches should be included.

Response: CERCLA authorizes trustees to pursue claims only for injuries to public resources, namely those resources ''belonging to, managed by, held in trust by, appertaining to or otherwise controlled by'' the United States, a State, or an Indian tribe. CERCLA sec. 101(16). Private beaches will generally not constitute public resources. Therefore, the rule only allows trustees to use the type A models for public beaches.

Comment: One of the independent technical reviewers stated that the NRDAM/CME should be modified to allow for the recovery of damages for lost use of rocky shoreline.

Response: The Department was unable to identify sufficient data on the relative value of recreation on different shoreline types in coastal and marine environments to permit distinctions between rocky and sandy shorelines. Therefore, the models compute damages for lost use of all types of closed Federal or State beaches; however, the models assign the same values regardless of habitat type. The Department believes that this approach is reasonable in light of the geographic breadth of the studies used to develop the beach values in the models. Further, although the August 1994 proposed rule required trustees who used the NRDAM/GLE to specify whether a closed beach was rocky or sandy, the model itself did not assign different values based on that designation. Therefore, the Department has revised the final rule to remove the requirement.

Comment: Several commenters thought the models used unreliable boating area coefficients that were likely biased upward. The commenters complained about the use of freshwater boating studies to determine a boating value for coastal and marine waters in the proposed NRDAM/CME. The commenters stated that marine boating is different from freshwater boating. Some commenters, including some of the independent technical reviewers, thought that the coastal regions of the United States were so heterogenous that applying one boating value to the entire coastline of the United States was not appropriate.

Further, the commenters stated that the proposed NRDAM/GLE inappropriately assumed that all boat trips were evenly distributed along the Great Lakes shoreline, which would result in an overestimate of damages. These commenters also thought the studies used to derive boating value in the NRDAM/GLE were unpublished and outdated, and inappropriate for the transfer of values.

Response: The Department was unable to establish the similarity of marine boating to freshwater boating for the NRDAM/CME. Therefore, the Department has eliminated the calculation of lost boating values from the NRDAM/CME.

As to the NRDAM/GLE, the density of recreational boating is higher near ports. Thus, due to the greater likelihood of spills occurring near port facilities, the Department believes the even allocation of boating trips used in the model could tend to underestimate the number of boating trips that would be affected by a small spill rather than overestimate the value.

The Department does not agree that the models calculate only upwardly biased boating damages. In the NRDAM/GLE, lost trips are estimated using a formula that distributes the estimated number of trips across the total area of water covered by the near shore forecast. In some areas this may result in underestimates of the number of affected boating trips. For example, areas near major ports or marina facilities are likely to have a higher density of boating trips than is assumed in the NRDAM/GLE. Nevertheless, the Department believes that in those areas when type B procedures cannot be performed at a reasonable cost, trustees should have the option of using the NRDAM/GLE.

Q. Judicial Review and the Rebuttable Presumption

Comment: Some commenters supported proposed § 11.91(c)(2), and the Department's related statements regarding which elements of a type A damage assessment can be challenged following application of the NRDAM/CME or NRDAM/GLE in a specific case, and which aspects of the rule (which

incorporates the models) must be challenged within 90 days of promulgation, as provided by section 113(a) of CERCLA. Proposed § 11.91(c)(2) states that judicial review of a type A damage assessment shall be limited to the trustee's decision to use the type A procedure and the incident-specific data supplied by the trustee. It further states that the decision to use the type A procedure and the incident-specific data collected by the trustee receive CERCLA's rebuttable presumption. The commenters supporting this proposed provision suggested that it would reduce the potential for litigation and attendant delays to restoration, although they conditioned their support on how the Department responded to their other comments.

Numerous other commenters strongly objected to proposed § 11.91(c)(2), as beyond the Department's authority and as contrary to the two provisions in CERCLA interpreted and applied in proposed § 11.91(c)(2). These commenters asserted that proposed § 11.91(c)(2) is outside of the rulemaking authority provided by section 301(c)(1) of CERCLA, and therefore beyond the Department's legal authority. These commenters stated that while the Department has authority to promulgate regulations for assessments, it does not have authority to prescribe what effect those assessments will have in future judicial proceedings.

These commenters also asserted that the Department's proposed rule language that judicial review of a type A assessment in a specific case would be limited to the trustee's decision to use the type A procedure and the incident-specific data supplied by the trustee is contrary to sections 113 and 107(f)(2)(C) of CERCLA and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). These commenters stated that because CERCLA provides a rebuttable presumption to assessments performed in accordance with the regulations, CERCLA allows a PRP to introduce any relevant evidence that may rebut the presumption. In the view of these commenters, proposed § 11.91(c)(2) would deny PRPs any meaningful opportunity to rebut the rebuttable presumption, effectively rendering the presumption irrebuttable. These commenters interpreted section 113(a) of CERCLA as only barring future judicial review of whether the regulations are valid and meet statutory requirements. Section 113(a) does not, according to these commenters, preclude judicial consideration of all relevant evidence in an assessment not performed at the time the regulations are reviewed—e.g., evidence in a particular case that the computer model grossly overstates the number of affected fish and wildlife. Some commenters suggested that application of proposed § 11.91(c)(2) would raise constitutional due process questions.

Finally, some of these commenters objected to the provisions in proposed § 11.91(c)(2) that the rebuttable presumption applies to the trustee's decision to use the type A procedure and the data inputs. These commenters stated that CERCLA's rebuttable presumption is granted only to the final results of an assessment, not to intermediate steps such as the decision to use the type A procedures and the data input selections. These commenters also asserted that the Department had provided no criteria for ensuring the accuracy and reliability of site-specific data inputs, and that absent such regulatory criteria, the inputs would not be entitled to the rebuttable presumption. The commenters cited the absence of a rebuttable presumption for the statement of trusteeship as an example where the Department concluded that the absence of guidance resulted in the absence of a rebuttable presumption.

Response: The Department has given this issue careful consideration, and decided not to include proposed § 11.91(c)(2) in today's final rule. Whether or not a court ultimately would uphold the authority of the Department to promulgate proposed § 11.91(c)(2), and the interpretation of CERCLA reflected in it, the Department has concluded that there is sufficient uncertainty about the precise effect of sections 107(f)(2)(C) and 113(a) of CERCLA, as applied in a specific case, to warrant leaving proposed § 11.91(c)(2) out of the rule at this time.

The Department recognizes that there are numerous scenarios giving rise to natural resource damage claims. Whether or not proposed § 11.91(c)(2) as applied would be overly broad could depend on the specific circumstances of a given case. Aside from whether the commenters objecting to this provision are legally correct, the questions raised have convinced the Department that this issue is best addressed outside the rulemaking context, at least until additional experience has been gained through case-specific application of these simplified procedures. Therefore, the Department has concluded for now that the precise delineation of CERCLA's preclusive review and rebuttable presumption provisions to type A damage assessments is best left to specific cases. As a result, the Department need not address whether it has the legal authority under section 301(c)(2) to promulgate proposed § 11.91(c)(2), nor whether that section accurately interprets CERCLA.

The Department does note that some of the comments interpreting CERCLA's rebuttable presumption provision appear largely to read CERCLA's preclusive review provision out of the statute. Undoubtedly, Congress intended that PRPs have a meaningful opportunity to rebut specific aspects of a trustee's case, but not if it is a ''matter with respect to which review could have been obtained'' in a challenge to the regulations. CERCLA sec. 113(a). In the case of the type A rules, the validity of the regulations themselves is closely related to the content and workings of the incorporated computer models. The Department believes that section 113(a) of CERCLA requires that challenges to aspects of the rule that are clearly discernible from the rule language, the models, the incorporated technical documentation, and this Federal Register notice be brought within 90 days after promulgation. Sections 107(f)(2)(A) and 113(a) of CERCLA should be read in harmony with one another.

Also, contrary to the view of some commenters, the statutory language of CERCLA does not limit the effect of the rebuttable presumption to the ''final results'' of an assessment. Rather, section 107(f)(2)(C) of CERCLA provides that ''[a]ny determination or assessment of damages * * * made * * * in accordance with the regulations * * * shall have the force and effect of a rebuttable presumption.'' Although the Department has decided not to promulgate regulatory language delineating the scope of the rebuttable presumption, the statute appears to be worded more broadly than was recognized by these commenters. Furthermore, the rule does provide procedures requiring trustees to include data inputs in the Assessment Plan, which is subject to public review and comment. As such, the rule does contain procedural criteria to ensure the accuracy and reliability of data inputs through a public review and comment process. The commenters also failed to recognize a primary reason for the Department declining to afford the rebuttable presumption to the statement of trusteeship. Unlike a statement of trusteeship, which is in essence a legally-founded assertion, data inputs are factual in nature and can be checked, reviewed, and verified through the public comment process.

National Environmental Policy Act, Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Orders 12866, 12630, 12778, and 12612

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the Department has not prepared any further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act (43 U.S.C. 4332(2)(C)).

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule provides technical procedural guidance for the assessment of damages to natural resources. It does not directly impose any additional cost. As the rule applies to natural resource trustees, it is not expected to have an effect on a substantial number of small entities.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

OMB has reviewed this rule under Executive Order 12866. This rule does not have takings implications under Executive Order 12630. The Department has certified to OMB that this rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778. This rule does not have federalism implications under Executive Order 12612.

List of Subjects in 43 CFR Part 11

Coastal zone, Environmental protection, Fish, Hazardous substances, Incorporation by reference, Indian lands, Marine resources, National forests, National parks, Natural resources, Public lands, Recreation areas, Sea shores, Wildlife, Wildlife refuges.

For the reasons set out in the preamble, Title 43, Subtitle A of the Code of Federal Regulations is amended as follows:

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for Part 11 continues to read as follows:

Authority: 42 U.S.C. 9651(c), as amended.

Subpart A—Introduction

2. Section 11.15 is amended by revising the heading and paragraph (a)(1) to read as follows:

§ 11.15 What damages may a trustee recover?

(a) * * *

(1) Damages as determined in accordance with this part and calculated based on injuries occurring from the onset of the release through the recovery period, less any mitigation of those injuries by response actions taken or anticipated, plus any increase in injuries that are reasonably unavoidable as a result of response actions taken or anticipated;

* * * * *

3. Section 11.18 is amended by revising paragraph (a)(4) and adding a new paragraph (a)(5) to read as follows:

§ 11.18 Incorporation by reference.

(a) * * *

(4) The CERCLA Type A Natural Resource Damage Assessment Model for Coastal and Marine Environments, Technical Documentation, Volumes I–VI, dated April 1996, prepared for the U.S. Department of the Interior by Applied Science Associates, Inc., A.T. Kearney, Inc., and Hagler Bailly Consulting, Inc. (NRDAM/CME technical document). Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–501788; ph: (703) 487–4650. Sections 11.34 (a) (b) and (e), 11.35(a), 11.36(b), 11.40(a), and 11.42(a), and Appendix II refer to this document.

(5) The CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments, Technical Documentation, Volumes I–IV, dated April 1996, prepared for the U.S. Department of the Interior by Applied Science Associates, Inc., and Hagler Bailly Consulting, Inc. (NRDAM/GLE technical document). Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–501770; ph: (703) 487–4650. Sections 11.34 (a) (b) and (e), 11.35(a), 11.36(b), 11.40(a), and 11.42(a), and Appendix III refer to this document.

* * * * *

4. Section 11.19 is removed and reserved.

Subpart C—Assessment Plan Phase

5. Section 11.30 is amended by revising the heading and paragraphs (a) and (c)(1)(vi) to read as follows:

§ 11.30 What does the authorized official do if an assessment is warranted?

(a) If the authorized official determines during the Preassessment Phase that an assessment is warranted, the authorized official must develop a plan for the assessment of natural resource damages.

* * * * *

(c) * * *

(1) * * *

(vi) Any other Assessment Plan costs for activities authorized by §§ 11.30 through 11.38.

* * * * *

6. Section 11.31 is amended by revising the heading and paragraphs (a)(1), (b), (c) introductory text, (c)(1), and (d) to read as follows:

§ 11.31 What does the Assessment Plan include?

(a) *General content and level of detail.* (1) The Assessment Plan must identify and document the use of all of the type A and/or type B procedures that will be performed.

* * * * *

(b) *Identification of types of assessment procedures.* The Assessment Plan must identify whether the authorized official plans to use a type A procedure, type B procedures, or a combination. Sections 11.34 through 11.36 contain standards for deciding which types of procedures to use. The Assessment Plan must include a detailed discussion of how these standards are met.

(c) *Specific requirements for type B procedures.* If the authorized official plans to use type B procedures, the Assessment Plan must also include the following:

(1) The results of the confirmation of exposure performed under § 11.37;

* * * * *

(d) *Specific requirements for type A procedures.* If the authorized official plans to use a type A procedure, the Assessment Plan must also contain the information described in subpart D.

7. Section 11.32 is amended by revising the heading and paragraph (c)(1) and adding a new paragraph (f)(3) to read as follows:

§ 11.32 How does the authorized official develop the Assessment Plan?

* * * * *

(c) *Public involvement in the Assessment Plan.* (1) The authorized official must make the Assessment Plan available for review by any identified potentially responsible parties, other natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested member of the public for a period of at least 30 calendar days, with reasonable extensions granted as appropriate. The authorized official may not perform any

type B procedures described in the Assessment Plan until after this review period.

* * * * *

(f) * * *

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply to the use of a type A procedure.

8. Section 11.33 is revised to read as follows:

§ 11.33 What types of assessment procedures are available?

There are two types of assessment procedures:

(a) Type A procedures are simplified procedures that require minimal field observation. Subpart D describes the type A procedures. There are two type A procedures: a procedure for coastal or marine environments, which incorporates the Natural Resource Damage Assessment Model for Coastal and Marine Environments, Version 2.4 (NRDAM/CME); and a procedure for Great Lakes environments, which incorporates the Natural Resource Damage Assessment Model for Great Lakes Environments, Version 1.4 (NRDAM/GLE).

(b) Type B procedures require more extensive field observation than the type A procedures. Subpart E describes the type B procedures.

9. Sections 11.34 and 11.35 are redesignated as §§ 11.37 and 11.38 and new §§ 11.34 through 11.36 are added to read as follows:

§ 11.34 When may the authorized official use a type A procedure?

The authorized official may use a type A procedure only if:

(a) The released substance entered an area covered by the NRDAM/CME or NRDAM/GLE. Section 3.4, Volume III of the NRDAM/CME technical document (incorporated by reference, see § 11.18) identifies the areas that the NRDAM/CME covers. Section 6.2, Volume III of the NRDAM/GLE technical document (incorporated by reference, see § 11.18) describes the areas that the NRDAM/GLE covers;

(b) The NRDAM/CME or NRDAM/GLE cover the released substance. Table 7.1, Volume I of the NRDAM/CME technical document lists the substances that the NRDAM/CME covers. Table 7.1, Volume I of the NRDAM/GLE technical document lists the substances that the NRDAM/GLE covers;

(c) The released substance entered water at or near the surface;

(d) At the time of the release, winds did not vary spatially over the area affected by the release in a way that would significantly affect the level or extent of injuries;

(e) The authorized official is not aware of any reliable evidence that, for species that are likely to represent a significant portion of the claim, the species biomass is significantly lower than the species biomass assigned by the NRDAM/CME or the NRDAM/GLE Tables IV.2.1 through IV.2.115 and IV.5.1 through IV.5.77, Volume III of the NRDAM/CME technical document list the species biomasses in the NRDAM/CME. Tables III.3.17 through III.3.27 and III.3.40 through III.3.50, Volume III of the NRDAM/GLE technical document list the species biomasses in the NRDAM/GLE ; and

(f) Subsurface currents either: are not expected to significantly affect the level or extent of injuries; or are reasonably uniform with depth over the water column in the area affected by the release.

§ 11.35 How does the authorized official decide whether to use type A or type B procedures?

(a) If the authorized official determines under § 11.34 that a type A procedure is available, the authorized official must then decide whether to use that procedure or use type B procedures. The authorized official must make this decision by weighing the difficulty of collecting site-specific data against the suitability of the averaged data and simplifying assumptions in the type A procedure for the release being assessed. The authorized official may use type B procedures if they can be performed at a reasonable cost and if the increase in accuracy provided by those procedures outweighs the increase in assessment costs. Section 1, Volume I of the NRDAM/CME technical document (incorporated by reference, see § 11.18) lists the simplifying assumptions made in the NRDAM/CME. Volumes III through IV of the NRDAM/CME technical document list the data in the NRDAM/CME. Section 1, Volume I of the NRDAM/GLE technical document (incorporated by reference, see § 11.18) lists the simplifying assumptions made in the NRDAM/GLE. Volume III of the NRDAM/GLE technical document lists the data in the NRDAM/GLE.

(b) The authorized official must use type B procedures rather than a type A procedure whenever a potentially responsible party:

(1) Submits a written request for use of type B procedures along with documentation of the reasons supporting the request; and

(2) Advances all reasonable costs of using type B procedures within a time frame acceptable to the authorized official.

(c) If there is no available type A procedure, the authorized official must use type B procedures to calculate all damages.

(d) Except as provided in paragraph (b) of this section, the authorized official may change the type of procedure used in light of comments received on the Assessment Plan. [See § 11.32(e)(2) to determine if the authorized official must provide for additional public review.] However, if the authorized official decides to use type B procedures in lieu of a type A procedure, and cannot confirm exposure under § 11.37, the authorized official may not then use a type A procedure.

§ 11.36 May the authorized official use both type A and type B procedures for the same release?

(a) The authorized official may use both a type A procedure and type B procedures for the same release if:

(1) The type B procedures are cost-effective and can be performed at a reasonable cost;

(2) There is no double recovery; and

(3) The type B procedures are used only to determine damages for injuries or compensable values that do not fall into the categories addressed by the type A procedure. [Sections 11.14(v) and 11.62 define ''injury.'' Section 11.83(c)(1) defines ''compensable value.'']

(b) The type A procedures address the following categories of injury and compensable value:

(1) Direct mortality of species covered by the NRDAM/CME or NRDAM/GLE resulting from short-term exposure to the released substance. Volume IV of the NRDAM/CME technical document (incorporated by reference, see § 11.18) lists the species that the NRDAM/CME covers. Section 3, Volume III of the NRDAM/GLE technical document (incorporated by reference, see § 11.18) lists the species that the NRDAM/GLE covers;

(2) Direct loss of production of species covered by the NRDAM/CME or NRDAM/GLE resulting from short-term exposure to the released substance;

(3) Indirect mortality of species covered by the NRDAM/CME or NRDAM/GLE resulting from disruption of the food web by direct mortality or direct loss of production;

(4) Indirect loss of production of species covered by the NRDAM/CME or NRDAM/GLE resulting from disruption of the food web by direct mortality or direct loss of production;

(5) Lost assimilative capacity of water column and sediments;

(6) Lost economic rent for lost commercial harvests resulting from any

closures specified by the authorized official and/or from population losses;

(7) Lost recreational harvests resulting from any closures specified by the authorized official and/or from population losses;

(8) For the type A procedure for coastal and marine environments, lost wildlife viewing, resulting from population losses, by residents of the States bordering the provinces in which the population losses occurred. [A province is one of the geographic areas delineated in Table 6.1, Volume I of the NRDAM/CME technical document.] For the type A procedure for Great Lakes environments, lost wildlife viewing, resulting from population losses, by residents of local areas bordering the provinces in which the population losses occurred. [A province is one of the geographic areas delineated in Table 8.1, Volume I of the NRDAM/GLE technical document.];

(9) Lost beach visitation due to closure; and

(10) For the type A procedure for Great Lakes environments, lost boating due to closure.

(c) If the authorized official uses both type A and type B procedures, he or she must explain in the Assessment Plan how he or she intends to prevent double recovery.

(d) When the authorized official uses type B procedures for injuries not addressed in a type A procedure, he or she must follow all of subpart E (which contains standards for determining and quantifying injury as well as determining damages), § 11.31(c) (which addresses content of the Assessment Plan), and § 11.37 (which addresses confirmation of exposure). When the authorized official uses type B procedures for compensable values that are not included in a type A procedure but that result from injuries that are addressed in the type A procedure, he or she need not follow all of subpart E, § 11.31(c), and § 11.37. Instead, the authorized official may rely on the injury predictions of the type A procedure and simply use the valuation methodologies authorized by § 11.83(c) to calculate compensable value. When using valuation methodologies, the authorized official must comply with § 11.84.

10. Newly designated § 11.37 is amended by revising the heading and paragraph (a) to read as follows:

§ 11.37 Must the authorized official confirm exposure before implementing the Assessment Plan?

(a) Before including any type B methodologies in the Assessment Plan, the authorized official must confirm that at least one of the natural resources identified as potentially injured in the preassessment screen has in fact been exposed to the released substance.

* * * * *

11. The heading of subpart D is revised to read as follows:

Subpart D—Type A Procedures

12. Section 11.40 is amended by revising the heading and paragraph (a), removing paragraph (b), removing the heading from paragraph (c), and redesignating paragraph (c) as paragraph (b) to read as follows:

§ 11.40 What are type A procedures?

(a) A type A procedure is a standardized methodology for performing Injury Determination, Quantification, and Damage Determination that requires minimal field observation. There are two type A procedures: the type A procedure for coastal and marine environments; and the type A procedure for Great Lakes environments. The type A procedure for coastal and marine environments incorporates a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments Version 2.4 (NRDAM/CME). The NRDAM/CME technical document (incorporated by reference, see § 11.18) includes and explains the NRDAM/CME. The type A procedure for Great Lakes environments incorporates a computer model called the Natural Resource Damage Assessment Model for Great Lakes Environments Version 1.4 (NRDAM/GLE). The NRDAM/GLE technical document (incorporated by reference, see § 11.18) includes and explains the NRDAM/GLE. The authorized official must follow §§ 11.41 through 11.44 when using the type A procedures.

(b) * * *

13. Section 11.41 is revised to read as follows:

§ 11.41 What data must the authorized official supply?

(a) The NRDAM/CME and the NRDAM/GLE require several data inputs to operate. The authorized official must develop the following data inputs:

(1) The identity of the released substance;

(2) The mass or volume of the identified substance that was released;

(3) The duration of the release;

(4) The time of the release;

(5) The location of the release;

(6) The wind conditions;

(7) The extent of response actions;

(8) The extent of any closures;

(9) The implicit price deflator; and

(10) For the NRDAM/CME, the condition of the currents and tides.

(b) The authorized official must change the data in the NRDAM/CME and the NRDAM/GLE for the following parameters if he or she is aware of more accurate data:

(1) Air temperature;

(2) Water temperature at the surface;

(3) Total suspended sediment concentration;

(4) Mean settling velocity of suspended solids; and

(5) Habitat type.

(c)(1) If the release occurred in Alaska and the authorized official is not aware of any reliable evidence that ice was absent from the site of the release, then he or she must turn on the ice modeling function. Otherwise, the authorized official must leave the ice modeling function off.

(2) If the release occurred in the Great Lakes and the authorized official is aware of reliable evidence that ice was absent from the site of the release, then he or she must turn off the ice modeling function.

(d) The authorized official must develop the data inputs and modifications and include them in the Assessment Plan in the format specified in Appendix II (for the NRDAM/CME) or Appendix III (for the NRDAM/GLE).

14. New §§ 11.42 through 11.44 are added to subpart D to read as follows:

§ 11.42 How does the authorized official apply the NRDAM/CME or NRDAM/GLE?

(a) The authorized official must perform a preliminary application of the NRDAM/CME or NRDAM/GLE with the data inputs and modifications developed under § 11.41. Volume II of the NRDAM/CME technical document (incorporated by reference, see § 11.18) describes how to apply the NRDAM/CME. Volume II of the NRDAM/GLE technical document (incorporated by reference, see § 11.18) describes how to apply the NRDAM/GLE. For cases involving releases of two or more substances or a release of a mixture of substances, the authorized official may only apply the NRDAM/CME or NRDAM/GLE once using only one of the substances.

(b) If the preliminary application of the NRDAM/CME or NRDAM/GLE indicates damages in excess of $100,000, then the authorized official must decide whether to:

(1) Limit the portion of his or her claim calculated with the type A procedure to $100,000; or

(2) Compute all damages using type B procedures.

§ 11.43 Can interested parties review the results of the preliminary application?

After completing the preliminary application of the NRDAM/CME or NRDAM/GLE, if the authorized official decides to continue with the type A procedure, he or she must issue an Assessment Plan for public comment as described in § 11.32. The Assessment Plan must include the information described in § 11.31, the data inputs and modifications developed under § 11.41, and a summary of the results of the preliminary application. The Assessment Plan must also identify a contact from whom a complete copy of the printout of the preliminary application can be obtained.

§ 11.44 What does the authorized official do after the close of the comment period?

(a) The authorized official must carefully review all comments received on the Assessment Plan, provide substantive responses to all comments, and modify the Plan as appropriate. [See § 11.32(e)(2) to determine if the authorized official must provide for additional public review.]

(b) If, after reviewing the public comments, the authorized official decides to continue with the type A procedure, he or she must then perform a final application of the NRDAM/CME or NRDAM/GLE, using final data inputs and modifications based on § 11.41 and any reliable information received during the public review and comment period.

(c) After completing the final application of the NRDAM/CME or NRDAM/GLE, the authorized official must prepare a Report of Assessment. The Report of Assessment must include the printed output from the final application as well as the Preassessment Screen Determination and the Assessment Plan.

(d) If the authorized official is aware of reliable evidence that a private party has recovered damages for commercial harvests lost as a result of the release, the authorized official must eliminate from the claim any damages for such lost harvests that are included in the lost economic rent calculated by the NRDAM/CME or NRDAM/GLE.

(e) If the authorized official is aware of reliable evidence that the NRDAM/CME or NRDAM/GLE application covers resources beyond his or her trustee jurisdiction, the authorized official must either:

(1) Have the other authorized official(s) who do have trustee jurisdiction over those resources join in the type A assessment; or

(2) Eliminate any damages for those resources from the claim for damages.

(f) If the final application of the NRDAM/CME or NRDAM/GLE, adjusted as needed under paragraphs (d) and (e), calculates damages in excess of $100,000, then the authorized official must limit the portion of his or her claim calculated with the type A procedure to $100,000.

(g) After preparing the Report of Assessment, the authorized official must follow the steps described in subpart F.

15. The heading of subpart E is revised to read as follows:

Subpart E—Type B Procedures

16. Section 11.73 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 11.73 Quantification phase-resource recoverability analysis

(a) * * * The time estimated for recovery or any lesser period of time as determined in the Assessment Plan must be used as the recovery period for purposes of § 11.38 and the Damage Determination phase, §§ 11.80 through 11.84.

* * * * *

Subpart F—Post-Assessment Phase

17. Section 11.90 is amended by revising the heading, paragraphs (a) and (b), and the first sentence of paragraph (c) as follows:

§ 11.90 What documentation must the authorized official prepare after completing the assessment?

(a) At the conclusion of an assessment, the authorized official must prepare a Report of Assessment that consists of the Preassessment Screen Determination, the Assessment Plan, and the information specified in paragraphs (b) and (c) of this section as applicable.

(b) When the authorized official has used a type A procedure, the Report of Assessment must include the information specified in subpart D.

(c) When the authorized official has used type B procedures, the Report of Assessment must include all documentation supporting the determinations required in the Injury Determination phase, the Quantification phase, and the Damage Determination phase, and specifically including the test results of any and all methodologies performed in these phases. * * *

18. Section 11.91 is amended by revising the heading and by removing the first sentence of paragraph (a) and inserting three new sentences in its place to read as follows:

§ 11.91 How does the authorized official seek recovery of the assessed damages from the potentially responsible party?

(a) At the conclusion of the assessment, the authorized official must present to the potentially responsible party a demand in writing for the damages determined in accordance with this part and the reasonable cost of the assessment. [See § 11.92(b) to determine how the authorized official must adjust damages if he or she plans to place recovered funds in a non-interest-bearing account.] The authorized official must deliver the demand in a manner that establishes the date of receipt.

* * *

* * * * *

19. New Appendices II and III are added to read as follows:

Appendix II to Part 11—Format for Data Inputs and Modifications to the NRDAM/CME

This appendix specifies the format for data inputs and modifications to the NRDAM/CME under § 11.41. Consult the back of this appendix for definitions.

Starting Point for the NRDAM/CME

The NRDAM/CME begins its calculations at the point that the released substance entered water in an area represented by its geographic database. Any water within the geographic boundaries of the NRDAM/CME is a ''coastal or marine environment.'' The authorized official must determine all data inputs and modifications as of the time and location that the released substance entered a coastal or marine environment. In the case of a release that began in water in an area within the boundaries of the NRDAM/CME, this point will be the same as the point of the release. However, for releases that begin on land or that begin outside the boundaries of the NRDAM/CME, this point will not be the point of the release but rather the point at which the released substance migrates into a coastal or marine environment.

Required Data Inputs

Documentation of the source of the data inputs; and

Identity of Substance

For release of single substance:

Name of the substance that entered a coastal or marine environment as it appears in Table 7.1, Volume I of the NRDAM/CME technical document (incorporated by reference, see § 11.18).

For releases of two or more substances or a release of a mixture of two or more substances:

Name of only one of the substances that entered a coastal or marine environment as it appears in Table 7.1, Volume I of the NRDAM/CME technical document.

Mass or Volume

For release of single substance:

Mass or volume of identified substance that entered a coastal or marine environment

stated in tonnes, barrels, gallons, liters, pounds, or kilograms.

For releases of two or more substances or a release of a mixture of two or more substances:

Mass or volume of the one identified substance (rather than total mass) that entered a coastal or marine environment stated in tonnes, barrels, gallons, liters, pounds, or kilograms.

Duration

Length of time over which the identified substance entered a coastal or marine environment stated in hours.

Time

Year, month, day, and hour when the identified substance first entered a coastal or marine environment.

Location

Latitude and longitude, stated in degrees and decimal minutes, where the identified substance entered a coastal or marine environment.

Winds

At least one set of data on prevailing wind conditions for each day of the 30-day period beginning 24 hours before the identified substance entered a coastal or marine environment. Each set must include:

Wind velocity stated in knots or meters per second; and

Corresponding wind direction stated in the degree angle of the wind's origin.

[One possible source of information is the National Climatic Data Center, Asheville, NC (703) 271–4800.]

Response Actions

If removed from water surface:

A rectangular geographic area encompassing the surface water area over which the released substance was likely to have spread, stated in terms of the northern- and southern-most latitude, and the eastern- and western-most longitude;

One or more time frames for removal stated in terms of the number of days and hours after the identified substance entered a coastal or marine environment that removal began and ended; and

For each time frame, volume of the identified substance removed from the water surface (not the total volume of contaminated water or sediments removed) stated in barrels, gallons, or cubic meters.

If removed from shoreline:

A rectangular geographic area encompassing the shoreline area over which the released substance was likely to have spread, stated in terms of the northern- and southern-most latitude, and the eastern- and western-most longitude;

One or more time frames for removal stated in terms of the number of days and hours after the identified substance entered a coastal or marine environment that removal began and ended; and

For each time frame, volume of the identified substance removed (not the total volume of contaminated water or sediments removed) stated in barrels, gallons, or cubic meters.

Closures

Documentation that the closure was ordered by an appropriate agency as a result of the release;

Province(s) in which closure occurred; and

For beaches:

Whether the beach was Federal or State (including municipal or county);

Number of days of closure stated by calendar month; and

Length of shoreline closed, stated in kilometers, for each month in which closure occurred.

For fisheries and shellfish harvest areas:

Whether area closed was seaward open water, landward open water, or structured;

Number of days of closure; and

Area closed stated in square kilometers.

For furbearer hunting or trapping areas and waterfowl hunting areas:

Number of days of closure; and

Area closed stated in square kilometers.

Implicit Price Deflator

Quarterly implicit price deflator for the Gross National Product (base year 1992) for the quarter in which the identified substance entered a coastal or marine environment. [See the Survey of Current Business, published by the U.S. Department of Commerce/Bureau of Economic Analysis, 1441 L Street, NW, Washington, D.C., 20230, (202) 606–9900.]

Currents

For a rectangular geographic area encompassing the area affected by the release stated in terms of the northern- and southern-most latitude, and the eastern- and western-most longitude:

At least one set of data concerning background (mean) current consisting of—

An east-west (U) velocity stated in centimeters per second or knots;

A north-south (V) velocity stated in centimeters per second or knots; and

Latitude and longitude of the origin of the U and V velocity components.

At least one set of data concerning tidal current at time of flood stage (i.e., rising tide) consisting of—

An east-west (U) velocity stated in centimeters per second or knots;

A north-south (V) velocity stated in centimeters per second or knots; and

Latitude and longitude of the origin of the U and V velocity components.

[Possible sources of information are: the National Ocean Service, U.S. Department of Commerce, Riverdale, MD (310) 436–6990; and the Eldridge Tide and Pilot Book, Robert Eldridge White Publisher, Boston, MA (617) 742–3045.]

Tides

Hour of high tide on the day that the identified substance entered a coastal or marine environment;

Tidal range at point that the identified substance entered a coastal or marine environment stated in meters; and

Whether the tide in the area affected by the release is diurnal (i.e., completes one full cycle every day) or semi-diurnal (i.e., completes two full cycles every day).

Modifications to the NRDAM/CME Databases (if Any)

Documentation of the source of the modification; and

For air temperature:

Air temperature, stated in degrees Celsius, assigned by the NRDAM/CME at the point that the identified substance entered a coastal or marine environment (see Table III.3.2, Volume III of the NRDAM/CME technical document); and

Substitute air temperature stated in degrees Celsius.

For water temperature at the surface:

Water temperature at the surface, stated in degrees Celsius, assigned by the NRDAM/CME at the point that the identified substance entered a coastal or marine environment (see Table III.3.3, Volume III of the NRDAM/CME technical document); and

Substitute water temperature stated in degrees Celsius.

For total suspended sediment concentration:

Total suspended sediment concentration, stated in milligrams per liter, assigned by the NRDAM/CME at the point that the identified substance entered a coastal or marine environment (see Section 3, Volume I of the NRDAM/CME technical document); and

Substitute suspended sediment concentration stated in milligrams per liter.

For mean settling velocity of suspended solids:

Mean settling velocity of suspended sediments, stated in meters per day, assigned by the NRDAM/CME at the point that the identified substance entered a coastal or marine environment (see Section 3, Volume I of the NRDAM/CME technical document); and

Substitute suspended sediment concentration stated in milligrams per liter.

For habitat type:

Latitude and longitude bounds of area for which the habitat type is being modified;

Habitat type assigned by the NRDAM/CME (see Section 3.4, Volume III of the NRDAM/CME technical document); and

Substitute habitat type.

For releases in Alaska, if the authorized official leaves the ice modeling function off, he or she must provide documentation that ice was absent at the site of the release.

Definitions

Background (mean) current—net long-term current flow (i.e., one direction only), attributable to forces such as winds, river flow, water density, and tides, that remains when all the oscillatory (tidal) components have been removed either mathematically or by measurement techniques.

Landward open water—a body of water that does not contain vegetation (e.g., wetland, seagrass, or kelp) or invertebrate reef (e.g., coral reef) and is classified as ''landward'' in Table 6.2, Volume I of the NRDAM/CME technical document.

Province—one of the geographic areas delineated in Table 6.1, Volume I of the NRDAM/CME technical document.

Seaward open water—a body of water that does not contain vegetation (e.g., wetlands, seagrass, or kelp) or invertebrate reef (e.g., coral reef) and is classified as ''seaward'' in

Table 6.2, Volume I of the NRDAM/CME technical document.

Structured—in an area that contains vegetation (e.g., wetlands, seagrass, or kelp) or invertebrate reef (e.g., coral reef).

Tidal current—currents caused by alternating rise and fall of the sea level due to the gravitational forces between the earth, moon, and sun.

Tidal range—difference between the highest and lowest height of the tide.

Appendix III to Part 11—Format for Data Inputs and Modifications to the NRDAM/GLE

This appendix specifies the format for data inputs and modifications to the NRDAM/GLE under § 11.41. Consult the back of this appendix for definitions.

Point of Analysis

The NRDAM/GLE begins its calculations at the point that the released substance entered water in an area represented by its geographic database. Any water within the geographic boundaries of the NRDAM/GLE is a ''Great Lakes environment.'' The authorized official must determine all data inputs and modifications as of the time and location that the released substance entered a Great Lakes environment. In the case of a release that began in water in an area within the boundaries of the NRDAM/GLE, this point will be the same as the point of the release. However, for releases that begin on land or that begin outside the boundaries of the NRDAM/GLE, this point will not be the point of the release but rather the point at which the released substance migrates into a Great Lakes environment.

Required Data Inputs

Documentation of source of data inputs; and

Identity of Substance

For release of single substance:

Name of the released substance that entered a Great Lakes environment as it appears in Table 7.1, Volume I of the NRDAM/GLE technical document (incorporated by reference, see § 11.18).

For releases of two or more substances or a release of a mixture of two or more substances:

Name of only one of the released substances that entered a Great Lakes environment as it appears in Table 7.1, Volume I of the NRDAM/GLE technical document.

Mass or Volume

For releases of single substance:

Mass or volume of identified substance that entered a Great Lakes environment stated in tonnes, barrels, gallons, liters, pounds, or kilograms.

For releases of two or more substances or a release of a mixture of two or more substances:

Mass or volume of the one identified substance (rather than total mass) that entered a Great Lakes environment stated in tonnes, barrels, gallons, liters, pounds, or kilograms.

Duration

Length of time over which the identified substance entered a Great Lakes environment stated in hours.

Time

Year, month, day, and hour when the identified substance first entered a Great Lakes environment.

Location

Latitude and longitude, stated in degrees and decimal minutes, where the identified substance entered a Great Lakes environment.

Winds

At least one set of data on prevailing wind conditions for each day of the 30-day period beginning 24 hours before the identified substance entered a Great Lakes environment. Each set must include:

Wind velocity stated in knots or meters per second; and Corresponding wind direction stated in the degree angle of the wind's origin.

[One possible source of information is the National Climatic Data Center, Asheville, NC (703) 271–4800.]

Response Actions

Percentage of identified substance removed from water surface, bottom sediments, and shoreline; and

For each medium cleaned (water surface, bottom sediments, or shoreline), the number of days after the identified substance entered a Great Lakes environment that removal began and ended.

Closures

Documentation that the closure was ordered by an appropriate agency as a result of the release; and

For boating areas:

Number of weekend days of closure stated by calendar month;

Number of weekday days of closure stated by calendar month; and

Area closed stated in square kilometers.

For beaches:

Whether the beach was Federal or State (including municipal or county);

Number of days of closure stated by calendar month; and

Length of shoreline closed stated in meters.

For fisheries:

Whether area closed was an offshore, nearshore, or wetland fishery;

Number of days of closure; and

Area closed stated in square kilometers.

For furbearer hunting or trapping areas and waterfowl hunting areas:

Number of days of closure; and

Area closed stated in square kilometers.

Implicit Price Deflator

Quarterly implicit price deflator for the Gross National Product (base year 1992) for the quarter in which the identified substance entered a Great Lakes environment. [See the Survey of Current Business, published by the U.S. Department of Commerce/Bureau of Economic Analysis, 1441 L Street, NW, Washington, D.C., 20230, (202) 606–9900.]

Modifications to the NRDAM/GLE Databases (if Any)

Documentation of the source of the modifications; and

For air temperature:

Air temperature, stated in degrees Celsius, assigned by the NRDAM/GLE at the point that the identified substance entered a Great Lakes environment (see Table III.6.1, Volume III of the NRDAM/GLE technical document); and

Substitute air temperature stated in degrees Celsius.

For water temperature at the surface:

Water temperature at the surface, stated in degrees Celsius, assigned by the NRDAM/GLE at the point that the identified substance entered a Great Lakes environment (see Table III.6.2.6, Volume III of the NRDAM/GLE technical document); and

Substitute water temperature stated in degrees Celsius.

For total suspended sediment concentration:

Total suspended sediment concentration, stated in milligrams per liter, assigned by the NRDAM/GLE at the point that the identified substance entered a Great Lakes environment (see Section 3, Volume I of the NRDAM/GLE technical document); and

Substitute suspended sediment concentration stated in milligrams per liter.

For mean settling velocity of suspended solids:

Mean settling velocity of suspended sediments, stated in meters per day, assigned by the NRDAM/GLE at the point that the identified substance entered a Great Lakes environment (see Section 3, Volume I of the NRDAM/GLE technical document); and

Substitute suspended sediment concentration stated in milligrams per liter.

For habitat type:

Latitude and longitude bounds of area for which the habitat type is being modified;

Habitat type assigned by the NRDAM/GLE (see Section 6.2, Volume III of the NRDAM/GLE technical document); and

Substitute habitat type.

If the authorized official turns off the ice modeling function, then he or she must provide documentation that ice was absent from the site of the release.

Definitions

Nearshore fishery—fishery in an open water area that is less than 30 feet in depth or is in a connecting channel.

Offshore fishery—fishery in an open water area that is 30 feet or more in depth.

Wetland fishery—fishery that is not in an open water area.

Dated: April 25, 1996.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 96–10747 Filed 5–6–96; 8:45 am]

BILLING CODE 4310–RG–P

federal register

Tuesday
May 7, 1996

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–01–AD; Amendment 39–9587; AD 96–09–11]

RIN 2120–AA64

Airworthiness Directives; de Havilland, Inc. DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to de Havilland DHC–6 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in freezing rain or freezing drizzle conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–01–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

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 de Havilland DHC–6 series airplanes was published in the Federal Register on January 25, 1996 (61 FR 2175). The action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

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

In addition to the proposed rule described previously, in January 1996, the FAA issued 17 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 18 proposed rules). These 17 proposals also were published in the Federal Register on January 25, 1996. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180
96–CE–04–AD	Dornier 228 Series	61 FR 2172
96–CE–05–AD	Cessna 208/208B	61 FR 2178
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144
96–NM–14–AD	Jetstream 4101	61 FR 2142
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Comment 1. Support for the Proposals

Numerous commenters support the FAA's intent to minimize the potential hazards associated with operating airplanes of any type design in severe icing conditions. One commenter states that the limitation prohibiting the use of flaps while enroute and during holding in icing conditions will be a positive contribution to safety. Additionally, several commenters support the requirement of the proposed AD for Aerospatiale airplanes for installation of modified deicing boots on the outer leading edges of the wings. One of these commenters states that the incorporation of AFM procedures, in addition to installation of the modified boots, provide a substantial margin of safety for the Aerospatiale fleet.

Comment 2. Requests Concerning References to ''Freezing Rain/Freezing Drizzle''

Raytheon requests that references to a class of meteorological conditions in the limitations described as ''freezing rain or freezing drizzle'' should be removed from the proposed rules. Raytheon contends that instructions for the flight crew should be restricted to hazardous conditions that are defined by the accumulation of ice. The commenter states that the term ''severe icing'' has a specific meaning as defined in the Aeronautical Information Manual: ''The rate of accumulation is such that the icing/anti-icing equipment fails to reduce or control the hazard. Immediate diversion is necessary.'' The commenter states that, although freezing rain or freezing drizzle may involve drops larger than those specified in Appendix C of part 25 (''Airworthiness Standards: Transport Category Airplanes'') of the Federal Aviation Regulations (14 CFR part 25), flight into those conditions does not always result in accumulation

of ice beyond the capability of the aircraft nor is severe icing always the result of freezing rain or freezing drizzle. Raytheon concludes that the limitation specified in paragraph (a)(1) of the proposals which reads, ''Flight in meteorological conditions described as freezing rain or freezing drizzle, as determined by the following visual cues, is prohibited,'' is an inference or conclusion that does not follow from the premises.

The European Regional Airlines (ERA) Association states that the proposals define visual cues to be used to identify ''freezing rain'' and ''freezing drizzle,'' but these criteria are inconsistent with the criteria defined by the International Civil Aviation Organization (ICAO) and used by weather observers in aviation meteorological support services. The FAA infers from this remark that ERA requests the use of ICAO terminology associated with the visual cues.

The FAA concurs partially. The FAA concurs that most of the references to ''freezing rain/freezing drizzle'' can be removed from the final rules. The FAA has revised the final rules to replace certain references to freezing rain and freezing drizzle with the words ''severe icing.'' The FAA finds that since the visual cues contained in paragraph (a)(1) of these final rules indicate that icing conditions have exceeded the limits of the ice protection equipment, the use of the terminology ''severe icing'' is appropriate. As stated by one commenter, ''severe icing'' is terminology used to describe icing conditions that exceed the capabilities of the ice protection equipment. The terminology ''severe icing'' is commonly used and understood within the aviation community. Additionally, there should be no confusion over the use of this term in the final rules because the AFM revisions required by these AD's define the terminology ''severe icing'' by specifying the visual cues that indicate when the capabilities of the ice protection equipment have been exceeded. However, the FAA would consider a request for approval of an alternative method of compliance to use terminology other than ''severe icing'' in an AFM, in accordance with the provisions of these AD's, provided that adequate justification is presented to support such a request.

Any inconsistencies that may exist between the criteria used by weather specialists to define ''severe icing'' and the criteria stated in these final rules are not relevant for these AD's because these AD's do not require the flight crew to take any action based on information provided by a weather observer. For these AD's, the flight crew must only take action if certain visual cues are present on the airplane.

The FAA has determined that reference to freezing rain and freezing drizzle should not be removed from the text of the ''Caution'' that appears in paragraph (a)(2) of the proposals. [Note: The ''Caution'' appears as the ''Warning'' in paragraph (a)(1) of the final rules. An explanation of this change is contained in the disposition of Comment 49 of these final rules.] Reference to freezing rain and freezing drizzle in that portion of text is made simply to provide a description of conditions that may result in ice build-up that exceeds the capabilities of the ice protection system.

Comment 3. Request for Review of ''Severe Icing'' Terminology

One commenter, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, requests that use of the terminology ''severe icing'' be reviewed. The CAA does not believe it is appropriate that this terminology becomes accepted for supercooled large droplet (SLD) conditions. The CAA indicates that a common interpretation for ''severe icing'' is that beyond the limit specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25), which is at or just over the capability of the ice protection system.

The FAA has reviewed the use of the terminology ''severe icing'' as related to SLD. The FAA finds that ice resulting from SLD conditions may not always meet the criterion specified in the common interpretation of ''severe icing,'' as described by the commenter. The FAA notes that while SLD conditions may result in the formation of severe icing, severe icing also may accrue in conditions such as liquid water content, temperature, or extent of cloud, when those conditions exceed the limits specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). As explained previously, most references to freezing rain and freezing drizzle have been replaced with the terminology ''severe icing.'' Additionally, the AFM's for the affected airplanes include a definition of severe icing.

Comment 4. Request To Withdraw the Proposals: Significant Economic Impact on Operating Community

A number of commenters request that the proposals be withdrawn because the effect of these proposed AD's will produce a significant economic impact on the operating community. The commenters indicate that many flights would need to be canceled in order to make all reasonable efforts to avoid encounters with freezing rain/freezing drizzle conditions—i.e., when these conditions are forecast, airplanes will be prohibited from flight into those conditions. One commenter remarks that, based on the actual weather in January 1996, nearly 75 percent of its scheduled flights would have been canceled due to forecast or actual freezing rain or freezing drizzle conditions if the AD's had been in effect. The commenters do not believe that the FAA has considered the economic factors affected by the proposed actions, such as the number of flights lost per day, crew costs, passenger compensation, misconnected baggage, etc.

If the FAA does not withdraw the proposals, one commenter states that the prohibition of flight in freezing rain or freezing drizzle, as specified in paragraph (a)(1) of the proposals, should be revised. The commenter suggests the following: ''The aircraft should be immediately flown clear of icing conditions if ice is seen forming on the upper surface of the wing behind the leading edge deice boots.'' The commenter believes that the current wording in the proposals would cause flight crews to cancel or delay departure not only when freezing rain or freezing drizzle exists, but also when those conditions are forecast.

The FAA concurs partially. The FAA finds that some misunderstanding exists among the commenters concerning the intent of these AD's. Many of the commenters believe that the AD's will prevent affected airplanes from flight in forecast freezing rain and freezing drizzle. This is not the case. The FAA agrees that certain language contained in the AD's must be clarified to reflect its intent. The FAA has evaluated the wording proposed by one of the commenters and agrees with it in principal. However, the FAA has determined that the first limitation in paragraph (a)(1) of the final rules must be revised in order to accommodate visual cues other than that specified by the commenter, to incorporate terminology familiar to the flight crew, and to emphasize that these AD's address only in-flight icing encounters. Additionally, in order to ensure that appropriate coordination with Air Traffic Control is accomplished, the FAA has revised the instruction following the visual cues in paragraph (a)(1), and has moved that instruction to the end of the first limitation in paragraph (a)(1) of the final rules. The entire limitation reads as follows: ''During flight, severe icing conditions

that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.'' (Operators should note that, in the final rule for Aerospatiale airplanes, only one visual cue is specified. That cue involves ice on the side window of the airplane.)

Several commenters question certain issues related to dispatch of the airplane in severe icing conditions. One commenter states that the procedures specified in the proposed AD's fail to address the conditions that would prohibit takeoff in freezing rain and freezing drizzle. The commenter believes the visual cues provided in the proposals would only appear on an airplane during flight. Thus, allowable conditions for takeoff during times of forecast freezing rain or freezing drizzle are left to the individual operator's interpretation. Another commenter believes that the FAA has not established a basis for prohibiting flight in all reported freezing drizzle. The commenter contends that takeoff in freezing rain should always be prevented, but takeoff in freezing drizzle should be possible after applying appropriate deicing or anti-icing treatments. One commenter requests that the FAA clarify how the procedures for exiting freezing rain/freezing drizzle conditions would apply to takeoff and landing. The commenter states that landing during those conditions might, in many cases, be the most expeditious method of avoiding a hazardous condition. Another commenter suggests that the AFM for Aerospatiale airplanes should be revised to reflect standard dispatch rules; however, the commenter provides no justification for this request.

The FAA concurs that visual cues that would prohibit takeoff in freezing rain or freezing drizzle were not provided because the FAA's intent is that these AD's address only in-flight icing encounters. These AD's do not affect any existing regulations or FAA-approved operating procedures related to takeoff, dispatch, or release of an airplane in icing conditions. These AD's only prohibit remaining in icing conditions when certain visual cues are present on the airplane; these AD's do not prohibit flight into forecast or reported freezing drizzle. Operators must comply with existing rules that require an airplane to be free of ice prior to takeoff. Further, the FAA finds no need to revise the AFM for Aerospatiale airplanes to reflect standard dispatch rules. The FAA also considers that landing the airplane when freezing rain/freezing drizzle conditions are encountered would, in many cases, be the most expeditious method of exiting the conditions. Such landing would be in compliance with the limitation that requires the flight crew to exit the severe icing conditions.

Two commenters indicate that the first note that appears in paragraph (a)(1) of the proposed rules could be interpreted to mean that if freezing rain or freezing drizzle is forecast anywhere along the route of flight, the airplane could not be dispatched. One of the commenters concludes that forecasting methodologies are inadequate and would need to be improved. The other commenter suggests that the FAA remove the word ''purely'' from the note. The same commenter requests that the FAA clarify that the airplane may be dispatched if the forecast may indicate freezing rain/freezing drizzle conditions. Another commenter indicates that the wording of the same note is unclear as to how the FAA defines a ''purely'' inadvertent encounter. The commenter states that examples of such purely inadvertent encounters would be helpful.

One commenter asks the following questions in regard to the same note:

—What are ''reasonable efforts?''

—What does ''immediately exit'' mean? Are the procedures for immediately exiting listed in the Air Traffic Controller's Handbook or the Airman's Information Manual? Can a pilot operating the airplane in a holding pattern decide on his/her own to immediately descend below the freezing level without regard to other traffic?

One commenter states that the note should be placed in the Normal Procedures Section of the AFM, rather than in the Limitations Section. The commenter provides no justification for this request.

The FAA concurs that clarification of this note is necessary. The FAA originally included the note in the AD's to clarify the intent of the rules. Since the first instruction and the limitation that follows have been revised in these final rules, the FAA finds that inclusion of the clarifying note is no longer necessary. In order to avoid any possible misinterpretation of the intent of the limitation on flight in freezing rain or freezing drizzle, the FAA has removed the first note that appeared in paragraph (a)(1) of the proposals. These AD's do not prohibit flight into forecast or reported freezing rain or freezing drizzle. This means that the aircraft is not prohibited from takeoff, dispatch, or release simply because the forecast may indicate freezing rain or freezing drizzle, but is prohibited from continued flight in severe icing conditions.

Comment 5. Request To Withdraw the Proposals: No Unsafe Condition Has Been Established

Several commenters request that the proposals be withdrawn because no unsafe condition has been established with respect to airplane handling characteristics in severe icing conditions. One commenter states that the preamble of the proposals does not provide data that establish an unsafe condition; the preamble only indicates that there are inadequate data to represent all possible conditions. Another commenter remarks that the FAA's dismissal of the significance of the test results with the specious comment, ''such airplanes could develop ice shapes other than those tested,'' is wholly speculative, and is an invalid basis on which to issue an AD under the provisions of part 39 (''Airworthiness Directives'') of the Federal Aviation Regulations (14 CFR part 39).

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

Additionally, in the preamble to the proposed rules, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a

complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if these final rules were required, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD's must be viewed as two unrelated actions.

Comment 6. Request To Withdraw the Proposals: Unsafe Condition Is Outside Certification Limits

One commenter states that the proposed AD's should be withdrawn because the issuance of AD's to address the problems of icing encounters outside of the limits for which the airplane is certificated is a completely inappropriate application of part 39 of the Federal Aviation Regulations (14 CFR part 39). Another commenter contends that since the Aerospatiale aircraft passed all present certification testing, what transpired beyond the limits of certification should not be held against that aircraft.

The FAA does not concur that the AD's should be withdrawn on the basis that the unsafe condition is outside the icing certification envelope. Flight in icing conditions that are outside the icing certification envelope occurs during the normal service life of an airplane. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. The appropriate vehicle for providing this method of identification is through issuance of an AD. The FAA acknowledges that the Aerospatiale airplane has been shown to comply with existing certification rules; however, no airplane is certificated for flight in icing conditions outside of Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25).

Comment 7. Request To Withdraw the Proposals: Proposals Unfairly Discriminate Against Turbopropeller-Powered Aircraft

Several commenters state that the proposed AD's should be withdrawn because the AD's unfairly discriminate against turbopropeller-powered aircraft. The commenters contend that by issuing these proposed rules, the FAA is creating a public perception that turbopropeller-powered aircraft are less safe than other aircraft.

Numerous commenters oppose the statement contained in the preamble of the proposals which indicates that since turbopropeller-powered airplanes are more likely to operate at low altitudes and to make more frequent landings, they are more likely to encounter icing conditions that are outside the icing envelope. One commenter states that the mere fact that turbopropeller-powered airplanes make more frequent landings is irrelevant for the following reasons:

—Every flight encounters the same atmospheric conditions after takeoff and prior to landing, whether the airplane is powered by a turbopropeller or turbojet engine;

—There are numerous airplanes powered by turbojet engines that operate on segments equal in duration to those operated by many turbopropeller-powered aircraft; numerous airplanes powered by turbojet engines make just as frequent landings; and

—Even if turbopropeller-powered aircraft do make more frequent landings, there is no negative inference to be drawn from that fact; more opportunities are available to ensure that ice has not formed on the aircraft if the aircraft lands more frequently.

One commenter states that the altitudes where SLD conditions exist are the same altitudes at which jets would encounter those conditions during the departure and arrival phases of flight. Flight in SLD conditions that would have a negative effect on a turbopropeller-powered airplane would have the same effect on a jet, since both are certificated under the same rules with regard to flight into adverse weather, and both fly at about the same speeds during the departure and arrival phases of flight. Additionally, another commenter adds that no airplane, whether it is powered by a turbopropeller, turbojet, or turbofan engine, is certificated for operation in SLD conditions.

Another commenter indicates that icing encounters take place at altitudes below the cruising altitudes of most turbopropeller-powered aircraft used in scheduled service; this also occurs on airplanes powered by turbojet engines. Icing encounters occur during takeoff, climb, descent, holding, and landing phases of flight on both types of aircraft. The commenter adds that operating the airplane in a holding pattern for a prolonged period in severe icing conditions is hazardous for both turbojet and turbopropeller-powered aircraft. The commenter explains that, although the exposure time per flight hour of a long-haul jet aircraft is less, the exposure on a per flight basis is exactly the same. The commenter states that, like landing gear life limits, the proper measure of exposure to freezing rain/freezing drizzle should be the number of flights, not the number of flight hours.

Another commenter, Saab, states that Saab Model SAAB 2000 series airplanes have a unique power-to-weight ratio, which makes it comparable with airplanes of the same size and, in some relevant areas such as climb performance and single engine ceiling, even far superior. Operators of those airplanes can operate the aircraft over-the-weather at flight level (FL) 310. This means that these Saab airplanes operate on jet profiles and, therefore, are not exposed to the icing conditions that are outside the icing envelope any more than the airplanes that are excluded from the proposals.

The FAA does not concur that the proposals should be withdrawn. The FAA does not intend to imply through issuance of these AD's that turbopropeller-powered airplanes are less safe than airplanes having other types of propulsion systems. As stated in the preamble of the proposals, the FAA addressed certain airplanes as a higher priority for two reasons:

—Turbopropeller-powered airplanes are more likely to operate at low altitudes and to make more frequent landings; therefore, they are more likely to encounter icing conditions that are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25); and

—The flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew.

Since the issuance of the proposed rules, the FAA has reconsidered this reasoning. The FAA acknowledges that simply because an airplane is turbopropeller-powered and has a particular flight profile, that airplane should not be addressed as a higher priority. However, this does not diminish the significance of the necessity of the flight crew of an airplane having an unpowered roll control system to rely on physical strength to counteract roll control anomalies. The subject airplanes all have pneumatic deicing boots and unpowered aileron controls, which have been common denominators in the accident and incident history

concerning flight in icing conditions and, in particular, during conditions when SLD was believed to be present. Therefore, airplanes having those design features are of immediate concern to the FAA and were addressed as a higher priority. Additionally, these AD's primarily address airplanes used in regularly scheduled passenger service in the United States.

The FAA finds that the comment indicating that more frequent landings provides more opportunity to verify that ice has not formed is irrelevant. It also could be said that more frequent landings gives more opportunity for ice to form. The FAA agrees with the statement that holding for prolonged periods in severe icing conditions is hazardous for all aircraft types. The FAA is considering initiating an assessment of the need to prohibit all aircraft from continued flight in severe icing conditions as defined in these AD's.

Although Transport Canada Aviation does not request that the proposed AD's be withdrawn, the commenter indicates that roll control anomalies could exist for all aircraft whether they have powered or unpowered roll control systems. Transport Canada Aviation adds that some jet-powered aircraft have unpowered ailerons.

The FAA concurs that roll anomalies could exist for all aircraft whether they have powered or unpowered roll control systems. However, these AD's address airplanes having both deicing boots and unpowered aileron controls. The FAA acknowledges that other airplanes that have powered ailerons may be subject to roll problems in severe icing conditions due to loss of lift. However, the FAA is not aware of a mechanism that would allow ice to produce an uncommanded control deflection on airplanes having powered flight control systems. In addition, airplanes having powered roll control systems do not have direct feedback of aerodynamic forces to the pilot. However, the FAA is considering initiating an assessment of the need to apply similar limitations to other aircraft types.

Comment 8. Request To Withdraw the Proposals: Affected Airplanes Are Not Same Type Design as Accident Airplane

Several commenters contend that the proposals should be withdrawn because the FAA has not established clearly that the airplanes addressed in the proposed rules have the same type design as the Aerospatiale Model ATR–72 series airplane that was involved in an accident in October 1994 that occurred in severe icing conditions.

One commenter questions the words ''same type design,'' and asks if those words refer to high wing, low wing, T-tail, or aircraft of another type design.

Three commenters provide justification in support of a request that certain airplanes be exempt from these AD's:

- de Havilland Model DHC–7 and DHC–8 series airplanes: De Havilland states that the airplanes it manufactures share a conservative aerodynamic design philosophy that yields exceptional low-speed handling qualities and demonstrated benign handling qualities in icing conditions. De Havilland adds that two-thirds of the roll control authority of these airplanes is provided by hydraulically powered roll spoilers. A second commenter adds that increased testing has been conducted on these airplanes.
- Fokker F27 Mark 100, 200, 300, 400, 500, 600, 700, and 050 series airplanes: Fokker states that the leading edge boots on Fokker Model F27 series airplanes and Model F27 Mark 050 series airplanes extend to a chord wise position, 12.5 percent wing chord, which precludes all but the very largest droplets impinging on the unprotected surfaces. Fokker adds that since the accident airplane has unshielded horn balances and the affected Fokker airplanes do not have these unshielded horn balances, Fokker airplanes will not experience roll upset problems. Fokker indicates that aerodynamically balancing the control surfaces by means of unshielded horn balances was not applied because of the bad service experience of the Vickers Viking aircraft in 1946.
- Beech Model 200 and 200C airplanes: Raytheon states that these particular airplane models are not normally considered to be commuter aircraft, and that issuance of an AD would be contrary to the stated purpose of the proposals because most of these airplanes are used in non-revenue service. Raytheon states that these airplanes are all low wing aircraft. Aerospatiale Model ATR–72 series airplanes (the accident airplane) is 50 percent larger and carries over twice the number of passengers as these Beech aircraft. For these reasons, as well as other differences in the geometry of the airplanes (i.e., relative aileron span), Raytheon states that the supposition of an icing hazard in these aircraft is purely speculative.

The FAA does not concur that any of the addressed airplanes should be exempt from these AD's. The FAA has examined the accident and incident history in icing conditions and, in particular, those events believed to involve SLD conditions. Results of this examination revealed that the type design characteristics that appear to be common in these events are pneumatic deicing boots and unpowered aileron controls. Airplanes having those type design characteristics appear to be more susceptible to control problems in severe icing conditions. In response to Fokker's remark that its airplanes will not experience roll control problems since those airplanes do not have unshielded horn balances, the FAA has determined that horn balances on the accident airplane were not the source of the uncommanded aileron motion. Design similarities of the wing, tail, or ailerons do not appear to be a common denominator among airplanes involved in accidents or incidents where SLD conditions may have been present.

Saab asks for removal of the sentence that reads, ''Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design * * *.'' Saab states that this sentence implies that Saab Model SF340A and SAAB 340B series airplanes have a problem and that this problem is ''likely to develop on other airplanes of the same type design.'' Yet, there have been no reported problems on those airplanes, which are not of the same type design as all other turbopropeller-powered airplanes. Transport Canada Aviation does not request that the proposals be withdrawn; however, the commenter requests that the FAA revise the same phrase discussed by Saab. Transport Canada Aviation requests that the phrase be reworded as follows: ''Since an unsafe condition has been identified where aircraft icing certification is not adequate to address the conditions that are outside of Appendix C of FAR part 25 * * *.''

The FAA does not concur with Saab's request. The FAA acknowledges that there have been no reported problems involving severe icing conditions on Saab airplanes. However, Saab Model SF340A and SAAB 340B series airplanes have pneumatic deicing boots and unpowered aileron controls, which have been determined to be the common denominators among the airplanes involved in accidents and incidents in severe icing conditions. Therefore, the FAA has determined that when severe icing conditions are encountered on these Saab airplanes, those conditions must be exited.

Although the FAA has no technical objection to the revised wording proposed by Transport Canada Aviation, this sentence does not reappear in the final rules. Therefore, no change to the final rule is necessary.

Comment 9. Request for Explanation of the Applicability of the AD's

One commenter requests an explanation of the methodology used by the FAA to determine that AD's should not be issued for Cessna and Piper multi-engine aircraft. The commenter also asks if an AD similar to the proposed rules exists for Boeing Model 737 series airplanes. The commenter indicates that Model 737 series airplanes have demonstrated abnormal and unexplained roll tendencies.

The FAA provides the following clarification for this commenter. No AD's have been issued for Piper airplanes or Boeing Model 737 series airplanes. However, as reflected in the table above, the FAA has issued an AD for Cessna Model 208 and 208B airplanes.

Most of the aircraft affected by these final rules are used primarily in regularly scheduled passenger service in the United States. However, there are some airplanes affected by the final rules that are not used in regularly scheduled passenger service. Two of these are Cessna Model 208 and 208B airplanes. Those airplanes were included in the final rules because of their accident and incident history in icing conditions. The FAA is considering an assessment of the need to prohibit all aircraft from continued flight in severe icing conditions.

Comment 10. Request To Withdraw the Proposals: Service Experience of Affected Airplanes Is Satisfactory

Several commenters indicate that the FAA should withdraw the proposed AD's in light of the satisfactory service experience of the airplanes addressed in the proposals. The commenters believe that the FAA is singling out turbopropeller-powered aircraft without any regard for the operational record of those aircraft.

Several commenters provide justification in support of this request:

- One commenter states that de Havilland airplanes have been successfully operated for over 30 years without one instance of roll upset or flight control problems.
- De Havilland indicates that de Havilland Model DHC–8 series airplanes have been in service for 11 years and have accumulated 6 million flights and 5 million flight hours without any incidents due to icing.
- De Havilland adds that de Havilland Model DHC–7 series airplanes have been in service for 18 years and have accumulated 3.7 million flights and 2.7 million flight hours without any incidents due to icing.
- Another commenter has not experienced any icing related upsets or control irregularities in its fleet of de Havilland Model DHC–8 series airplanes and Beech Model 1900 series airplanes.
- One commenter operates 21 Beech Model 1900D airplanes, 32 EMBRAER Model EMB–120 series airplanes, and 41 Aerospatiale Model ATR–42 and ATR–72 series airplanes; none of these airplanes have experienced any icing incidents this season.
- One commenter indicates that airplanes produced by Beech, EMBRAER, and Jetstream Aircraft Limited (JAL) have no record of uncommanded roll due to asymmetrical build-up of ice on surfaces beyond the deicing boots.
- One commenter notes that it has not experienced any unusual icing characteristics on its fleet of EMBRAER Model EMB–120 series airplanes and Aerospatiale Model ATR–72 series airplanes.
- Fairchild notes that in over 26 years and 15,000,000 flight hours in passenger service, there has never been a reported incident where the controllability of Fairchild Aircraft SA226 and SA227 series airplanes were in jeopardy as a result of any icing encounters (including SLD icing encounters).
- The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, states that no ice build-up behind the wing boots has ever been reported on Saab Model SF340A, SAAB 340B, or SAAB 2000 series airplanes. Additionally, the leading edge on these airplanes can be inspected easily during flight.
- Saab remarks that no roll anomaly problems in icing conditions have occurred during the extensive service experience of Saab Model SF340A and SAAB 340B series airplanes.

The FAA does not concur that the AD's should be withdrawn. The fact that an airplane has a perfect safety record in icing does not negate the fact that no airplane has been certificated for flight into SLD. The FAA has determined that a need exists to provide the flight crew with useful safety-related information regarding the limitations of the airplane concerning flight in severe icing conditions. The purpose of issuing these final rules is to provide the flight crew with such information.

One commenter, Transport Canada Aviation, requests that the proposals apply only to those airplanes that have a demonstrated history of in-service problems as a priority. The commenter states that the hazards relating to operation in icing conditions exist for all types of aircraft. (The commenter does not request that the proposed rules be withdrawn.)

The FAA does not concur with this request. As explained previously, the FAA has issued AD's for airplanes having pneumatic deicing boots and unpowered aileron controls as a priority. Airplanes having these design features are of immediate concern to the FAA because these features have been common denominators in the accident and incident history concerning flight in icing conditions and, in particular, during conditions when SLD was believed to be present. The FAA is considering the need for rulemaking to impose similar limitations on other aircraft.

Comment 11. Request To Withdraw the Proposals: Extensive Testing Revealed No Icing Problems

Several commenters request that the proposals be withdrawn because extensive testing revealed no icing problems on many different turbopropeller-powered airplanes, even though those tests likely exceeded any icing certification tests ever performed on other civil aircraft types, including large jet-powered transport category airplanes. Fokker states that Fokker Model F27 series airplanes do not demonstrate unacceptable roll control characteristics in severe icing conditions; however, Fokker submits no data to substantiate this statement.

The FAA does not concur. The FAA finds that successful completion of the roll upset evaluation is not a valid reason for withdrawing the AD's. On the contrary, if the evaluation had demonstrated anomalies, the FAA may have concluded that action beyond that required by these AD's was necessary to address the demonstrated unsafe condition. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle to determine if any design changes are necessary to prevent catastrophic control surface deflection. The testing was not a certification test to approve the airplane for flight into freezing drizzle since many of the components and their functions were not tested (e.g., pitch control, engine and propeller, performance, stall warning, windshield, air data sensors and fuel system vents). Further, freezing rain was not tested. Satisfactory demonstration of those tests does not remove the FAA's responsibility to provide a safe operating environment for the passengers and crew.

JAL comments that its airplanes are not subject to the addressed unsafe condition, and that the FAA had

concurred with this contention. JAL states that the FAA agreed that, by the controllability evaluation process, all Jetstream aircraft types had been demonstrated to be not susceptible to roll control anomalies in freezing rain or freezing drizzle conditions.

The FAA does not concur with JAL's position concerning its airplanes. All Jetstream airplanes affected by these AD's successfully completed the roll upset evaluation. However, as stated previously, no airplanes were tested in freezing rain conditions. The roll upset evaluation only addressed conditions that were believed to have existed during an accident involving a transport category airplane that occurred in October 1994. Therefore, since no airplane has been tested in all freezing rain and freezing drizzle conditions, no airplane has been demonstrated to be safe for continued flight in these conditions.

Comment 12. Request To Withdraw the Proposals: Publish Advisory Materials and Require Training

Several commenters request that, in lieu of issuing the proposed rules, the FAA publish appropriate advisory materials and require training for recognition, avoidance, and exit from severe icing encounters as part of the required severe weather training for pilots and dispatchers. Two commenters suggest that the FAA include such requirements in the operating rules specified in part 121 (''Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft'') of the Federal Aviation Regulations (14 CFR part 121). Another commenter indicates that, since jets and piston-engine aircraft also could develop ice shapes other than those tested, training should not be provided only to pilots of turbopropeller-powered airplanes, but to pilots of all aircraft. Some commenters also suggest that the FAA has successfully addressed other issues through increased awareness and training requirements, rather than by issuing AD's against every airplane type design to require revising the Limitations Section of the AFM. The commenters cite windshear, ground deicing, and clear air turbulence as examples of such issues. The commenters contend that, except where configuration changes are needed, such as in the case of windshear detection devices, improved awareness and training programs—not AD's—have been highly effective in achieving needed safety improvements.

The FAA does not concur. The FAA considers that substituting advisory material and mandatory training for issuance of an AD is not appropriate, nor would this adequately address the unsafe condition. The FAA fully supports the development of advisory materials and training. Part 121 (''Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft'') and part 135 (''Air Taxi Operators and Commercial Operators'') of the Federal Aviation Regulations (14 CFR parts 121 and 135) require that appropriate training concerning limitations such as those contained in these AD's be incorporated into air carriers' training programs. However, the FAA's position is that the development and use of such advisory materials and training alone are not adequate to address the subject unsafe condition. Currently, the AFM's specify that the affected airplanes are certificated for flight in icing conditions; however, the AFM's do not specify a method of determining whether the certification limits for those conditions have been exceeded. Consequently, the FAA finds that these AFM's must be revised to provide limitations for flight in icing conditions and to provide the flight crew with a method of determining when those limitations have been exceeded.

The FAA does not concur that amending part 121 of the Federal Aviation Regulations (14 CFR part 121) in lieu of issuing these AD's is appropriate. The FAA's position is that the appropriate place to inform the flight crew of the limitations of the airplane is in the AFM. The appropriate vehicle for mandating such AFM revisions is through issuance of an AD. In addition, an AD will ensure that the incorporation of such AFM revisions is not left to each operator's individual discretion and that flight crews receive pertinent information. The FAA may consider an assessment of the need to provide training to pilots of all aircraft types for flight in severe icing conditions.

The commenters reference windshear as an example of an issue that was handled successfully without issuance of an AD to revise the AFM's. In this case, the AFM's for all airplanes having an onboard windshear system were revised to provide the flight crew with procedures for responding when the system gives an alert. Although no AD was issued to mandate these AFM revisions, without revising the AFM, operators could not comply with the section of part 121 of the Federal Aviation Regulations (14 CFR part 121) that requires installation of the windshear detection devices. In conclusion, although AFM revisions were not required by an AD, AFM changes were mandated indirectly by a new part 121 regulation.

The commenters also reference ground deicing. Part 91 (''General Operating and Flight Rules'') of the Federal Aviation Regulations (14 CFR part 91) prohibits takeoff of an airplane unless the airframe is clear of ice; therefore, there is no need to provide additional limitations concerning the amount of ice that would be acceptable for takeoff. However, in the case of severe icing conditions addressed by these final rules, the AFM's currently allow flight in icing, but the AFM does not define when the limits of the certificated icing operation envelope have been exceeded.

Concerning the issue of clear air turbulence, issuance of an AD was not required because an airspeed limitation associated with turbulent air penetration was already in the AFM's. Therefore, in this case, the issue was addressed in the AFM as well as through awareness and training.

Comment 13. Request To Withdraw the Proposals: Incorporate Operational Issues Into a Training Curriculum

Two commenters request that the proposals be withdrawn because the proposed AD's address an operational issue that should be incorporated into an operator's training curriculum. One commenter states that pilots must be made aware of the hazards of icing and that extended operation of an airplane in any icing encounter that results in significant airframe accretion of ice is unacceptable.

The FAA does not concur that the AD's should be withdrawn based on the commenters' request. The FAA acknowledges that these AD's address an operational issue. When the requirements of these AD's are accomplished and the AFM limitations are revised, this material will be incorporated necessarily, as explained previously, into the training curriculum for the flight crews and dispatchers, if applicable, in the operator's approved training program. In this manner, pilots and dispatchers, if applicable, will be informed of the hazards of icing and that continued operation of an airplane in certain icing conditions is prohibited.

Comment 14. Request To Withdraw the Proposals: Require Training for Air Traffic Controllers and Weather Specialists

Two commenters request that the FAA implement additional policy to require training for air traffic controllers and weather specialists in the

recognition, avoidance, and procedures to exit severe icing conditions.

The FAA does not concur that these AD's should be withdrawn. However, the FAA acknowledges that implementation of these AD's may necessitate additional training beyond that which is already required for air traffic controllers and weather specialists. The FAA may consider the need to provide training concerning recognition, avoidance, and procedures for exiting severe icing conditions. However, the intent of these AD's is to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The appropriate vehicle for requiring that such information be included in the AFM's is through issuance of an AD.

Comment 15. Request To Withdraw the Proposals: Add a Caution to the AFM

One commenter requests that, in lieu of issuing the proposed AD's, a ''Caution'' should be added to the AFM to inform pilots to exit icing conditions if ice was observed to be forming aft of the protected surfaces of the wings. The commenter states that information regarding the use of flaps and the autopilot in icing conditions could also be incorporated into the AFM. The commenter does not indicate which section of the AFM should include this material.

The FAA does not concur. The FAA finds that the requirement to exit severe icing conditions and information concerning use of the autopilot during flight in those conditions must be included in the Limitations Section of the AFM. Additionally, information concerning use of the flaps during those conditions should be included in the Procedures Section of the AFM. The appropriate vehicle for requiring these changes to the AFM is through issuance of an AD.

Comment 16. Request To Withdraw the Proposals: Require Alternative AFM Limitation

One commenter requests that, in lieu of an AD, the FAA require an alternative AFM limitation that reads as follows: ''This aircraft is certified for flight into icing conditions as specified by Appendix C of Part 25. Actual icing encountered may be greater than Appendix C requirements.''

The FAA does not concur. The suggested limitation does not provide guidance as to how a pilot can identify and safely exit icing conditions that have exceeded those specified in the icing envelope in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). These AD's are intended to provide the flight crew with visual cues which indicate that icing conditions have exceeded the capabilities of the ice protection equipment, and with procedures to safely exit those conditions. No change to the AD's is necessary.

Comment 17. Request To Withdraw the Proposals: AFM Revisions Already Are Required

One commenter requests that the proposals be withdrawn because section 121.133 (''Manual Requirements: 'Preparation' '') of the Federal Aviation Regulations (14 CFR 121.133) already requires that operators incorporate revisions into the AFM's; therefore, issuance of the proposed AD's is unnecessary.

The FAA does not concur. Section 121.133 of the Federal Aviation Regulations (14 CFR 121.133) does not specifically require that AFM's be updated to current revisions. Section 121.141 (''Airplane or Rotorcraft Flight Manual'') of the Federal Aviation Regulations (14 CFR 121.141) requires that the current AFM be carried on the aircraft, but does not require incorporation of the most current revisions. Additionally, the commenter does not address the need to change the AFM's for airplanes that operate under parts 135 (''Air Taxi Operators and Commercial Operators'') and 91 (''General Operating and Flight Rules'') of the Federal Aviation Regulations (14 CFR parts 135 and 91). The appropriate vehicle for ensuring that the Limitations Section of the AFM's is changed is through issuance of an AD.

Comment 18. Request To Withdraw the Proposals: Use Existing AFM Revisions

The General Aviation Manufacturers Association (GAMA), on behalf of its members, states that some of the affected manufacturers have prepared FAA-approved revisions for the AFM's for their products. GAMA indicates that those revisions incorporate specific information regarding cues for recognizing severe icing conditions and procedures for exiting such conditions, if encountered. Therefore, if the proposed AD's are adopted, the requirements of the AD's would supersede the information operators have already incorporated into the AFM's with less appropriate information that is not type design specific.

One commenter, JAL, requests that certain existing AFM revisions for the affected Jetstream airplanes be cited in the proposed AD's for those airplanes in lieu of the content of the proposed AD's. (However, JAL does not request that the proposals be withdrawn for this particular reason.) JAL indicates that the existing AFM revisions have already been FAA-approved.

The FAA does not concur with the commenters' requests. The FAA acknowledges that the AFM revisions required by these final rules will supersede previously approved AFM revisions. However, the FAA is unaware of any AFM that addresses all of the provisions specified in these final rules, nor of any AFM that contains specific visual cues that the FAA has not included in the final rules. Even if AFM material currently exists that does contain all of the provisions of the final rules, the FAA finds that issuance of an AD would still be necessary to mandate the provisions of the AFM revisions. However, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD, for those operators having AFM's that already contain all of the provisions of the final rules.

Another commenter requests that the FAA withdraw the proposal that applies to Fairchild Model SA226 and SA227 series airplanes. The commenter states that the AFM for those airplanes currently contains visual cues to aid the flight crew in recognition of weather conditions conducive to SLD. This AFM also provides procedures for avoidance of such conditions. The commenter adds that these AFM procedures result in additional operating limitations on the aircraft with regard to severe weather conditions. The commenter believes these AFM procedures address all current FAA requirements.

The FAA does not concur that the AFM for Fairchild Model SA226 and SA227 series airplanes addresses all of the proposed requirements of the proposed rule. For example, the Limitations section of the AFM for those airplanes does not require the flight crew to exit severe icing conditions. For this reason, the FAA does not consider the AFM for Fairchild Model SA226 and SA227 series airplanes to be equivalent to the information specified in these AD's.

Comment 19. Request To Withdraw the Proposals: Develop Rulemaking To Address Airplane Certification Outside of Appendix C

Three commenters suggest that instead of arbitrarily prohibiting operation of the airplane, the FAA should undertake a well-designed research program and, if warranted, devise a rulemaking plan for certification of airplanes outside of Appendix C of part 25 of the Federal

Aviation Regulations (14 CFR part 25). One commenter also suggests possible retroactive implementation of a new Appendix C.

The FAA does not concur because of the length of time that would be required to implement the commenters' suggestion. The FAA finds that action is required prior to the commencement of the next icing season to prohibit the continued flight of airplanes in icing conditions that have been shown to be unsafe and for which the airplanes have not been certificated. However, the FAA is currently considering initiating an assessment of the need to revise Appendix C and the possibility of its retroactive implementation.

Transport Canada Aviation states that the FAA has determined that there may be a problem with the certification requirements for icing on de Havilland Model DHC–6, DHC–7, and DHC–8 series airplanes, but not the specific approval or design features of those airplanes. However, the commenter does not specifically request that the proposals be withdrawn.

The FAA does not concur with the commenter's statement. The FAA has only determined that no adequate means exists for the flight crew to determine when the icing certification limits have been exceeded. The purpose of these AD's is to provide more clearly defined procedures and limitations associated with severe icing conditions. This does not imply that the certification requirements for icing are inadequate.

Comment 20. Request To Withdraw the Proposals: Issue a ''General AD'' for All Airplane Types

One commenter requests that a ''general AD'' be issued to prohibit all airplane types from inadvertent flight into hazardous SLD conditions. Another commenter adds that if encounters with freezing rain/freezing drizzle conditions must be reported to Air Traffic Control, such reporting also should apply to flight crews of all airplane types.

The FAA does not concur with the commenter's request. For the reasons discussed earlier in the preamble of this AD, the FAA has determined that airplanes having pneumatic deicing boots and unpowered aileron controls are of immediate concern and have been addressed as a higher priority. The FAA finds that action is required prior to the commencement of the next icing season to prohibit the operation of these airplanes in icing conditions that have been shown to be unsafe and for which the airplanes have not been certificated. However, the FAA is currently considering initiating an assessment of the potential adverse effects of SLD on all airplane types.

Comment 21. Request To Withdraw the Proposals: Establish a Detailed Reporting System

One commenter requests that the FAA establish a detailed reporting system for inadvertent encounters with severe SLD. The commenter envisions a system that would provide a database for better identification of controllability issues and visual indications related to these encounters.

The FAA does not concur with the commenter's request. The FAA has been advised that the Regional Airline Association (RAA) has already established an ''Unusual Icing Reporting Program'' for the purpose described by the commenter; therefore, establishing another reporting program would duplicate this benefit.

Comment 22. Request To Withdraw the Proposals: Revise the Master Minimum Equipment List (MMEL)

Two commenters request that, instead of addressing an MMEL item in an AD [i.e., the icing detection lights referenced in paragraph (a)(1) of the proposals], the FAA should require that the MMEL be revised. A third commenter adds that the decision to change the MMEL should be made by FAA Operations Inspectors based on local conditions. One commenter states that the prohibition of dispatch with any inoperative ice detection lights would preclude any efforts by an operator to enhance safety by installing a second set of bulbs. The commenter adds that under this proposed rule, this type of action would be penalized by simply doubling the chances of a burned out bulb grounding the aircraft. In practice, if one were to add a fully redundant set of bulbs, it would enhance safety by allowing the equivalent of the current illumination level even with a bulb burned out.

The FAA does not concur with these requests. FAA Operations Inspectors are not authorized to make MMEL revisions. The FAA has determined that it is prudent to address the icing detection lights in these final rules to ensure uniform and immediate application of the requirements of the AD's. Concerning the example provided by one of the commenters, if an operator chooses to add a fully redundant set of bulbs, that operator should request approval of an alternative method of compliance in accordance with the provisions of this final rule.

Although Transport Canada Aviation does not request that the proposals be withdrawn, it requests a revision to the requirement that all icing detection lights must be operative. For de Havilland Model DHC–7 and DHC–8 series airplanes, the commenter requests that the requirement be changed to mandate that at least one outboard and one inboard inspection light be operative prior to flight into known or forecast icing conditions at night. Since the MMEL contains a provision that a suitable lamp/light of adequate capacity be available, this is considered acceptable in conjunction with other indications of freezing rain or freezing drizzle. Similarly, for de Havilland DHC–6 series airplanes, the requirement should be revised to require a suitable lamp/light for dispatch at night with one wing inspection light inoperative.

The FAA does not concur. The FAA has determined that the justification provided by the commenter is not adequate to enable the FAA to determine if the proposed changes are acceptable. During severe icing conditions, the flight crew's workload may be high, and there may be no opportunity to use the portable lamp/light, which, in itself, may create disorientation in the cockpit due to adverse reflections from the glass. The FAA's intent in having all inspection lights be operative at night is to provide the flight crew the best possible visibility of the airframe. However, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of these AD's, provided that adequate justification is presented to support such a request.

Comment 23. Request To Withdraw the Proposals: Certify Airplanes for Flight in Conditions Outside Appendix C

One commenter implies that the airplanes affected by the proposed rules must be rectified to a level beyond the present certification requirements for flight in icing.

The FAA does not concur. The final rules do not require certification of the airplane beyond the current certification requirements for flight in icing specified in Appendix C. These AD's simply provide the flight crew with visual cues which indicate that icing conditions have exceeded the capabilities of the ice protection equipment, and with procedures to safely exit those conditions.

One commenter requests that the proposal for de Havilland DHC–6 series airplanes be withdrawn because this airplane model is type certificated in Canada, which is a country with a higher standard than the United States for operating in icing conditions.

The FAA does not concur. This commenter did not submit data to the FAA to substantiate that the airplane has been shown to be safe for flight outside the icing certification envelope specified in Appendix C. Additionally, the FAA is unaware of any foreign civil aviation authority having certification requirements for icing conditions that are outside of the icing certification envelope used in the United States.

Comment 24. Request To Withdraw the Proposals: Proposals Prohibit Takeoff or Approach in ''Light Freezing Drizzle'' Conditions

One commenter requests the proposals be withdrawn because the proposed limitation would prohibit takeoff or approach when ''light freezing drizzle'' conditions that are caused by light precipitation falling through a thin layer of cold surface air below warmer air above are reported on the surface. The commenter maintains that with accomplishment of the appropriate ground deicing precautions prior to takeoff, no hazard to the operation of the airplane is posed.

The FAA does not concur that the AD's should be withdrawn for this reason. These AD's do not affect any existing regulations or FAA-approved operating procedures related to takeoff, dispatch, or release of an airplane in icing conditions, nor do these AD's prohibit operation in specific meteorological conditions. These AD's only prohibit remaining in icing conditions when certain visual cues are present on the airplane. Operators must comply with existing rules that require an airplane to be free of ice prior to takeoff. Therefore, takeoff in ''light freezing drizzle'' would only be prohibited by existing regulations or FAA-approved operating procedures, not by these AD's. As explained previously, the FAA considers that landing the airplane when freezing rain/freezing drizzle conditions are encountered would, in many cases, be the most expeditious method of exiting the conditions. Such landing would be in compliance with the limitation that requires the flight crew to exit the severe icing conditions.

Comment 25. Request To Withdraw the Proposals: Proposals Leave Unanswered Questions

One commenter contends that the proposals leave unanswered questions. The commenter alleges that without the answers to those questions, affected parties are deprived of the ability to provide informed comments and, thereby, are ''denied their rights under the Administrative Procedures Act (APA) to comment on the proposed rules.'' Specifically, the commenter asks:

—What is unusual icing?
—Does the pilot, Air Traffic Control, dispatch, or the FAA determine when the conditions exist?
—What is splatter effect?
—Where are the operating instructions incorporated—in the AFM, training manuals, or some other document?

The FAA infers from the commenter's remarks that the commenter requests the proposed AD's be withdrawn because informed comments could not be provided.

The FAA does not concur that the AD's should be withdrawn on this basis. The FAA does not agree that the public has been deprived of the ability to provide informed comments, as required by the APA. In general, the APA requires that notice of the terms or substance of a proposed rule be published in the Federal Register. The purpose of this requirement is to ensure that federal agencies thoroughly consider all information and opinions submitted by the public before any requirements are imposed. Notice is intended to improve both the quality of the regulations and their acceptability to the public. The FAA finds that none of the questions raised by the commenter identify areas in which the commenter has not been provided a reasonable opportunity to comment. The fact that the commenter raises questions suggests that the commenter considers a need for further clarification. Even if the commenter is correct in that these questions require clarification, that fact in itself is a comment that can be addressed properly by simply clarifying terms. The fact that clarification is necessary does not mean that the public has been denied reasonable opportunity to comment.

In response to the commenter's questions, the FAA provides the following clarification. The term ''unusual icing'' did not appear in the proposed rules. However, the phrase ''unusually extensive ice'' is referenced in paragraph (a)(1) of the final rules. [This reference appears in paragraph (a)(2) of the final rule for Aerospatiale airplanes.] ''Unusually extensive ice'' accrued on the airframe in areas not normally observed to collect ice is a visual cue that is subject to interpretation by the flight crew; therefore, a specific definition of ''unusually extensive ice'' cannot be provided.

These AD's address changes to AFM limitations, which pertain to the pilot since the pilot is responsible to look for the visual cues defined in the AD's. Therefore, the pilot determines when severe icing conditions exist.

The terminology ''splatter effect'' did not appear in the proposed rules. The FAA infers from the commenter's question that the commenter is referencing terminology used in paragraph (a)(2) of the proposed AD's. ''Droplets that splash or splatter on impact at temperatures below +5 degrees Celsius OAT'' is a visual cue that was included in the proposed AD's as a method of identifying severe icing conditions.

Concerning incorporation of operating instructions, these final rules specify that the AFM's be revised. The AD's do not specify that any other manuals or documents be revised. However, information that is included in the AFM as a limitation is necessarily included in the training program.

Comment 26. Request To Clarify Scope of Icing Conditions Addressed

Transport Canada Aviation suggests that the proposals, which address only freezing rain/freezing drizzle conditions, are not adequate to cover all hazards related to operation of aircraft in icing conditions. The commenter makes no specific request.

The FAA concurs that these AD's do not address all icing related hazards. The FAA's intent is to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing the flight crews with more clearly defined procedures and limitations associated with such conditions. However, no change to the final rules is necessary.

Comment 27. Request To Expand the Applicability of the AD's

One commenter, the CAA, suggests that the ''coverage'' of the proposals should be stated clearly. The CAA believes that a restriction to those operations in ''regularly scheduled passenger service'' is not warranted for a safety issue as it does not cover cargo, charter, or private operations. The commenter does not specify which airplane models should be addressed. The FAA infers from the commenter's remarks that it requests that the proposed AD's be applicable to other airplane models that are used in cargo, charter, or private operations that may have been excluded from the applicability of these AD's.

The FAA does not concur that the applicability of these AD's should be expanded to include additional airplane models used primarily in cargo, charter, or private operation. The FAA is currently considering the need for

additional rulemaking to address other airplane models having pneumatic deicing boots and unpowered aileron controls that are used in these types of service that were not addressed by these AD's. Additionally, the applicability of these final rules indicates that the AD's apply to ''all'' of the airplane models identified, certificated in any category. This means that the AD's apply to all of the affected airplanes, regardless of how those airplanes are operated (including passenger service, cargo, charter, or private operation).

Comment 28. Request for Design Changes to the Airplanes

One commenter requests that the FAA require design changes to the airplanes, which, when accomplished, will allow elimination of the AFM limitations. The commenter states that abnormal roll control anomalies could be eliminated by design changes that prevent any ice shapes from forming by using supplemental ice protection added to existing pneumatic boots or other ice protection installations. The commenter concludes that, given this added protection, restricting flight in freezing drizzle could be reduced to allow exposure to these atmospheric conditions for a reasonable time and would not require immediately exiting these conditions when encountered as presently stipulated.

The FAA does not concur that it should require design changes to airplanes in these AD's. Currently, the FAA is unaware of any design changes that would allow elimination or reduction of the AFM limitations specified in these AD's. However, if such design changes are developed, approved, and become available, the FAA would consider additional rulemaking to require such changes. The FAA finds that even if the ice protection system prevented the formation of ice shapes in front of the ailerons when the airframe is exposed to certain freezing drizzle conditions, other meteorological conditions still exist (e.g., freezing rain) for which the airplane would not be certificated.

Comment 29. Request for More Specific Visual Cues

One commenter requests that the FAA provide more specific visual cues for identification of freezing rain or freezing drizzle conditions. The commenter states that the generic visual cues provided in the proposed AD's are not adequate for aircraft types that frequently operate in and encounter SLD conditions. For example, ice could be forming on the upper wing and not the lower wing; therefore, looking at the lower wing would not be a reliable visual cue. Two commenters suggest that specific visual cues be provided for each airplane model. One of these commenters states that subjective cues may be of limited benefit if the pilot's experience with icing is inadequate. The other commenter adds that subjective visual cues will result in varying interpretations (i.e., some unnecessary course changes in altitudes or service interruptions caused by overly conservative interpretations). Transport Canada Aviation does not request more specific visual cues; but states that ''unusually extensive ice,'' ''normally observed,'' and ''farther back than normally observed'' are all variable terms that are largely dependent on flight crew experience. The commenter contends that limitations and procedures described using these terms will not be consistently interpreted. In addition, Transport Canada Aviation states that ice on the lower wing surface aft of the protected area, by itself, is unlikely to cause a hazard. Moreover, the presence or absence of such ice cannot be used as an indication of any hazardous accumulation on the upper wing surface or on the horizontal stabilizer.

The FAA does not concur with the commenters' request to provide more specific (or airplane-specific) visual cues. The FAA agrees with the commenters' assertion that, under certain circumstances, examination of the undersurface of a high wing may not be reliable. The FAA also agrees that other cues, such as unusually extensive ice accrued on the airframe in areas not normally observed to collect ice and accumulation of ice on the propeller spinner farther aft then normally observed, are subjective and that reliance on pilot judgment and experience is necessary in such cases. Additionally, the FAA fully supports the development and use of airplane-specific cues by operators and manufacturers. Unfortunately, no commenter provided airplane-specific cues during this comment period.

In summary, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Transport Canada Aviation states that the term ''protected area'' may not be readily recognizable by the flight crew; for example, not all of a deicing boot surface is ''protected area.'' [This terminology appears in the second visual cue (in the proposals for airplanes other than Aerospatiale airplanes) and in the autopilot limitation in paragraph (a)(1) of the proposals. For Aerospatiale airplanes, this terminology appears in the secondary indications in paragraph (a)(1) of the proposal.] The FAA infers that the commenter requests that more specific language than ''protected area'' be used.

The FAA does not concur that this terminology should be revised. The FAA considers that a pilot understands that a portion of the deicing boot would be considered to be unprotected. Therefore, no additional clarification or definition of the term ''protected area'' is necessary.

Comment 30. Request To Reference Clear Icing Conditions and Clear Component of Mixed Icing Conditions

One commenter also asks that all references to freezing rain and freezing drizzle environments and visual cue identification reference clear icing conditions and the clear component of mixed icing conditions. According to the commenter, mixed icing conditions can contain areas of freezing rain and/or freezing drizzle. The commenter notes that mixed icing has taken on two different definitions within the aviation community—the ''engineering'' definition (which is defined in an FAA icing handbook) and the definition pilots use (which includes areas of clear and rime ice). The commenter states that a clear definition of these conditions is needed. The commenter adds that only pilot reports can show that freezing rain/freezing drizzle exists because forecasting of these conditions is inadequate. The commenter indicates that while the Aerospatiale airplanes have side window cues that will accurately identify freezing rain or freezing drizzle, pilots of other airplanes without such a sophisticated cue may erroneously report mixed icing.

The FAA does not concur. The FAA acknowledges that freezing rain and freezing drizzle may be reported as clear/mixed icing conditions. However, the flight crew must exit icing conditions that produce the visual cues specified in the final rules. Exiting the icing conditions is not dependent upon the terminology used to describe the conditions. Therefore, the FAA has determined that it is not necessary to include references to clear icing

conditions and the clear component of mixed icing conditions. In addition, the FAA has determined that including a discussion in these AD's of the phenomenon of mixed icing conditions as it relates to the current state-of-the-art weather forecasting would be premature because no clear definition of this phenomenon has been agreed upon among the aviation community. The FAA is currently considering an assessment during which various icing-related subjects, including mixed icing conditions, would be addressed.

Comment 31. Request for Research and Use of Wing-Mounted Ice Detectors

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

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required. The specifications for automatic detectors having the capabilities to differentiate among freezing rain, freezing drizzle, and other icing conditions have not been determined. However, if such ice detectors are developed, approved, and become available, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 32. Request to Limit the Applicability of the AD's

One commenter requests that the applicability of the proposals be limited to airplanes having NACA 430xx airfoils. The commenter asserts that the unusual pressure peak on the NACA 430xx airfoils at 9 percent chord caused the ice ridge to form at that point, which resulted in the accident involving a Aerospatiale Model ATR–72 series airplane. The commenter states that ''the accident was caused by the poorly designed, unusual, and fortunately rarely used NACA 430xx airfoils used on this airplane.''

The FAA does not concur with the commenter's request to limit the applicability of the AD's. First, the National Transportation Safety Board (NTSB) has not yet made an official finding of the probable cause of the accident referenced by the commenter. Therefore, the FAA cannot assume that airplanes having NACA 430xx airfoils are more susceptible to the addressed unsafe condition than those airplanes that do not have this type of airfoil. Second, the FAA has examined the data submitted by the commenter, and disagrees with the commenter's assertion concerning the formation of ice ridges. The formation of ice ridges depends on many factors. Ice ridges have been observed to form in areas where there is no pressure (commonly, ''suction'') peak. However, the impingement location of large droplets is more relevant to the development of ice ridges than the particular pressure distribution. The commenter does not address the fact that, regardless of the type of airfoil on an airplane, a substantial sharp edge protuberance in the vicinity of the suction peak can have adverse consequences to the aerodynamic performance of the airfoil. Regardless of the cause of location of ice formations, prevention or removal of the ice is certainly an acceptable remedy for such conditions, should those conditions occur. For example, Aerospatiale extended the deicing boots to prevent the formation of adverse ice ridges.

Comment 33. Request for Approval of Improved Deicing Equipment for Aerospatiale Airplanes

ATR requests that paragraph (b) of the proposed rule for Aerospatiale airplanes be revised to indicate that installation of any improved version of deicing equipment that is approved by the FAA is acceptable for compliance with the requirements of that paragraph. The commenter provides no justification for its request.

The FAA does not concur with the commenter's request to revise the AD. However, if an improved version of deicing equipment is developed, approved, and available, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of the AD.

Comment 34. Request for Re-Evaluation of Modified Deicing Boots on Aerospatiale Airplanes

In response to the proposal for Aerospatiale airplanes, one commenter requests that the new, enlarged deicing boots that are required to be installed on these airplanes must be re-evaluated before total confidence in the modified boots is warranted. The commenter asserts that no test data exist to show that the modified boots will preclude the problem of large droplets outside of Appendix C. The area of exposure outside of Appendix C is essentially open-ended, and only limited testing within a narrow range of droplet diameters was conducted. Additionally, the test conditions that existed during the tanker testing conducted at Edwards Air Force Base, which was intended to be a ''before modification/after modification'' validation program, were not identical. The commenter adds that no modification will ensure that any airplane is safe while flying in icing conditions outside those specified in Appendix C.

The FAA does not concur with the commenter's request for a re-evaluation of the modified deicing boots. The modified deicing boots for these airplanes were subjected to an extensive certification program by both the FAA and the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France. FAA approval of the modified boots was based on engineering analyses, wind tunnel testing, flight testing in natural icing conditions, and a validation program involving a United States Air Force icing tanker. This testing verified that the modified boots continue to perform the intended function within the Appendix C icing envelope. In addition, the extended deicing boots were shown to adequately protect the airplane from the larger, supercooled water droplets that are believed to have existed in the area at the time of the accident in October 1994.

It should be noted, however, that it is not intended that the modified boots provide protection in all possible icing conditions, including freezing rain/freezing drizzle. However, the FAA considers that the combination of the enlarged deicing boots, the AFM operational procedures and restrictions, and the visual cues which indicate entry into freezing rain/freezing drizzle conditions provides for an enhanced level of safety during inadvertent flight in these conditions.

Comment 35. Request for Formal Weather Forecasting System for Freezing Rain/Freezing Drizzle

One commenter supports a requirement to establish a formal system to provide forecasts of freezing rain/freezing drizzle conditions, as proposed in paragraphs (b) and (c) of the original proposed rule for Aerospatiale airplanes. [This proposed requirement was removed from the subsequent supplemental notice of proposed rulemaking (NPRM) issued for these airplanes in January 1996.] The commenter states that such a requirement should remain in effect until forecasting tools are developed or detection methods are established to prevent dispatch or operations in conditions outside those specified in Appendix C. The commenter states that

the efficacy of the deicing boots has not been shown completely nor documented; therefore, avoidance of freezing rain/freezing drizzle is paramount to safety of flight.

The FAA does not concur that such a requirement is necessary. The FAA agrees that such a system would enhance the safety of flight operations. However, there is no evidence that lack of a system with such specialized features would lead to an unsafe condition. Forecasts of freezing rain/freezing drizzle are a normal part of pre-flight weather briefings. The FAA is aware, however, of serious limitations for such a system to provide accurate and timely forecasts of these conditions during flight in areas that are removed from weather reporting stations. Quite often, the only indication of the existence of severe icing conditions is from pilot reports or other direct observations.

Research is underway currently in industry and the academic community to address shortcomings in the forecasting of severe icing conditions. The FAA may consider further rulemaking if advancements in weather forecasting provide for a reliable method to predict the occurrence of freezing rain/freezing drizzle conditions during flight or in areas removed from direct observations.

Comment 36. Request To Approve Earlier Service Bulletin Revisions

One commenter to the proposed rule for Aerospatiale airplanes requests that the proposed AD be revised to specify that earlier revisions of service bulletins are acceptable for compliance with the requirements of the proposed rule. The commenter makes this request so as to eliminate the need to apply for approval of alternative methods of compliance when accomplishing service bulletin revisions other than those specified in the proposed rule.

The FAA does not concur that earlier revisions of the referenced service bulletins should be cited in the final rule for Aerospatiale airplanes. However, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of the AD, provided that adequate justification is presented to support such a request.

Additionally, the FAA has revised the revision levels specified for certain service bulletins because those revision levels were omitted inadvertently from paragraph (b) of the proposed rule for Aerospatiale airplanes. That final rule has been revised to indicate that certain modifications are to be accomplished in accordance with Revision 1 of Aerospatiale Service Bulletins ATR42–57–0043, ATR72–57–1015, and ATR72–57–1016. The correct date for Revision 1 of those service bulletins (April 10, 1995) was specified in the proposal for the affected airplanes.

Comment 37. Request To Revise Referenced Service Bulletins

One commenter to the proposal for Aerospatiale airplanes suggests that service bulletin revisions should contain a statement indicating that the revision has no effect on previously modified airplanes. The commenter provides no justification for this request.

The FAA acknowledges that many service bulletins do contain the suggested phrase as an aid to operators that may already have accomplished an earlier service bulletin revision. In fact, if a particular service bulletin is specified in an AD and that service bulletin is revised, the FAA routinely determines whether the service bulletin revision adequately addresses the unsafe condition specified in the AD; if necessary, the FAA amends the AD to cite the later service bulletin revision.

Comment 38. Request To Revise Visual Cue: Ice on Side Window

One commenter suggests revised wording for the first visual cue specified in paragraph (a)(1) of the proposed rule for Aerospatiale airplanes, as follows: ''Freezing rain and freezing drizzle are characterized by ice covering all or a substantial part of the unheated portion of either forward side window and/or water splashing or streaming on the windshield or the side window when in freezing or near freezing temperatures.'' The commenter states that the present wording implies that ice will always appear on the side window; however, this is not the case.

The FAA does not concur with the commenter's request. The commenter's revised wording suggests that water splashing or streaming on the windshield or the side window would be a primary cue used to determine when severe icing conditions are present. The FAA does not concur that water splashing or streaming on the windshield or the side window would be a reliable cue in itself. However, this cue may be used as a supplemental cue to the primary cue of ice accruing on the side window. No change to the final rule for Aerospatiale airplanes is necessary.

Comment 39. Request To Remove Visual Cue: Unusually Extensive Ice Accretion

One commenter, Saab, requests that if the FAA does not withdraw the proposed AD's, paragraph (a)(1) of the proposal for Saab SF340A and SAAB 340B series airplanes should be revised. The commenter suggests that the first visual cue that appears in that paragraph, which relates to unusually extensive ice accretion, be removed from the proposal for those airplanes. Saab indicates that critical ice is believed to be ice that builds up beyond the protected surfaces on the wing. On Saab Model SF340A and SAAB 340B series airplanes, the pilot has a good view of the outer wing and the propeller spinner. Unusually extensive ice in other areas may or may not be significant in determining whether freezing rain or freezing drizzle is present; however, the primary visual cue for these airplanes is ice on the spinner/outer wing.

In light of Saab's remarks, the FAA concurs that the visual cue addressed by the commenter should be removed from the final rule for Saab Model SF340A and SAAB 340B series airplanes. (That visual cue remains in place for Saab Model SAAB 2000 series airplanes.) Paragraph (a)(1) of that final rule has been revised accordingly.

A second commenter, Raytheon, requests that the same visual cue be removed from the proposal for Beech airplanes. Raytheon indicates that it does not believe that observation of this visual cue indicates that the airplane has exceeded the Appendix C icing envelope with respect to Beech airplanes. Therefore, the cue specified in the proposal would be irrelevant in an AFM for these airplanes.

The FAA does not concur with Raytheon's request. The commenter has not submitted data to warrant removal of the visual cue. No change to the final rule for Beech airplanes has been made.

Comment 40. Request To Remove Visual Cue: Accumulation of Ice on Wing Surfaces

JAL requests that the FAA remove the generic information contained in the visual cue concerning accumulation of ice on the wing surfaces from the proposals for Jetstream airplanes. JAL indicates that, for its airplanes, the appropriate visual cue is the accretion of ice behind the protected area of the wing upper surface (not the wing lower surface).

The FAA concurs partially. The FAA does not agree that the visual cue should be removed from the final rules for Jetstream airplanes. However, the FAA finds that this particular visual cue should be airplane-specific. Therefore, the FAA has customized paragraph (a)(1) of the final rules for all affected airplanes to specify whether accumulation of ice is observed on the

upper or lower surface of the wing, depending upon whether the airplane is a high- or low-wing airplane. [Operators should note that, for Aerospatiale airplanes, the cue was customized in paragraph (a)(2) of the final rule.]

Comment 41. Request To Revise Visual Cue: Accumulation of Ice on Propeller Spinner

One commenter requests that the FAA revise the visual cue concerning accumulation of ice on the propeller spinner, as specified in paragraph (a)(1) of the proposals. For consistency, the commenter requests that the word ''back'' be replaced with ''aft.''

The FAA concurs with the commenter's request. The final rules have been revised to change the visual cue to read as follows: ''Accumulation of ice on the propeller spinner farther aft than normally observed.'' [Operators should note that, for Aerospatiale airplanes, this change appears in paragraph (a)(2) of the final rule.]

Comment 42. Request To Remove Visual Cue: Accumulation of Ice on Propeller Spinner

One commenter, JAL, requests that the FAA remove the visual cue concerning accumulation of ice on the propeller spinner from the proposals for Jetstream airplanes. JAL indicates that on Jetstream Model ATP airplanes and Model 748 series airplanes, the propeller spinner is not visible from the flight deck. On Jetstream Models 3101, 3201, and 4101 airplanes, the propeller spinner is visible from the flight deck, but flight test experience indicates that there is no unique correlation between the extent of spinner ice accretion and the existence of freezing rain/freezing drizzle conditions.

The FAA concurs partially. The FAA concurs that since the propeller spinner is not visible from the flight deck on Jetstream Model ATP airplanes and Model 748 series airplanes, the visual cue can be removed from paragraph (a)(1) of the final rules for these models. The FAA does not concur that this visual cue should be removed from the AD's for Jetstream Models 3101, 3201, and 4101 airplanes. The commenter did not submit data to substantiate its assertion that flight test experience indicates there is no unique correlation between the extent of spinner ice accretion and the existence of freezing rain/freezing drizzle conditions. Therefore, it is uncertain if the commenter's flight test airplane was equipped with instrumentation that would allow the detection and/or measurement of droplets outside the Appendix C conditions, and if the airplane had flown into icing conditions containing freezing rain or freezing drizzle.

Comment 43. Request To Remove Limitation to Immediately Exit Freezing Rain/Freezing Drizzle

Saab requests that the FAA remove a sentence from paragraph (a)(1) of the proposals that requires the pilot to immediately exit freezing rain or freezing drizzle conditions by changing altitude or course. This commenter points out that the first limitation contained in the proposal for Saab airplanes (''Flight in meteorological conditions described as freezing rain or freezing drizzle, as determined by the following visual cues, is prohibited . . .'') already prohibits flight in these conditions, and the pilot should respond accordingly. Raytheon believes a conflict exists between using observations of ice accretion, as required by paragraph (a)(1) of the proposed rules, and the ''determination'' of certain meteorological conditions.

The FAA concurs partially. The FAA does not agree that the sentence discussed by Saab should be removed from paragraph (a)(1) of the final rules. As explained previously, the first limitation in paragraph (a)(1) of the final rules has been revised to read: ''During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exist, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.'' (This wording is slightly different in the final rule for Aerospatiale airplanes because only one visual cue is provided.) The FAA finds that this revision to the final rules addresses the commenters' concerns with regard to the proposed limitations.

One commenter poses various questions concerning the last sentence of the first instruction listed in the procedures for exiting the freezing rain/freezing drizzle environment in paragraph (a)(2) of the proposals. (That sentence reads as follows: ''Asking for priority to leave the area is fully justified under these conditions.'')

—What does the term ''priority'' provide a pilot when asking for priority to leave icing conditions?

—What if there were three simultaneous requests for ''priority?''

—What Air Traffic Control procedures exist for treating an immediate request for ''priority?''

—Where is the term ''priority'' defined?

The commenter states that confusion over terms that have not been defined clearly by the FAA has partially resulted in accidents and incidents. However, the commenter does not cite a specific case in which this occurred.

The FAA has re-examined the last sentence of the first instruction listed in the procedures for exiting the freezing rain/freezing drizzle environment in paragraph (a)(2) of the proposals. The FAA has reconsidered use of the term ''priority.'' The FAA finds that more appropriate language that would be understood clearly by the flight crew and Air Traffic Controllers should be used in that instruction. Existing training for flight crews and Air Traffic Controllers addresses priority handling of airplanes. However, the FAA will issue additional information for Air Traffic Controllers to further clarify priority handling of airplanes in severe icing conditions. The FAA finds that the limitations specified in paragraph (a)(1) of the final rules will result in the pilot taking appropriate steps to exit the icing conditions. Therefore, the FAA finds that the sentence questioned by the commenter may be removed from the final rules without affecting safety. Accordingly, the FAA has removed that sentence from the final rules.

Additionally, in order to use terminology in the procedures for exiting the severe icing environment that is consistent with the terminology used in the revised limitation and to simplify certain language, the FAA has revised the first instruction of the procedures. The revised instruction reads as follows: ''Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.''

Comment 44. Request To Change the Note Concerning the Autopilot

One commenter, ATR, requests that the FAA revise the second note in paragraph (a)(1) of the proposal for Aerospatiale airplanes. As proposed, ATR believes the last sentence of the note is too restrictive. ATR proposes the following: ''The autopilot may mask tactile cues . . . characteristics. Therefore, when any ice is visible on the airplane, the pilot should consider flying manually for short periods in order to check the absence of any anomaly.''

Two commenters request that the FAA remove a similar note concerning the autopilot from the proposals for airplanes other than Aerospatiale

models. One of the commenters, JAL, states that the note contains advisory information and should not appear in the Limitations Section of an AFM.

The FAA concurs with ATR's comment that the last sentence of the note is too restrictive; that sentence has been removed from the final rules for all airplanes. However, the FAA does not agree with JAL's contention that the explanation of the relationship between the autopilot and the masking of tactile cues is inappropriate for insertion in the Limitations Section of an AFM. On the contrary, the FAA finds that inclusion of such information will increase the level of understanding and, consequently, will increase the level of safety.

In light of this, the FAA finds that the note may be removed from paragraph (a)(1) of the final rules for all airplanes; however, the information contained in the first sentence of that note has been combined with the autopilot limitation in paragraph (a)(1) of the final rules. The final rules have been revised accordingly.

Comment 45. Requests To Remove Autopilot Limitation

Saab requests that the FAA revise the second limitation that appears in paragraph (a)(1) of the proposal for Saab airplanes. As proposed, this limitation indicates that use of the autopilot is prohibited when any ice is observed forming aft of the protected surfaces of the wing, or when unusual lateral trim requirements or autopilot trim warnings are encountered. Saab asks that this autopilot limitation be modified to take into consideration the autopilot system design on these airplanes, which provides out-of-trim warnings; therefore, the autopilot can be used up to the point where a warning is triggered. Saab adds that the triggering point is early enough for the warning to be taken, should the reason be ice build-up beyond the protected surfaces. Additionally, there is no automatic disconnect if the autopilot servo reaches its limit torque, which would prevent any surprise to the pilot during an out-of-trim condition.

Another commenter, EMBRAER, requests that use of the autopilot not be limited for EMBRAER Model EMB–120 series airplanes. The commenter states that flight tests have demonstrated the safe ability of these airplanes to depart a freezing rain/freezing drizzle condition with the autopilot on.

Raytheon also objects to the autopilot limitation. Raytheon suggests that a better approach is to inform the pilots of the nature of ice accretion, and then let the pilots decide when to use the autopilot. The commenter believes that prohibiting use of the autopilot when any ice is observed aft of the protected surfaces of the wing is a rigid requirement that takes away a valuable aid to the flight crew when it may be needed most. Raytheon states that there is no evidence that the autopilots on Beech aircraft would mask an icing related control problem. The commenter points out that tests on those aircraft disclosed no icing related control problem to mask. The commenter adds that trying to anticipate every situation with an absolute prohibition may lead to other unsafe conditions.

The FAA does not concur that the autopilot limitation should be modified or removed from the AD's for any of the affected airplanes. The limited amount of time the pilot is using manual controls instead of the autopilot would not result in an unsafe condition. In normal operational environments and conditions, the autopilot is a valuable aid that reduces the workload of the flight crew. However, under abnormal conditions (ice aft of the protected surfaces, unusual lateral trim, or autopilot trim warnings), the autopilot will mask the build-up of large or unusual control forces in one or more axes. Therefore, for the short period of time necessary to exit severe icing conditions, the safest course of action would be manual pilot control. Even if an autopilot does not automatically disconnect, the pilot may choose to disconnect the autopilot and could then be faced unexpectedly with unusual control forces. These reasons also still hold true with airplanes that have been flight tested with the ice shapes.

Since the issuance of the proposed rules, the FAA has re-examined the autopilot limitation specified in paragraph (a)(1) of the proposals. The FAA recognizes that clarification is necessary with regard to its intent concerning that limitation. That limitation, as specified in the proposals, states that use of the autopilot is prohibited when any ice is observed forming aft of the protected surfaces of the wing, or when unusual lateral trim requirements or autopilot trim warnings are encountered. However, the FAA's intent concerning that limitation is that the autopilot be disconnected when the flight crew observes any of the visual cues identified in paragraph (a)(1) of the AD's. The need to disconnect the autopilot arises when an amount of ice accumulates that indicates the limits of the ice protection equipment have been exceeded, regardless of the means by which the flight crew becomes aware of the accumulation of ice.

Additionally, the FAA acknowledges that the autopilot limitation, as proposed, could be misinterpreted to mean that the autopilot must be disengaged when unusual lateral trim or autopilot trim warnings are encountered, regardless of whether the airplane is in icing conditions. However, the FAA only intended that the autopilot limitation apply while the airplane is in icing conditions.

In light of this, the FAA has determined that the autopilot limitation contained in paragraph (a)(1) of the final rules must be revised. The FAA has changed that limitation to read as follows: ''Since the autopilot may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.'' (This wording is slightly different in the final rule for Aerospatiale airplanes because only one visual cue is provided.) This revision more accurately reflects the FAA's intent and is, therefore, a logical outgrowth of the proposed rules.

Comment 46. Request To Insert Procedures in Limitations or Abnormal Procedures Section of AFM

One commenter suggests that operations in icing conditions that exceed the capability of the airplane should be described in the Limitations or Abnormal Procedures Section of the AFM, rather than in the Normal Procedures Section, as specified in paragraph (a)(2) of the proposals.

The FAA concurs partially. The FAA agrees that the Abnormal Procedures Section may be an appropriate location for the procedures for exiting severe icing conditions. However, the FAA does not agree that such operational procedures should appear in the Limitations Section of the AFM since such procedures are not limitations. Additionally, upon further review, the FAA finds that AFM's may have neither an Abnormal Procedures nor a Normal Procedures Section. Consequently, to provide operators with flexibility as to where the procedures specified in paragraph (a)(2) should be incorporated in the AFM, that paragraph has been revised to require that the ''Procedures'' Section of the AFM be revised. This means that the procedures may be inserted in the ''Normal Procedures,'' ''Abnormal Procedures,'' or other ''Procedures'' Section of the AFM, as appropriate.

Comment 47. Request To Remove Duplicate Visual Cues

Two commenters indicate that certain visual cues specified in paragraph (a)(2) of the proposals are duplicated in the ''Warning'' that is also contained in that paragraph. One commenter states that the duplication of text reduces the impact of the message. Another commenter questions whether the visual cues and procedures for exiting the icing environment are intended to be part of the AFM material. The FAA infers from these remarks that the commenters request that duplicate text be removed.

Transport Canada Aviation requests that the ''Warning'' be removed because indications of the possible hazard are progressive and may not necessarily require immediate action from the pilot. The commenter suggests that renaming this as a ''Caution'' may be more appropriate.

The FAA concurs partially. The FAA agrees that duplicate text should be removed from the ''Warning'' section that appeared in the proposals. The FAA finds that only one unique instruction appears in the ''Warning'' in paragraph (a)(2) of the proposals: ''If the flaps are extended, do not retract them until the airframe is clear of ice.'' Therefore, the FAA has added that instruction to the procedures for exiting the severe icing environment in paragraph (a)(2) of the AD's. The remainder of the ''Warning'' section that appeared in the proposals has been removed from the final rules.

Comment 48. Request for Revision to Instruction for Flaps Extension

Saab requests that the FAA revise an instruction contained in the procedures for exiting the freezing rain/freezing drizzle environment in paragraph (a)(2) of the proposals. That instruction indicates to ''Avoid extending flaps during extended operation in icing conditions * * *.'' Saab suggests the following: ''Do not extend flaps when holding in conditions where ice is accreting on the airframe.'' Further, the commenter asks that this instruction be inserted as a ''caution'' in the Limitations Section of the AFM, rather than into the Normal Procedures Section, as specified in the proposed rule. Saab believes that it is imperative that the flaps not be extended in such cases. Inserting the instruction into the Limitations Section, rather than the Normal Procedures Section, would add strength to the requirement.

Another commenter states that this same instruction appears to be in conflict with previously approved AFM revisions which state, ''Sustained flight in icing conditions is prohibited with flaps extended.'' However, the commenter does not provide a suggestion for rewording this instruction.

The FAA concurs that the procedures related to extension of the flaps can be reworded somewhat. For clarification purposes, the FAA has replaced the word ''avoid'' with ''do not'' in that procedure in paragraph (a)(2) of the final rules. This revision eliminates the conflict discussed by the second commenter. However, the FAA does not agree that revising the remainder of the instruction, as suggested by Saab, provides any additional clarification.

The FAA agrees that inserting the revised wording in the Limitations Section of the AFM, rather than in the Normal Procedures Section, would be acceptable; however, this would expand the scope of the originally proposed rules and would necessitate reopening the comment period to provide additional opportunity for public comment. In light of the time required to complete the rulemaking process in advance of the upcoming icing season and in consideration of the safety issues addressed by these final rules, the FAA finds that the AD's should be issued without additional delay. However, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD, to include this information in the Limitations Section of an operator's AFM.

Transport Canada Aviation requests that this instruction be revised to read as follows: ''Do not extend flaps during operation in icing conditions, except for approach and landing. Operation with flaps extended will result in a reduced wing angle-of-attack with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.''

The FAA concurs partially. The FAA does not concur with the commenter's suggested rewording to limit use of the flaps in all operation in icing conditions except approach and landing. The wording proposed in the AD's would affect use of the flaps only during extended operation in icing conditions. The FAA finds that an amount of ice sufficient to cause control problems is more likely to accumulate during prolonged operations in icing conditions. Further, the FAA does not concur that the words ''operation of the flaps can result in a reduced angle-of-attack * * *'' should be changed to ''operation of the flaps will result in a reduced angle-of-attack * * *'' in this instruction. Operation with flaps extended does not always result in a reduced angle-of-attack. For instance, during extension of the flaps while the airplane is slowing, the angle-of-attack will increase.

The FAA concurs with the suggestion to include the words ''the possibility of ice forming on the upper surface further aft * * *'' The FAA acknowledges that under certain conditions the droplets will not impinge further aft with a reduced angle-of-attack. The final rules have been revised to add the words suggested by the commenter to the sixth instruction specified in the procedures for exiting the severe icing environment contained in paragraph (a)(2) of the AD's. That revised instruction reads as follows: ''Do not extend flaps * * * with the possibility of ice forming on the upper surface * * *''

Comment 49. Requests To Revise ''Caution'' Paragraph

One commenter asks that the heading, ''Caution,'' which appears in paragraph (a)(2) of the proposals, be renamed ''Warning'' because this section is intended to prevent loss of life or injury. Transport Canada Aviation requests that the ''Caution'' section be changed to a note. The commenter provides no justification.

The FAA concurs partially. The FAA does not concur that the ''Caution'' should be changed to a note because this section is intended to prevent loss of life or injury. In light of this, the FAA concurs with the commenter's request to rename the ''Caution'' section ''Warning.'' The FAA finds that ''Warning'' is a stronger term and would be a more appropriate heading for the paragraph in question. Additionally, the FAA finds that the ''Warning'' provides advisory information that should precede the first limitation in paragraph (a)(1) of the AD's. Accordingly, the FAA has revised the heading ''Caution'' to ''Warning'' in the final rules. In addition, the ''Warning'' has been placed at the beginning of paragraph (a)(1) of the final rules. The FAA has determined that including this information in the Limitations Section of the AFM will not impose an additional burden on any operator, since it is informational only and does not necessitate providing an additional opportunity for public comment.

Additionally, the commenter notes that an undefined term, ''extreme,'' is used in a sentence in the ''Caution'' paragraph of the proposals, as follows: ''Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in extreme ice build-up on protected surfaces * * *'' The FAA infers from

this remark that the commenter asks that the word ''extreme'' be removed from the ''Caution'' paragraph.

The FAA concurs. The FAA finds that removing the word ''extreme'' would not change the intent of the sentence and may eliminate confusion. The word ''extreme'' has been removed from this section of the final rule. In addition, for clarification purposes, the FAA has revised the first sentence of the proposed ''Caution'' from ''Severe icing comprises environmental conditions * * *'' to ''Severe icing may result from environmental conditions * * *''

Comment 50. Request To Remove Visual Cues: Identification of Freezing Rain/Freezing Drizzle

One commenter indicates that the cues provided in paragraph (a)(2) of the proposals for identifying freezing rain/freezing drizzle conditions are duplicated in material that appears in paragraph (a)(1) of the proposals. The FAA infers from this remark that the commenter requests that duplicative wording be removed from paragraph (a)(2) of the proposed rules.

The FAA concurs. The FAA finds that the section entitled ''The following shall be used to identify freezing rain/freezing drizzle icing conditions'' is duplicated in material that appears in paragraph (a)(1), and does not enhance the effectiveness of the AD's. Therefore, that section has been removed from paragraph (a)(2) of the final rules for all airplanes other than Aerospatiale Model ATR–42 and ATR–72 series airplanes.

Paragraph (a)(1) of the proposals for Aerospatiale airplanes specified secondary indications for identifying possible freezing rain/freezing drizzle conditions. The FAA recognizes that the flight crew could have interpreted that paragraph to mean that if the secondary indicators were observed, the airplane must be flown clear of the severe icing conditions. However, the FAA's intent is that the flight crew must immediately request priority handling to exit the icing conditions only when the visual cue (ice on the side window) specified in paragraph (a)(1) of the AD is observed.

Accordingly, the FAA has deleted the secondary indications of possible severe icing conditions from paragraph (a)(1) of the final rule for Aerospatiale airplanes. In addition, the FAA has removed the visual cue (ice on the side window) from paragraph (a)(2) of the final rule. The FAA has retitled the section containing the secondary indications of possible severe icing as follows: ''The following may be used as secondary indications of severe icing conditions.'' Further, the last two secondary indicators contained in that section are specified in the final rule in a section titled: ''The following weather conditions may be conducive to severe in-flight icing.'' (This change is explained further in Comment 51 below.)

Comment 51. Request To Remove Visual Cues: Identification of Possible Freezing Rain/Freezing Drizzle

One commenter states that the word ''may'' in the following title, which appears in paragraph (a)(2) of the proposals, is confusing: ''The following may be used to identify possible freezing rain/freezing drizzle conditions.'' The commenter indicates that AFM procedures should provide a clear sequence of steps that must be followed and that such procedures should be explicit; general advice, regardless of how prudent, should be published elsewhere. The FAA infers from this remark that the commenter asks that the cues that appear under this section be deleted.

The FAA does not concur that this section should be removed. The cues provided for identification of possible severe icing conditions will alert the pilot to the possibility that unusual ice accretion may develop. The FAA finds that the level of detail provided in the final rules will increase the level of pilot awareness and, consequently, will increase the level of safety over that which exists currently. Therefore, the FAA has determined that it is appropriate to incorporate this section in the AFM.

However, the FAA finds that clarification is necessary with regard to the title of this section. The FAA finds that operators may misinterpret that title, as proposed, to mean that this section contains visual cues that should be used to identify possible severe icing conditions prior to takeoff, dispatch, or release while the airplane is on the ground. Additionally, the FAA finds that confusion could result in differentiating between the weather conditions specified in this section and the visual cues provided in paragraph (a)(1) of the AD's. For clarification purposes, the FAA has revised the title of this section to read as follows: ''The following weather conditions may be conducive to severe in-flight icing.''

Comment 52. Request To Revise Air Temperature References

Transport Canada Aviation states that ambient temperature is indicated as static air temperature (SAT), rather than outside air temperature (OAT), for de Havilland Model DHC–8 series airplanes. The FAA infers from this remark the commenter requests that the ambient temperature that appears in the weather conditions specified in paragraph (a)(2) of the proposals be expressed as SAT for those airplanes.

The FAA does not concur. The FAA does not intend to specify which specific indicator in the cockpit a pilot should use to determine the ambient air temperature. The FAA intends that the pilot use whatever means necessary to determine ambient air temperature.

However, since airplanes may have indicators other than OAT, the FAA has replaced the words ''outside air temperature'' with ''ambient air temperature'' in the weather conditions, and in the procedures for exiting the severe icing environment, specified in paragraph (a)(2) of these final rules to eliminate confusion concerning the need for a specific type of indicator.

In addition, the FAA has re-examined the ambient temperature of +5 degrees Celsius that is specified in paragraph (a)(2) of the proposals. The FAA has determined that this temperature is too high to be used as a reliable indication of whether severe icing conditions may exist during flight. The FAA finds that 0 degrees Celsius is a more appropriate indication. The FAA has revised paragraph (a)(2) of the final rules for all airplanes accordingly.

Comment 53. Request To Replace Reference to Droplets that Splash or Splatter

JAL requests that the weather condition that pertains to ''droplets that splash or splatter'' be removed from paragraph (a)(2) of the proposals. JAL believes that this weather condition places too much emphasis on subjective judgment. JAL states that normal rain conditions will contain droplets that splash or splatter upon impact with the windshield. JAL indicates that information included in its existing AFM revisions, specified as follows, adequately addresses the issue: ''Prolonged operation in altitude bands where temperatures are near freezing and heavy moisture is visible on the windscreen should be avoided.''

The FAA does not concur that this weather condition should be removed from the AD's. This weather condition must be used in conjunction with the temperature specified as a means of identifying severe in-flight icing conditions. The weather condition also will alert the pilot to the possibility that unusual ice accretion may develop. The FAA finds that the AFM information submitted by JAL does not provide an equivalent alert to the pilot.

Comment 54. Request To Revise Procedures for Exiting Freezing Rain/Freezing Drizzle

JAL requests that the procedures for exiting freezing rain/freezing drizzle specified in paragraph (a)(2) of the proposals be restricted to essential instructions that the flight crew must follow. JAL contends that the procedures contained in the proposals are not written in the appropriate format for AFM procedures, but are more representative of advisory material. JAL also states that the current FAA-approved AFM procedures for exiting freezing rain/freezing drizzle already provide this essential information and conform to the existing style of the AFM's. Transport Canada Aviation requests that the first instruction in these procedures be revised to state only: ''Exit the freezing rain or freezing drizzle conditions immediately.'' The commenter also requests clarification of the terms ''extended exposure,'' as used in that instruction.

The FAA concurs partially. The FAA has reviewed the procedures for exiting the severe icing environment and finds that two of the instructions contained in those procedures do not require the level of detail provided in the proposed rules. The FAA finds that the information concerning masking of control system forces is already provided in the Limitations Section of the AFM. Therefore, the FAA has revised the third instruction of those procedures to read as follows: ''Do not engage the autopilot.'' Additionally, the FAA has determined that the flight crew need not be provided with instructions for reducing the angle-of-attack because instructions such as this are considered to be basic airmanship. Accordingly, the FAA has revised the fifth instruction in the procedures for exiting the severe icing environment to specify only information that is essential for the flight crew. The revised instruction reads as follows: ''If an unusual roll response . . . reduce the angle-of-attack.'' The FAA finds that, for the remainder of the procedures for exiting, the additional level of details provided in the final rules will increase the level of understanding and, consequently, will increase the level of safety over that which exists currently. The FAA finds that these procedures are appropriate for insertion in the AFM's.

Regarding the terms ''extended exposure,'' the intent of that instruction is to advise the flight crew that exiting the severe icing conditions will minimize the exposure to flight conditions outside those for which the airplane has been certificated. The FAA finds that remaining in such conditions for a prolonged period may result in accumulating an amount of ice sufficient to cause control problems. The phrase ''to avoid extended exposure'' is only intended to explain to the flight crew why severe icing conditions should be exited immediately.

Raytheon questions the necessity to tell a commercial pilot not to make any abrupt or excessive maneuvers if the aircraft is in the position of having control difficulties. This instruction appears under the heading ''Procedures for exiting the freezing rain/freezing drizzle environment,'' which appears in paragraph (a)(2) of the proposals. The commenter contends that this is a training issue and is not appropriate for AFM procedures. The FAA infers from the commenter's remark that the commenter requests that these instructions be eliminated from the proposed rules.

The FAA does not concur. The FAA has determined that such instructions provide beneficial guidance to the flight crew, which will enhance the safety of the aircraft.

Saab requests that the FAA revise one of the instructions specified in the procedures for exiting freezing rain/freezing drizzle specified in the proposals. The instruction states that if an unusual roll response or uncommanded control movement is observed, the angle-of-attack should be reduced by increasing the airspeed or rolling the wings level (if in a turn), and applying additional power, if needed. Saab suggests that this instruction be revised to include the word ''aileron'' in the reference to uncommanded control movement. Saab states further that in the case of wing ice beyond the protected surfaces, the application of power may be appropriate to increase airspeed/improve airflow. However, if ice has accrued on the wings beyond the protected surfaces, there is a possibility that there also is ice on the horizontal stabilizers. In this case, a sudden burst of power may be detrimental. An uncommanded pitch control movement is indicative of tail ice, which normally calls for a different action, both concerning power as well as the handling of flaps, if extended. Another commenter, Transport Canada Aviation, requests that the same instruction be revised to include the word ''lateral'' in reference to ''uncommanded control movement,'' and to change the phrase ''or rolling wings level'' to ''and rolling wings level.''

The FAA concurs partially. The FAA agrees that the correct procedures for reducing the angle-of-attack is to increase the airspeed and roll the wings level, if in a turn. However, as explained previously, this portion of the procedure has been removed from the final rules. The FAA does not agree that either ''lateral'' or ''aileron'' should be used to specify the type of uncommanded control movement. The FAA finds that use of the term ''lateral'' may not be understood by the flight crew. The FAA finds that including the word ''aileron'' may clarify which control surface is of concern; however, the FAA has determined that use of a more general term, ''roll'' will correctly specify the type of uncommanded control movement that is of concern. The FAA has revised the fifth instruction in the procedures for exiting the severe icing environment in paragraph (a)(2) of the final rules accordingly. The revised instruction reads as follows: ''If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.''

In addition, the procedures for exiting the freezing rain/freezing drizzle environment contained in the proposals did not specify to use ''a sudden burst of power'' when reducing the angle-of-attack. Rather, the proposed procedure indicates to apply additional power, if needed, to provide the desired flight path. However, as discussed previously, the FAA has removed this reference from the final rules. In addition, as explained previously, the FAA has revised the final rules to add the word ''roll'' to describe the type of uncommanded control movement. This revised wording addresses Saab's concern regarding increasing power for a pitch anomaly.

Saab also notes that this instruction recommends a reduction in the angle-of-attack and application of power, if needed. However, the next instruction of the procedures indicates that reducing the angle-of-attack may cause ice to build up beyond the protected areas of the wing. Saab concludes that there is a conflict in that the proposed AD would require that the angle-of-attack not be reduced or ice will collect beyond the protected surfaces; however, the angle-of-attack must be reduced if there is an unusual roll response or uncommanded control movement.

The FAA does not concur with the commenter's contention that there is a conflict in the AD's. Reducing the angle-of-attack by increasing airspeed or rolling the wings level (if in a turn), and applying additional power, if needed, is a procedure used to exit severe icing conditions following an unusual roll response or uncommanded roll control movement; whereas the instruction that involves not extending the flaps during

extended operation in icing conditions is intended to prevent ice build-up beyond the unprotected surfaces.

Raytheon asks for removal of the instruction to reduce the angle-of-attack and apply additional power, if needed, in response to an unusual roll response or uncommanded control movement. The commenter states that these are normal instructions with respect to wing stall and are inappropriate for inclusion in an AFM.

The FAA concurs partially. There may not be a stall warning associated with uncommanded control movements in the case of encounters with severe icing conditions. Since this is not a ''normal'' stall, the flight crew may not recognize that normal stall recovery procedures should be used. However, as stated previously, the instruction referenced by the commenter has been deleted, in part, from the final rules.

Raytheon also states that it is not appropriate to require contact with Air Traffic Control as part of an AFM procedure since this is already addressed in the Aeronautical Information Manual and in section 91.183 of the Federal Aviation Regulations (14 CFR 91.183). The FAA infers from this statement that the commenter requests that the instruction to contact Air Traffic Control should be removed from the procedures for exiting severe icing conditions.

The FAA does not concur. The FAA is aware that this instruction is contained in the references provided by the commenter. However, the FAA finds that the importance of timely dissemination of this instruction warrants its inclusion in the final rules. Inclusion of instructions of this type is not without precedent; for example, similar information also is specified in certain AFM's where the forward look windshear system is addressed.

Comment 55. Request To Revise Procedures for Exiting the Severe Icing Environment: Include Airplane- Specific Instructions

One commenter suggests that any action that might be necessary to optimize aircraft performance and control in conditions of exceptional icing, and exit from those conditions, should be determined separately with each manufacturer; such procedures should be contained in the AFM for each airplane model. The FAA infers from this remark that the commenter requests that the FAA revise the procedures for exiting the severe icing environment in each final rule to include airplane-specific instructions.

The FAA agrees that procedures obtained from each individual manufacturer should be considered and included in the final rules, if appropriate. All manufacturers have been provided with an opportunity to submit such procedures in response to the proposed rules. Some manufacturers requested changes to the final rules. The FAA has revised the final rules for those requests that were substantiated adequately. Following issuance of the final rules, the FAA would consider a request to include additional changes to the AFM revisions, in accordance with the provisions of these AD's, provided that adequate justification is presented to support such a request.

Comment 56. Revision of Procedures for Exiting the Severe Icing Environment

The FAA has re-examined the section titled ''Procedures for exiting the severe icing environment'' in paragraph (a)(2) of the proposals. As proposed, that section states that if the visual cues used for identifying ''possible'' freezing rain or freezing drizzle conditions are observed, the flight crew should follow the procedures specified for exiting those conditions. The FAA did not intend that the flight crew use the procedures for exiting the severe icing environment when the weather conditions specified in paragraph (a)(2) of these AD's are observed. The FAA's intent is that the flight crew use those procedures only when the visual cues identified in the Limitations Section of the AFM are observed.

In order to eliminate any confusion, the FAA has revised the last sentence of the first paragraph in the procedures for exiting the severe icing environment. The FAA has removed the word ''possible'' from that sentence, and has added clarification that the visual cues are specified in the Limitations Section of the AFM. The revised sentence reads as follows: ''If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following.'' (Operators should note that, for Aerospatiale airplanes, the final rule specifies only one visual cue, which involves ice on the side window.)

Comment 57. Request to Revise Cost Estimate

Transport Canada requests that the FAA provide an operational cost estimate in the proposed AD's.

The FAA acknowledges the concern of the commenter. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur other costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically only includes such direct costs. In the case of these AD's, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them.

Further, because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain and operate aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining and operating safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD. In any case, the FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

The FAA points out that it is not required to do a full cost-benefit analysis for each AD. AD's were explicitly exempted from the Office of Management and Budget (OMB) coordination process described in Section 6 of that Executive Order. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA later makes a finding of an unsafe condition in an aircraft and issues an AD, it means that the original cost beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost beneficial, and because the AD does not add an additional regulatory requirement that increases the level of safety beyond what has been established by the type design, a full cost-benefit analysis for each AD would be redundant and unnecessary.

Comment 58. Requests to Delay Issuance of the Final Rules

Three commenters request that the FAA extend the comment period for the proposed rules by 90 days. Each of the commenters request the extension in order to complete a comprehensive

analysis of this issue. The commenters state their involvement in focusing on ''. . . ther recent rulemaking activity, including the Commuter Rule, flight crewmember training requirements, and proposed rules covering flight crew flight, duty and test requirements . . .'' as a reason that did not allow complete analysis of the proposed AD's.

One commenter requests that implementation of the AD's be deferred until further discussion with industry has been undertaken.

The FAA has reviewed these requests and, in consideration of the importance and need for dissemination of this important information to the aviation community, does not concur that the comment period should be extended or issuance of the final rules be deferred until a later date. Issuing the final rules will ensure that the information is available, understood, and implemented by the aviation community before the next icing season. For these reasons, the FAA has determined that it is imperative that the information and actions contained in these final rules be incorporated into the operators' AFM's immediately.

Conclusion

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

Cost Impact

The FAA estimates that 169 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the required action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to incorporate the AFM revisions.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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), 40113, 44701.

§ 39.13 [Amended]

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

96–09–11 De Havilland: Amendment 39–9587; Docket No. 96–CE–01–AD.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.

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

—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

(2) Revise the FAA-approved AFM by incorporating the following into the

Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

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

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.
• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.
• Do not engage the autopilot.
• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.
• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.
• Do not extend flaps during extended operation in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.
• If the flaps are extended, do not retract them until the airframe is clear of ice.
• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 acceptable level of safety may be used if 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.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–9587) becomes effective on June 11, 1996.

Issued in Kansas City, Missouri, on April 24, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10728 Filed 5–1–96; 3:23 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–CE–02–AD; Amendment 39–9588; AD 96–09–12]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileiro de Aeronautico, S.A. Models EMB–110P1 and EMB–110P2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Empresa Brasileiro de Aeronautico, S.A. (EMBRAER) Models EMB–110P1 and EMB–110P2 airplanes. This action requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in freezing rain or freezing drizzle conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–02–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

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 EMBRAER Models EMB–110P1 and EMB–110P2 airplanes was published in the Federal Register on January 25, 1996 (61 FR 2183). The action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 96–CE–01; Amendment 39–9587; AD 96–09–11, Airworthiness Directives; de Havilland, Inc. DHC–6 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 169 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the required action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to incorporate the AFM revisions.

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable

because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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), 40113, 44701.

§ 39.13 [Amended]

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

96–09–12 Empresa Brasileira de Aeronautica, S.A. (EMBRAER): Amendment 39–9588; Docket No. 96–CE–02–AD.

Applicability: Models EMB–110P1 and EMB–110P2 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.

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

—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR

43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 acceptable level of safety may be used if 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.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–9588) becomes effective on June 11, 1996.

Issued in Kansas City, Missouri, on April 24, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10725 Filed 5–1–96; 3:23 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–CE–03–AD; Amendment 39–9589; AD 96–09–13]

[RIN 2120–AA64]

Airworthiness Directives; Beech Aircraft Corporation Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Beech Aircraft Corporation (Beech) Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D airplanes. This action requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in freezing rain or freezing drizzle conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–03–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

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 Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D airplanes was published in the Federal Register on January 25, 1996 (61 FR 2180). The action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 96–CE–01; Amendment 39–9587; AD 96–09–11, Airworthiness Directives; de Havilland, Inc. DHC–6 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 169 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the required action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to incorporate the AFM revisions.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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), 40113, 44701.

§ 39.13 [Amended]

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

96–09–13 Beech Aircraft Corporation: Amendment 39–9589; Docket No. 96–CE–03–AD.

Applicability: Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.

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

—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 acceptable level of safety may be used if 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.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–9589) becomes effective on June 11, 1996.

Issued in Kansas City, Missouri, on April 24, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10723 Filed 5–1–96; 3:23 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–CE–04–AD; Amendment 39–9590; AD 96–09- 14]

RIN 2120–AA64

Airworthiness Directives; Dornier 228 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Dornier 228 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to

limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in freezing rain or freezing drizzle conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–04–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

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 Dornier 228 series airplanes was published in the Federal Register on January 25, 1996 (61 FR 2172). The action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 96–CE–01; Amendment 39–9587; AD 96–09–11, Airworthiness Directives; de Havilland, Inc. DHC–6 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 169 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the required action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to incorporate the AFM revisions.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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), 40113, 44701.

§ 39.13 [Amended]

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

96–09–14 Dornier: Amendment 39–9590; Docket No. 96- CE–04–AD. Applicability: Models 228–100, 228–101, 228–200, 228-201, 228–202, and 228–212 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing aft of the protected area.
—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 acceptable level of safety may be used if 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.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–9590) becomes effective on June 11, 1996.

Issued in Kansas City, Missouri, on April 24, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10722 Filed 5–1–96; 3:24 am]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–CE–05–AD; Amendment 39–9591; AD 96–09–15]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This action requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in freezing rain or freezing drizzle conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–05–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

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 Cessna Models 208 and 208B airplanes was published in the Federal Register on January 25, 1996 (61 FR 2178). The action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 96–CE–01; Amendment 39–9587; AD 96–09–11, Airworthiness Directives; de Havilland, Inc. DHC–6 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will

neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 169 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the required action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to incorporate the AFM revisions.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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), 40113, 44701.

§ 39.13 [Amended]

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

96–09–15 Cessna Aircraft Company: Amendment 39–9591; Docket No. 96–CE–05–AD.

Applicability: Models 208 and 208B airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.

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

—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 acceptable level of safety may be used if 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.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–9591) becomes effective on June 11, 1996.

Issued in Kansas City, Missouri, on April 24, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10729 Filed 5–1–96; 3:24 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–CE–06–AD; Amendment 39–9592; AD 96–09–16]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Fairchild Aircraft SA226 and SA227 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in freezing rain or freezing drizzle conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–06–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

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 Fairchild Aircraft SA226 and SA227 series airplanes was published in the Federal Register on January 25, 1996 (61 FR 2189). The action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 96–CE–01; Amendment 39–9587; AD 96–09–11, Airworthiness Directives; de Havilland, Inc. DHC–6 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 169 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the required action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to incorporate the AFM revisions.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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), 40113, 44701.

§ 39.13 [Amended]

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

96–09–16 Fairchild Aircraft: Amendment 39–9592; Docket No. 96–CE–06–AD.

Applicability: Models SA226–T, SA226–T(B), SA226–AT, SA226–TC, SA227–TT, SA227–AT, SA227–AC, SA227–BC, SA227–CC, and SA227–DC airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously. To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.

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

—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 acceptable level of safety may be used if 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.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–9592) becomes effective on June 11, 1996.

Issued in Kansas City, Missouri, on April 24, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10724 Filed 5–1–96; 3:25 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–CE–07–AD; Amendment 39–9593; AD 96–09–17]

RIN 2120–AA64

Airworthiness Directives; Jetstream Aircraft Limited Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes. This action requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in freezing rain or freezing drizzle conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–07–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

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 JAL Jetstream Models 3101 and 3201 airplanes was published in the Federal Register on January 25, 1996 (61 FR 2186). The action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 96–CE–01; Amendment 39–9587; AD 96–09–11, Airworthiness Directives; de Havilland, Inc. DHC–6 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 169 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the required action, the only cost impact upon the public is the time it would take the affected airplane owner/operators to incorporate the AFM revisions.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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), 40113, 44701.

§ 39.13 [AMENDED]

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

96–09–17 Jetstream Aircraft Limited: Amendment 39–9593; Docket No. 96–CE–07–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously. To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.

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

—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 acceptable level of safety may be used if 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.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–9593) becomes effective on June 11, 1996.

Issued in Kansas City, Missouri, on April 24, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10727 Filed 5–1–96; 3:25 pm]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–146–AD; Amendment 39–9604; AD 96–09–28]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes. Unless modifications are accomplished or alternative procedures and training are adopted, that AD currently prohibits operation of the airplane in certain icing conditions, and requires restrictions on the use of the autopilot in certain conditions. That AD was prompted by an FAA determination that, during flight, in certain icing conditions, and with the airplane in a specific flight configuration, a ridge of ice can form on the wing and cause an interruption in the airflow over the ailerons, aileron deflection, and resultant lateral control forces. The actions specified by that AD are intended to prevent a roll upset from which the flight crew may be unable to recover. This action adds requirements for modification of the deicing boots on the leading edge of the wing and various follow-on actions. This action also removes certain limitations and procedures.

DATES: Effective June 11, 1996.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of June 11, 1996.

The incorporation by reference of Aerospatiale Service Bulletin ATR72–27–1039, dated January 12, 1995, listed in the regulations was approved previously by the Director of the Federal Register as of March 8, 1995 (60 FR 9616, February 21, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113,

FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–02–51, amendment 39–9152 (60 FR 9616, February 21, 1995), which is applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the Federal Register on January 25, 1996 (61 FR 2147). The action proposed to prohibit operation of the airplane in certain icing conditions unless modifications are accomplished or alternatives procedures and training are adopted, and to require restrictions on the use of the autopilot in certain conditions. The action also proposed to add requirements for modification of the deicing boots on the leading edge of the wing and various follow-on actions. In addition, the action proposed to remove certain limitations and procedures.

Disposition of Comments

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

In addition to the proposed rule described previously, in January 1996, the FAA issued 17 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 18 proposed rules). These 17 proposals also were published in the Federal Register on January 25, 1996. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	FEDERAL REGISTER citation
96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175
96–CE–02–AD	EMBRAER EMB–110P1/EMB–110P2	61 FR 2183
96–CE–03–AD	Beech 99/200/1900 Series	61 FR 2180
96–CE–04–AD	Dornier 228 Series	61 FR 2172
96–CE–05–AD	Cessna 208/208B	61 FR 2178
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186
96–NM–13–AD	Jetstream BAe ATP	61 FR 2144
96–NM–14–AD	Jetstream 4101	61 FR 2142
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147

Comment 1. Support for the Proposals

Numerous commenters support the FAA's intent to minimize the potential hazards associated with operating airplanes of any type design in severe icing conditions. One commenter states that the limitation prohibiting the use of flaps while enroute and during holding in icing conditions will be a positive contribution to safety. Additionally, several commenters support the requirement of the proposed AD for Aerospatiale airplanes for installation of modified deicing boots on the outer leading edges of the wings. One of these commenters states that the incorporation of AFM procedures, in addition to installation of the modified boots, provide a substantial margin of safety for the Aerospatiale fleet.

Comment 2. Requests Concerning References to ''Freezing Rain/Freezing Drizzle''

Raytheon requests that references to a class of meteorological conditions in the limitations described as ''freezing rain or freezing drizzle'' should be removed from the proposed rules. Raytheon contends that instructions for the flight crew should be restricted to hazardous conditions that are defined by the accumulation of ice. The commenter states that the term ''severe icing'' has a specific meaning as defined in the Aeronautical Information Manual: ''The rate of accumulation is such that the icing/anti-icing equipment fails to reduce or control the hazard. Immediate diversion is necessary.'' The commenter states that, although freezing rain or freezing drizzle may involve drops larger than those specified in Appendix C of part 25 (''Airworthiness Standards: Transport Category Airplanes'') of the Federal Aviation Regulations (14 CFR part 25), flight into those conditions does not always result in accumulation of ice beyond the capability of the aircraft nor is severe icing always the result of freezing rain or freezing drizzle. Raytheon concludes that the limitation specified in paragraph (a)(1) of the proposals which reads, ''Flight in meteorological conditions described as freezing rain or freezing drizzle, as determined by the following visual cues, is prohibited,'' is an inference or conclusion that does not follow from the premises.

The European Regional Airlines (ERA) Association states that the proposals define visual cues to be used to identify ''freezing rain'' and ''freezing drizzle,'' but these criteria are inconsistent with the criteria defined by the International Civil Aviation Organization (ICAO) and used by weather observers in aviation meteorological support services. The FAA infers from this remark that ERA requests the use of ICAO terminology associated with the visual cues.

The FAA concurs partially. The FAA concurs that most of the references to ''freezing rain/freezing drizzle'' can be removed from the final rules. The FAA has revised the final rules to replace certain references to freezing rain and freezing drizzle with the words ''severe icing.'' The FAA finds that since the visual cues contained in paragraph (a)(1) of these final rules indicate that icing conditions have exceeded the limits of the ice protection equipment, the use of the terminology ''severe icing'' is appropriate. As stated by one commenter, ''severe icing'' is terminology used to describe icing conditions that exceed the capabilities

of the ice protection equipment. The terminology ''severe icing'' is commonly used and understood within the aviation community. Additionally, there should be no confusion over the use of this term in the final rules because the AFM revisions required by these AD's define the terminology ''severe icing'' by specifying the visual cues that indicate when the capabilities of the ice protection equipment have been exceeded. However, the FAA would consider a request for approval of an alternative method of compliance to use terminology other than ''severe icing'' in an AFM, in accordance with the provisions of these AD's, provided that adequate justification is presented to support such a request.

Any inconsistencies that may exist between the criteria used by weather specialists to define ''severe icing'' and the criteria stated in these final rules are not relevant for these AD's because these AD's do not require the flight crew to take any action based on information provided by a weather observer. For these AD's, the flight crew must only take action if certain visual cues are present on the airplane.

The FAA has determined that reference to freezing rain and freezing drizzle should not be removed from the text of the ''Caution'' that appears in paragraph (a)(2) of the proposals. [Note: The ''Caution'' appears as the ''Warning'' in paragraph (a)(1) of the final rules. An explanation of this change is contained in the disposition of Comment 49 of these final rules.] Reference to freezing rain and freezing drizzle in that portion of text is made simply to provide a description of conditions that may result in ice build-up that exceeds the capabilities of the ice protection system.

Comment 3. Request for Review of ''Severe Icing'' Terminology

One commenter, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, requests that use of the terminology ''severe icing'' be reviewed. The CAA does not believe it is appropriate that this terminology becomes accepted for supercooled large droplet (SLD) conditions. The CAA indicates that a common interpretation for ''severe icing'' is that beyond the limit specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25), which is at or just over the capability of the ice protection system.

The FAA has reviewed the use of the terminology ''severe icing'' as related to SLD. The FAA finds that ice resulting from SLD conditions may not always meet the criterion specified in the common interpretation of ''severe icing,'' as described by the commenter. The FAA notes that while SLD conditions may result in the formation of severe icing, severe icing also may accrue in conditions such as liquid water content, temperature, or extent of cloud, when those conditions exceed the limits specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). As explained previously, most references to freezing rain and freezing drizzle have been replaced with the terminology ''severe icing.'' Additionally, the AFM's for the affected airplanes include a definition of severe icing.

Comment 4. Request To Withdraw the Proposals: Significant Economic Impact on Operating Community

A number of commenters request that the proposals be withdrawn because the effect of these proposed AD's will produce a significant economic impact on the operating community. The commenters indicate that many flights would need to be canceled in order to make all reasonable efforts to avoid encounters with freezing rain/freezing drizzle conditions—i.e., when these conditions are forecast, airplanes will be prohibited from flight into those conditions. One commenter remarks that, based on the actual weather in January 1996, nearly 75 percent of its scheduled flights would have been canceled due to forecast or actual freezing rain or freezing drizzle conditions if the AD's had been in effect. The commenters do not believe that the FAA has considered the economic factors affected by the proposed actions, such as the number of flights lost per day, crew costs, passenger compensation, misconnected baggage, etc.

If the FAA does not withdraw the proposals, one commenter states that the prohibition of flight in freezing rain or freezing drizzle, as specified in paragraph (a)(1) of the proposals, should be revised. The commenter suggests the following: ''The aircraft should be immediately flown clear of icing conditions if ice is seen forming on the upper surface of the wing behind the leading edge deice boots.'' The commenter believes that the current wording in the proposals would cause flight crews to cancel or delay departure not only when freezing rain or freezing drizzle exists, but also when those conditions are forecast.

The FAA concurs partially. The FAA finds that some misunderstanding exists among the commenters concerning the intent of these AD's. Many of the commenters believe that the AD's will prevent affected airplanes from flight in forecast freezing rain and freezing drizzle. This is not the case. The FAA agrees that certain language contained in the AD's must be clarified to reflect its intent. The FAA has evaluated the wording proposed by one of the commenters and agrees with it in principal. However, the FAA has determined that the first limitation in paragraph (a)(1) of the final rules must be revised in order to accommodate visual cues other than that specified by the commenter, to incorporate terminology familiar to the flight crew, and to emphasize that these AD's address only in-flight icing encounters. Additionally, in order to ensure that appropriate coordination with Air Traffic Control is accomplished, the FAA has revised the instruction following the visual cues in paragraph (a)(1), and has moved that instruction to the end of the first limitation in paragraph (a)(1) of the final rules. The entire limitation reads as follows: ''During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.'' (Operators should note that, in the final rule for Aerospatiale airplanes, only one visual cue is specified. That cue involves ice on the side window of the airplane.)

Several commenters question certain issues related to dispatch of the airplane in severe icing conditions. One commenter states that the procedures specified in the proposed AD's fail to address the conditions that would prohibit takeoff in freezing rain and freezing drizzle. The commenter believes the visual cues provided in the proposals would only appear on an airplane during flight. Thus, allowable conditions for takeoff during times of forecast freezing rain or freezing drizzle are left to the individual operator's interpretation. Another commenter believes that the FAA has not established a basis for prohibiting flight in all reported freezing drizzle. The commenter contends that takeoff in freezing rain should always be prevented, but takeoff in freezing drizzle should be possible after applying appropriate deicing or anti-icing treatments. One commenter requests that the FAA clarify how the procedures for exiting freezing rain/freezing drizzle conditions would apply to takeoff and landing. The commenter states that landing during those conditions might,

in many cases, be the most expeditious method of avoiding a hazardous condition. Another commenter suggests that the AFM for Aerospatiale airplanes should be revised to reflect standard dispatch rules; however, the commenter provides no justification for this request.

The FAA concurs that visual cues that would prohibit takeoff in freezing rain or freezing drizzle were not provided because the FAA's intent is that these AD's address only in-flight icing encounters. These AD's do not affect any existing regulations or FAA-approved operating procedures related to takeoff, dispatch, or release of an airplane in icing conditions. These AD's only prohibit remaining in icing conditions when certain visual cues are present on the airplane; these AD's do not prohibit flight into forecast or reported freezing drizzle. Operators must comply with existing rules that require an airplane to be free of ice prior to takeoff. Further, the FAA finds no need to revise the AFM for Aerospatiale airplanes to reflect standard dispatch rules. The FAA also considers that landing the airplane when freezing rain/freezing drizzle conditions are encountered would, in many cases, be the most expeditious method of exiting the conditions. Such landing would be in compliance with the limitation that requires the flight crew to exit the severe icing conditions.

Two commenters indicate that the first note that appears in paragraph (a)(1) of the proposed rules could be interpreted to mean that if freezing rain or freezing drizzle is forecast anywhere along the route of flight, the airplane could not be dispatched. One of the commenters concludes that forecasting methodologies are inadequate and would need to be improved. The other commenter suggests that the FAA remove the word ''purely'' from the note. The same commenter requests that the FAA clarify that the airplane may be dispatched if the forecast may indicate freezing rain/freezing drizzle conditions. Another commenter indicates that the wording of the same note is unclear as to how the FAA defines a ''purely'' inadvertent encounter. The commenter states that examples of such purely inadvertent encounters would be helpful.

One commenter asks the following questions in regard to the same note:

—What are ''reasonable efforts?''

—What does ''immediately exit'' mean? Are the procedures for immediately exiting listed in the Air Traffic Controller's Handbook or the Airman's Information Manual? Can a pilot operating the airplane in a holding pattern decide on his/her own to immediately descend below the freezing level without regard to other traffic?

One commenter states that the note should be placed in the Normal Procedures Section of the AFM, rather than in the Limitations Section. The commenter provides no justification for this request.

The FAA concurs that clarification of this note is necessary. The FAA originally included the note in the AD's to clarify the intent of the rules. Since the first instruction and the limitation that follows have been revised in these final rules, the FAA finds that inclusion of the clarifying note is no longer necessary. In order to avoid any possible misinterpretation of the intent of the limitation on flight in freezing rain or freezing drizzle, the FAA has removed the first note that appeared in paragraph (a)(1) of the proposals. These AD's do not prohibit flight into forecast or reported freezing rain or freezing drizzle. This means that the aircraft is not prohibited from takeoff, dispatch, or release simply because the forecast may indicate freezing rain or freezing drizzle, but is prohibited from continued flight in severe icing conditions.

Comment 5. Request To Withdraw the Proposals: No Unsafe Condition Has Been Established

Several commenters request that the proposals be withdrawn because no unsafe condition has been established with respect to airplane handling characteristics in severe icing conditions. One commenter states that the preamble of the proposals does not provide data that establish an unsafe condition; the preamble only indicates that there are inadequate data to represent all possible conditions. Another commenter remarks that the FAA's dismissal of the significance of the test results with the specious comment, ''such airplanes could develop ice shapes other than those tested,'' is wholly speculative, and is an invalid basis on which to issue an AD under the provisions of part 39 (''Airworthiness Directives'') of the Federal Aviation Regulations (14 CFR part 39).

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

Additionally, in the preamble to the proposed rules, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if these final rules were required, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD's must be viewed as two unrelated actions.

Comment 6. Request To Withdraw the Proposals: Unsafe Condition is Outside Certification Limits

One commenter states that the proposed AD's should be withdrawn because the issuance of AD's to address the problems of icing encounters outside of the limits for which the airplane is certificated is a completely inappropriate application of part 39 of the Federal Aviation Regulations (14 CFR part 39). Another commenter contends that since the Aerospatiale aircraft passed all present certification testing, what transpired beyond the limits of certification should not be held against that aircraft.

The FAA does not concur that the AD's should be withdrawn on the basis that the unsafe condition is outside the icing certification envelope. Flight in icing conditions that are outside the icing certification envelope occurs during the normal service life of an airplane. Apart from the visual cues provided in these final rules, there is no

existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. The appropriate vehicle for providing this method of identification is through issuance of an AD. The FAA acknowledges that the Aerospatiale airplane has been shown to comply with existing certification rules; however, no airplane is certificated for flight in icing conditions outside of Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25).

Comment 7. Request To Withdraw the Proposals: Proposals Unfairly Discriminate Against Turbopropeller-Powered Aircraft

Several commenters state that the proposed AD's should be withdrawn because the AD's unfairly discriminate against turbopropeller-powered aircraft. The commenters contend that by issuing these proposed rules, the FAA is creating a public perception that turbopropeller-powered aircraft are less safe than other aircraft.

Numerous commenters oppose the statement contained in the preamble of the proposals which indicates that since turbopropeller-powered airplanes are more likely to operate at low altitudes and to make more frequent landings, they are more likely to encounter icing conditions that are outside the icing envelope. One commenter states that the mere fact that turbopropeller-powered airplanes make more frequent landings is irrelevant for the following reasons:

—Every flight encounters the same atmospheric conditions after takeoff and prior to landing, whether the airplane is powered by a turbopropeller or turbojet engine;

—There are numerous airplanes powered by turbojet engines that operate on segments equal in duration to those operated by many turbopropeller-powered aircraft; numerous airplanes powered by turbojet engines make just as frequent landings; and

—Even if turbopropeller-powered aircraft do make more frequent landings, there is no negative inference to be drawn from that fact; more opportunities are available to ensure that ice has not formed on the aircraft if the aircraft lands more frequently.

One commenter states that the altitudes where SLD conditions exist are the same altitudes at which jets would encounter those conditions during the departure and arrival phases of flight. Flight in SLD conditions that would have a negative effect on a turbopropeller-powered airplane would have the same effect on a jet, since both are certificated under the same rules with regard to flight into adverse weather, and both fly at about the same speeds during the departure and arrival phases of flight. Additionally, another commenter adds that no airplane, whether it is powered by a turbopropeller, turbojet, or turbofan engine, is certificated for operation in SLD conditions.

Another commenter indicates that icing encounters take place at altitudes below the cruising altitudes of most turbopropeller-powered aircraft used in scheduled service; this also occurs on airplanes powered by turbojet engines. Icing encounters occur during takeoff, climb, descent, holding, and landing phases of flight on both types of aircraft. The commenter adds that operating the airplane in a holding pattern for a prolonged period in severe icing conditions is hazardous for both turbojet and turbopropeller-powered aircraft. The commenter explains that, although the exposure time per flight hour of a long-haul jet aircraft is less, the exposure on a per flight basis is exactly the same. The commenter states that, like landing gear life limits, the proper measure of exposure to freezing rain/freezing drizzle should be the number of flights, not the number of flight hours.

Another commenter, Saab, states that Saab Model SAAB 2000 series airplanes have a unique power-to-weight ratio, which makes it comparable with airplanes of the same size and, in some relevant areas such as climb performance and single engine ceiling, even far superior. Operators of those airplanes can operate the aircraft over-the-weather at flight level (FL) 310. This means that these Saab airplanes operate on jet profiles and, therefore, are not exposed to the icing conditions that are outside the icing envelope any more than the airplanes that are excluded from the proposals.

The FAA does not concur that the proposals should be withdrawn. The FAA does not intend to imply through issuance of these AD's that turbopropeller-powered airplanes are less safe than airplanes having other types of propulsion systems. As stated in the preamble of the proposals, the FAA addressed certain airplanes as a higher priority for two reasons:

—Turbopropeller-powered airplanes are more likely to operate at low altitudes and to make more frequent landings; therefore, they are more likely to encounter icing conditions that are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25); and

—The flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew.

Since the issuance of the proposed rules, the FAA has reconsidered this reasoning. The FAA acknowledges that simply because an airplane is turbopropeller-powered and has a particular flight profile, that airplane should not be addressed as a higher priority. However, this does not diminish the significance of the necessity of the flight crew of an airplane having an unpowered roll control system to rely on physical strength to counteract roll control anomalies. The subject airplanes all have pneumatic deicing boots and unpowered aileron controls, which have been common denominators in the accident and incident history concerning flight in icing conditions and, in particular, during conditions when SLD was believed to be present. Therefore, airplanes having those design features are of immediate concern to the FAA and were addressed as a higher priority. Additionally, these AD's primarily address airplanes used in regularly scheduled passenger service in the United States.

The FAA finds that the comment indicating that more frequent landings provides more opportunity to verify that ice has not formed is irrelevant. It also could be said that more frequent landings gives more opportunity for ice to form. The FAA agrees with the statement that holding for prolonged periods in severe icing conditions is hazardous for all aircraft types. The FAA is considering initiating an assessment of the need to prohibit all aircraft from continued flight in severe icing conditions as defined in these AD's.

Although Transport Canada Aviation does not request that the proposed AD's be withdrawn, the commenter indicates that roll control anomalies could exist for all aircraft whether they have powered or unpowered roll control systems. Transport Canada Aviation adds that some jet-powered aircraft have unpowered ailerons.

The FAA concurs that roll anomalies could exist for all aircraft whether they have powered or unpowered roll control systems. However, these AD's address airplanes having both deicing boots and unpowered aileron controls. The FAA

acknowledges that other airplanes that have powered ailerons may be subject to roll problems in severe icing conditions due to loss of lift. However, the FAA is not aware of a mechanism that would allow ice to produce an uncommanded control deflection on airplanes having powered flight control systems. In addition, airplanes having powered roll control systems do not have direct feedback of aerodynamic forces to the pilot. However, the FAA is considering initiating an assessment of the need to apply similar limitations to other aircraft types.

Comment 8. Request To Withdraw the Proposals: Affected Airplanes Are Not Same Type Design as Accident Airplane

Several commenters contend that the proposals should be withdrawn because the FAA has not established clearly that the airplanes addressed in the proposed rules have the same type design as the Aerospatiale Model ATR–72 series airplane that was involved in an accident in October 1994 that occurred in severe icing conditions.

One commenter questions the words ''same type design,'' and asks if those words refer to high wing, low wing, T-tail, or aircraft of another type design.

Three commenters provide justification in support of a request that certain airplanes be exempt from these AD's:

- de Havilland Model DHC–7 and DHC–8 series airplanes: De Havilland states that the airplanes it manufactures share a conservative aerodynamic design philosophy that yields exceptional low-speed handling qualities and demonstrated benign handling qualities in icing conditions. De Havilland adds that two-thirds of the roll control authority of these airplanes is provided by hydraulically powered roll spoilers. A second commenter adds that increased testing has been conducted on these airplanes.
- Fokker F27 Mark 100, 200, 300, 400, 500, 600, 700, and 050 series airplanes: Fokker states that the leading edge boots on Fokker Model F27 series airplanes and Model F27 Mark 050 series airplanes extend to a chord wise position, 12.5 percent wing chord, which precludes all but the very largest droplets impinging on the unprotected surfaces. Fokker adds that since the accident airplane has unshielded horn balances and the affected Fokker airplanes do not have these unshielded horn balances, Fokker airplanes will not experience roll upset problems. Fokker indicates that aerodynamically balancing the control surfaces by means of unshielded horn balances was not applied because of the bad service experience of the Vickers Viking aircraft in 1946.
- Beech Model 200 and 200C airplanes: Raytheon states that these particular airplane models are not normally considered to be commuter aircraft, and that issuance of an AD would be contrary to the stated purpose of the proposals because most of these airplanes are used in non-revenue service. Raytheon states that these airplanes are all low wing aircraft. Aerospatiale Model ATR–72 series airplanes (the accident airplane) is 50 percent larger and carries over twice the number of passengers as these Beech aircraft. For these reasons, as well as other differences in the geometry of the airplanes (i.e., relative aileron span), Raytheon states that the supposition of an icing hazard in these aircraft is purely speculative.

The FAA does not concur that any of the addressed airplanes should be exempt from these AD's. The FAA has examined the accident and incident history in icing conditions and, in particular, those events believed to involve SLD conditions. Results of this examination revealed that the type design characteristics that appear to be common in these events are pneumatic deicing boots and unpowered aileron controls. Airplanes having those type design characteristics appear to be more susceptible to control problems in severe icing conditions. In response to Fokker's remark that its airplanes will not experience roll control problems since those airplanes do not have unshielded horn balances, the FAA has determined that horn balances on the accident airplane were not the source of the uncommanded aileron motion. Design similarities of the wing, tail, or ailerons do not appear to be a common denominator among airplanes involved in accidents or incidents where SLD conditions may have been present.

Saab asks for removal of the sentence that reads, ''Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design . * * *'' Saab states that this sentence implies that Saab Model SF340A and SAAB 340B series airplanes have a problem and that this problem is ''likely to develop on other airplanes of the same type design.'' Yet, there have been no reported problems on those airplanes, which are not of the same type design as all other turbopropeller-powered airplanes. Transport Canada Aviation does not request that the proposals be withdrawn; however, the commenter requests that the FAA revise the same phrase discussed by Saab. Transport Canada Aviation requests that the phrase be reworded as follows: ''Since an unsafe condition has been identified where aircraft icing certification is not adequate to address the conditions that are outside of Appendix C of FAR part 25 . . . .''

The FAA does not concur with Saab's request. The FAA acknowledges that there have been no reported problems involving severe icing conditions on Saab airplanes. However, Saab Model SF340A and SAAB 340B series airplanes have pneumatic deicing boots and unpowered aileron controls, which have been determined to be the common denominators among the airplanes involved in accidents and incidents in severe icing conditions. Therefore, the FAA has determined that when severe icing conditions are encountered on these Saab airplanes, those conditions must be exited.

Although the FAA has no technical objection to the revised wording proposed by Transport Canada Aviation, this sentence does not reappear in the final rules. Therefore, no change to the final rule is necessary.

Comment 9. Request for Explanation of the Applicability of the AD's

One commenter requests an explanation of the methodology used by the FAA to determine that AD's should not be issued for Cessna and Piper multi-engine aircraft. The commenter also asks if an AD similar to the proposed rules exists for Boeing Model 737 series airplanes. The commenter indicates that Model 737 series airplanes have demonstrated abnormal and unexplained roll tendencies.

The FAA provides the following clarification for this commenter. No AD's have been issued for Piper airplanes or Boeing Model 737 series airplanes. However, as reflected in the table above, the FAA has issued an AD for Cessna Model 208 and 208B airplanes.

Most of the aircraft affected by these final rules are used primarily in regularly scheduled passenger service in the United States. However, there are some airplanes affected by the final rules that are not used in regularly scheduled passenger service. Two of these are Cessna Model 208 and 208B airplanes. Those airplanes were included in the final rules because of their accident and incident history in icing conditions. The FAA is considering an assessment of the need to prohibit all aircraft from continued flight in severe icing conditions.

Comment 10. Request To Withdraw the Proposals: Service Experience of Affected Airplanes is Satisfactory

Several commenters indicate that the FAA should withdraw the proposed AD's in light of the satisfactory service experience of the airplanes addressed in the proposals. The commenters believe that the FAA is singling out turbopropeller-powered aircraft without any regard for the operational record of those aircraft.

Several commenters provide justification in support of this request:

- One commenter states that de Havilland airplanes have been successfully operated for over 30 years without one instance of roll upset or flight control problems.
- De Havilland indicates that de Havilland Model DHC–8 series airplanes have been in service for 11 years and have accumulated 6 million flights and 5 million flight hours without any incidents due to icing.
- De Havilland adds that de Havilland Model DHC–7 series airplanes have been in service for 18 years and have accumulated 3.7 million flights and 2.7 million flight hours without any incidents due to icing.
- Another commenter has not experienced any icing related upsets or control irregularities in its fleet of de Havilland Model DHC–8 series airplanes and Beech Model 1900 series airplanes.
- One commenter operates 21 Beech Model 1900D airplanes, 32 EMBRAER Model EMB–120 series airplanes, and 41 Aerospatiale Model ATR–42 and ATR–72 series airplanes; none of these airplanes have experienced any icing incidents this season.
- One commenter indicates that airplanes produced by Beech, EMBRAER, and Jetstream Aircraft Limited (JAL) have no record of uncommanded roll due to asymmetrical build-up of ice on surfaces beyond the deicing boots.
- One commenter notes that it has not experienced any unusual icing characteristics on its fleet of EMBRAER Model EMB–120 series airplanes and Aerospatiale Model ATR–72 series airplanes.
- Fairchild notes that in over 26 years and 15,000,000 flight hours in passenger service, there has never been a reported incident where the controllability of Fairchild Aircraft SA226 and SA227 series airplanes were in jeopardy as a result of any icing encounters (including SLD icing encounters).
- The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, states that no ice build-up behind the wing boots has ever been reported on Saab Model SF340A, SAAB 340B, or SAAB 2000 series airplanes. Additionally, the leading edge on these airplanes can be inspected easily during flight.
- Saab remarks that no roll anomaly problems in icing conditions have occurred during the extensive service experience of Saab Model SF340A and SAAB 340B series airplanes.
- The FAA does not concur that the AD's should be withdrawn. The fact that an airplane has a perfect safety record in icing does not negate the fact that no airplane has been certificated for flight into SLD. The FAA has determined that a need exists to provide the flight crew with useful safety-related information regarding the limitations of the airplane concerning flight in severe icing conditions. The purpose of issuing these final rules is to provide the flight crew with such information.

One commenter, Transport Canada Aviation, requests that the proposals apply only to those airplanes that have a demonstrated history of in-service problems as a priority. The commenter states that the hazards relating to operation in icing conditions exist for all types of aircraft. (The commenter does not request that the proposed rules be withdrawn.)

The FAA does not concur with this request. As explained previously, the FAA has issued AD's for airplanes having pneumatic deicing boots and unpowered aileron controls as a priority. Airplanes having these design features are of immediate concern to the FAA because these features have been common denominators in the accident and incident history concerning flight in icing conditions and, in particular, during conditions when SLD was believed to be present. The FAA is considering the need for rulemaking to impose similar limitations on other aircraft.

Comment 11. Request To Withdraw the Proposals: Extensive Testing Revealed No Icing Problems

Several commenters request that the proposals be withdrawn because extensive testing revealed no icing problems on many different turbopropeller-powered airplanes, even though those tests likely exceeded any icing certification tests ever performed on other civil aircraft types, including large jet-powered transport category airplanes. Fokker states that Fokker Model F27 series airplanes do not demonstrate unacceptable roll control characteristics in severe icing conditions; however, Fokker submits no data to substantiate this statement.

The FAA does not concur. The FAA finds that successful completion of the roll upset evaluation is not a valid reason for withdrawing the AD's. On the contrary, if the evaluation had demonstrated anomalies, the FAA may have concluded that action beyond that required by these AD's was necessary to address the demonstrated unsafe condition. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle to determine if any design changes are necessary to prevent catastrophic control surface deflection. The testing was not a certification test to approve the airplane for flight into freezing drizzle since many of the components and their functions were not tested (e.g., pitch control, engine and propeller, performance, stall warning, windshield, air data sensors and fuel system vents). Further, freezing rain was not tested. Satisfactory demonstration of those tests does not remove the FAA's responsibility to provide a safe operating environment for the passengers and crew.

JAL comments that its airplanes are not subject to the addressed unsafe condition, and that the FAA had concurred with this contention. JAL states that the FAA agreed that, by the controllability evaluation process, all Jetstream aircraft types had been demonstrated to be not susceptible to roll control anomalies in freezing rain or freezing drizzle conditions.

The FAA does not concur with JAL's position concerning its airplanes. All Jetstream airplanes affected by these AD's successfully completed the roll upset evaluation. However, as stated previously, no airplanes were tested in freezing rain conditions. The roll upset evaluation only addressed conditions that were believed to have existed during an accident involving a transport category airplane that occurred in October 1994. Therefore, since no airplane has been tested in all freezing rain and freezing drizzle conditions, no airplane has been demonstrated to be safe for continued flight in these conditions.

Comment 12. Request To Withdraw the Proposals: Publish Advisory Materials and Require Training

Several commenters request that, in lieu of issuing the proposed rules, the FAA publish appropriate advisory materials and require training for recognition, avoidance, and exit from severe icing encounters as part of the required severe weather training for pilots and dispatchers. Two commenters suggest that the FAA include such

requirements in the operating rules specified in part 121 (''Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft'') of the Federal Aviation Regulations (14 CFR part 121). Another commenter indicates that, since jets and piston-engine aircraft also could develop ice shapes other than those tested, training should not be provided only to pilots of turbopropeller-powered airplanes, but to pilots of all aircraft. Some commenters also suggest that the FAA has successfully addressed other issues through increased awareness and training requirements, rather than by issuing AD's against every airplane type design to require revising the Limitations Section of the AFM. The commenters cite windshear, ground deicing, and clear air turbulence as examples of such issues. The commenters contend that, except where configuration changes are needed, such as in the case of windshear detection devices, improved awareness and training programs—not AD's—have been highly effective in achieving needed safety improvements.

The FAA does not concur. The FAA considers that substituting advisory material and mandatory training for issuance of an AD is not appropriate, nor would this adequately address the unsafe condition. The FAA fully supports the development of advisory materials and training. Part 121 (''Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft'') and part 135 (''Air Taxi Operators and Commercial Operators'') of the Federal Aviation Regulations (14 CFR parts 121 and 135) require that appropriate training concerning limitations such as those contained in these AD's be incorporated into air carriers' training programs. However, the FAA's position is that the development and use of such advisory materials and training alone are not adequate to address the subject unsafe condition. Currently, the AFM's specify that the affected airplanes are certificated for flight in icing conditions; however, the AFM's do not specify a method of determining whether the certification limits for those conditions have been exceeded. Consequently, the FAA finds that these AFM's must be revised to provide limitations for flight in icing conditions and to provide the flight crew with a method of determining when those limitations have been exceeded.

The FAA does not concur that amending part 121 of the Federal Aviation Regulations (14 CFR part 121) in lieu of issuing these AD's is appropriate. The FAA's position is that the appropriate place to inform the flight crew of the limitations of the airplane is in the AFM. The appropriate vehicle for mandating such AFM revisions is through issuance of an AD. In addition, an AD will ensure that the incorporation of such AFM revisions is not left to each operator's individual discretion and that flight crews receive pertinent information. The FAA may consider an assessment of the need to provide training to pilots of all aircraft types for flight in severe icing conditions.

The commenters reference windshear as an example of an issue that was handled successfully without issuance of an AD to revise the AFM's. In this case, the AFM's for all airplanes having an onboard windshear system were revised to provide the flight crew with procedures for responding when the system gives an alert. Although no AD was issued to mandate these AFM revisions, without revising the AFM, operators could not comply with the section of part 121 of the Federal Aviation Regulations (14 CFR part 121) that requires installation of the windshear detection devices. In conclusion, although AFM revisions were not required by an AD, AFM changes were mandated indirectly by a new part 121 regulation.

The commenters also reference ground deicing. Part 91 (''General Operating and Flight Rules'') of the Federal Aviation Regulations (14 CFR part 91) prohibits takeoff of an airplane unless the airframe is clear of ice; therefore, there is no need to provide additional limitations concerning the amount of ice that would be acceptable for takeoff. However, in the case of severe icing conditions addressed by these final rules, the AFM's currently allow flight in icing, but the AFM does not define when the limits of the certificated icing operation envelope have been exceeded.

Concerning the issue of clear air turbulence, issuance of an AD was not required because an airspeed limitation associated with turbulent air penetration was already in the AFM's. Therefore, in this case, the issue was addressed in the AFM as well as through awareness and training.

Comment 13. Request To Withdraw the Proposals: Incorporate Operational Issues into a Training Curriculum

Two commenters request that the proposals be withdrawn because the proposed AD's address an operational issue that should be incorporated into an operator's training curriculum. One commenter states that pilots must be made aware of the hazards of icing and that extended operation of an airplane in any icing encounter that results in significant airframe accretion of ice is unacceptable.

The FAA does not concur that the AD's should be withdrawn based on the commenters' request. The FAA acknowledges that these AD's address an operational issue. When the requirements of these AD's are accomplished and the AFM limitations are revised, this material will be incorporated necessarily, as explained previously, into the training curriculum for the flight crews and dispatchers, if applicable, in the operator's approved training program. In this manner, pilots and dispatchers, if applicable, will be informed of the hazards of icing and that continued operation of an airplane in certain icing conditions is prohibited.

Comment 14. Request To Withdraw the Proposals: Require Training for Air Traffic Controllers and Weather Specialists

Two commenters request that the FAA implement additional policy to require training for air traffic controllers and weather specialists in the recognition, avoidance, and procedures to exit severe icing conditions.

The FAA does not concur that these AD's should be withdrawn. However, the FAA acknowledges that implementation of these AD's may necessitate additional training beyond that which is already required for air traffic controllers and weather specialists. The FAA may consider the need to provide training concerning recognition, avoidance, and procedures for exiting severe icing conditions. However, the intent of these AD's is to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The appropriate vehicle for requiring that such information be included in the AFM's is through issuance of an AD.

Comment 15. Request To Withdraw the Proposals: Add a Caution to the AFM

One commenter requests that, in lieu of issuing the proposed AD's, a ''Caution'' should be added to the AFM to inform pilots to exit icing conditions if ice was observed to be forming aft of the protected surfaces of the wings. The commenter states that information regarding the use of flaps and the autopilot in icing conditions could also be incorporated into the AFM. The commenter does not indicate which section of the AFM should include this material.

The FAA does not concur. The FAA finds that the requirement to exit severe icing conditions and information concerning use of the autopilot during flight in those conditions must be included in the Limitations Section of the AFM. Additionally, information concerning use of the flaps during those conditions should be included in the Procedures Section of the AFM. The appropriate vehicle for requiring these changes to the AFM is through issuance of an AD.

Comment 16. Request To Withdraw the Proposals: Require Alternative AFM Limitation

One commenter requests that, in lieu of an AD, the FAA require an alternative AFM limitation that reads as follows: ''This aircraft is certified for flight into icing conditions as specified by Appendix C of Part 25. Actual icing encountered may be greater than Appendix C requirements.''

The FAA does not concur. The suggested limitation does not provide guidance as to how a pilot can identify and safely exit icing conditions that have exceeded those specified in the icing envelope in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). These AD's are intended to provide the flight crew with visual cues which indicate that icing conditions have exceeded the capabilities of the ice protection equipment, and with procedures to safely exit those conditions. No change to the AD's is necessary.

Comment 17. Request To Withdraw the Proposals: AFM Revisions Already Are Required

One commenter requests that the proposals be withdrawn because section 121.133 (''Manual Requirements: 'Preparation' '') of the Federal Aviation Regulations (14 CFR 121.133) already requires that operators incorporate revisions into the AFM's; therefore, issuance of the proposed AD's is unnecessary.

The FAA does not concur. Section 121.133 of the Federal Aviation Regulations (14 CFR 121.133) does not specifically require that AFM's be updated to current revisions. Section 121.141 (''Airplane or Rotorcraft Flight Manual'') of the Federal Aviation Regulations (14 CFR 121.141) requires that the current AFM be carried on the aircraft, but does not require incorporation of the most current revisions. Additionally, the commenter does not address the need to change the AFM's for airplanes that operate under parts 135 (''Air Taxi Operators and Commercial Operators'') and 91 (''General Operating and Flight Rules'') of the Federal Aviation Regulations (14 CFR parts 135 and 91). The appropriate vehicle for ensuring that the Limitations Section of the AFM's is changed is through issuance of an AD.

Comment 18. Request To Withdraw the Proposals: Use Existing AFM Revisions

The General Aviation Manufacturers Association (GAMA), on behalf of its members, states that some of the affected manufacturers have prepared FAA-approved revisions for the AFM's for their products. GAMA indicates that those revisions incorporate specific information regarding cues for recognizing severe icing conditions and procedures for exiting such conditions, if encountered. Therefore, if the proposed AD's are adopted, the requirements of the AD's would supersede the information operators have already incorporated into the AFM's with less appropriate information that is not type design specific.

One commenter, JAL, requests that certain existing AFM revisions for the affected Jetstream airplanes be cited in the proposed AD's for those airplanes in lieu of the content of the proposed AD's. (However, JAL does not request that the proposals be withdrawn for this particular reason.) JAL indicates that the existing AFM revisions have already been FAA-approved.

The FAA does not concur with the commenters' requests. The FAA acknowledges that the AFM revisions required by these final rules will supersede previously approved AFM revisions. However, the FAA is unaware of any AFM that addresses all of the provisions specified in these final rules, nor of any AFM that contains specific visual cues that the FAA has not included in the final rules. Even if AFM material currently exists that does contain all of the provisions of the final rules, the FAA finds that issuance of an AD would still be necessary to mandate the provisions of the AFM revisions. However, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD, for those operators having AFM's that already contain all of the provisions of the final rules.

Another commenter requests that the FAA withdraw the proposal that applies to Fairchild Model SA226 and SA227 series airplanes. The commenter states that the AFM for those airplanes currently contains visual cues to aid the flight crew in recognition of weather conditions conducive to SLD. This AFM also provides procedures for avoidance of such conditions. The commenter adds that these AFM procedures result in additional operating limitations on the aircraft with regard to severe weather conditions. The commenter believes these AFM procedures address all current FAA requirements.

The FAA does not concur that the AFM for Fairchild Model SA226 and SA227 series airplanes addresses all of the proposed requirements of the proposed rule. For example, the Limitations section of the AFM for those airplanes does not require the flight crew to exit severe icing conditions. For this reason, the FAA does not consider the AFM for Fairchild Model SA226 and SA227 series airplanes to be equivalent to the information specified in these AD's.

Comment 19. Request To Withdraw the Proposals: Develop Rulemaking to Address Airplane Certification Outside of Appendix C

Three commenters suggest that instead of arbitrarily prohibiting operation of the airplane, the FAA should undertake a well-designed research program and, if warranted, devise a rulemaking plan for certification of airplanes outside of Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). One commenter also suggests possible retroactive implementation of a new Appendix C.

The FAA does not concur because of the length of time that would be required to implement the commenters' suggestion. The FAA finds that action is required prior to the commencement of the next icing season to prohibit the continued flight of airplanes in icing conditions that have been shown to be unsafe and for which the airplanes have not been certificated. However, the FAA is currently considering initiating an assessment of the need to revise Appendix C and the possibility of its retroactive implementation.

Transport Canada Aviation states that the FAA has determined that there may be a problem with the certification requirements for icing on de Havilland Model DHC–6, DHC–7, and DHC–8 series airplanes, but not the specific approval or design features of those airplanes. However, the commenter does not specifically request that the proposals be withdrawn.

The FAA does not concur with the commenter's statement. The FAA has only determined that no adequate means exists for the flight crew to determine when the icing certification limits have been exceeded. The purpose of these AD's is to provide more clearly defined procedures and limitations

associated with severe icing conditions. This does not imply that the certification requirements for icing are inadequate.

Comment 20. Request To Withdraw the Proposals: Issue a ''General AD'' for All Airplane Types

One commenter requests that a ''general AD'' be issued to prohibit all airplane types from inadvertent flight into hazardous SLD conditions. Another commenter adds that if encounters with freezing rain/freezing drizzle conditions must be reported to Air Traffic Control, such reporting also should apply to flight crews of all airplane types.

The FAA does not concur with the commenter's request. For the reasons discussed earlier in the preamble of this AD, the FAA has determined that airplanes having pneumatic deicing boots and unpowered aileron controls are of immediate concern and have been addressed as a higher priority. The FAA finds that action is required prior to the commencement of the next icing season to prohibit the operation of these airplanes in icing conditions that have been shown to be unsafe and for which the airplanes have not been certificated. However, the FAA is currently considering initiating an assessment of the potential adverse effects of SLD on all airplane types.

Comment 21. Request To Withdraw the Proposals: Establish a Detailed Reporting System

One commenter requests that the FAA establish a detailed reporting system for inadvertent encounters with severe SLD. The commenter envisions a system that would provide a database for better identification of controllability issues and visual indications related to these encounters.

The FAA does not concur with the commenter's request. The FAA has been advised that the Regional Airline Association (RAA) has already established an ''Unusual Icing Reporting Program'' for the purpose described by the commenter; therefore, establishing another reporting program would duplicate this benefit.

Comment 22. Request To Withdraw the Proposals: Revise the Master Minimum Equipment List (MMEL)

Two commenters request that, instead of addressing an MMEL item in an AD [i.e., the icing detection lights referenced in paragraph (a)(1) of the proposals], the FAA should require that the MMEL be revised. A third commenter adds that the decision to change the MMEL should be made by FAA Operations Inspectors based on local conditions. One commenter states that the prohibition of dispatch with any inoperative ice detection lights would preclude any efforts by an operator to enhance safety by installing a second set of bulbs. The commenter adds that under this proposed rule, this type of action would be penalized by simply doubling the chances of a burned out bulb grounding the aircraft. In practice, if one were to add a fully redundant set of bulbs, it would enhance safety by allowing the equivalent of the current illumination level even with a bulb burned out.

The FAA does not concur with these requests. FAA Operations Inspectors are not authorized to make MMEL revisions. The FAA has determined that it is prudent to address the icing detection lights in these final rules to ensure uniform and immediate application of the requirements of the AD's. Concerning the example provided by one of the commenters, if an operator chooses to add a fully redundant set of bulbs, that operator should request approval of an alternative method of compliance in accordance with the provisions of this final rule.

Although Transport Canada Aviation does not request that the proposals be withdrawn, it requests a revision to the requirement that all icing detection lights must be operative. For de Havilland Model DHC–7 and DHC–8 series airplanes, the commenter requests that the requirement be changed to mandate that at least one outboard and one inboard inspection light be operative prior to flight into known or forecast icing conditions at night. Since the MMEL contains a provision that a suitable lamp/light of adequate capacity be available, this is considered acceptable in conjunction with other indications of freezing rain or freezing drizzle. Similarly, for de Havilland Model DHC–6 series airplanes, the requirement should be revised to require a suitable lamp/light for dispatch at night with one wing inspection light inoperative.

The FAA does not concur. The FAA has determined that the justification provided by the commenter is not adequate to enable the FAA to determine if the proposed changes are acceptable. During severe icing conditions, the flight crew's workload may be high, and there may be no opportunity to use the portable lamp/light, which, in itself, may create disorientation in the cockpit due to adverse reflections from the glass. The FAA's intent in having all inspection lights be operative at night is to provide the flight crew the best possible visibility of the airframe. However, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of these AD's, provided that adequate justification is presented to support such a request.

Comment 23. Request To Withdraw the Proposals: Certify Airplanes for Flight in Conditions Outside Appendix C

One commenter implies that the airplanes affected by the proposed rules must be rectified to a level beyond the present certification requirements for flight in icing.

The FAA does not concur. The final rules do not require certification of the airplane beyond the current certification requirements for flight in icing specified in Appendix C. These AD's simply provide the flight crew with visual cues which indicate that icing conditions have exceeded the capabilities of the ice protection equipment, and with procedures to safely exit those conditions.

One commenter requests that the proposal for de Havilland Model DHC–6 series airplanes be withdrawn because this airplane model is type certificated in Canada, which is a country with a higher standard than the United States for operating in icing conditions.

The FAA does not concur. This commenter did not submit data to the FAA to substantiate that the airplane has been shown to be safe for flight outside the icing certification envelope specified in Appendix C. Additionally, the FAA is unaware of any foreign civil aviation authority having certification requirements for icing conditions that are outside of the icing certification envelope used in the United States.

Comment 24. Request To Withdraw the Proposals: Proposals Prohibit Takeoff or Approach in ''Light Freezing Drizzle'' Conditions

One commenter requests the proposals be withdrawn because the proposed limitation would prohibit takeoff or approach when ''light freezing drizzle'' conditions that are caused by light precipitation falling through a thin layer of cold surface air below warmer air above are reported on the surface. The commenter maintains that with accomplishment of the appropriate ground deicing precautions prior to takeoff, no hazard to the operation of the airplane is posed.

The FAA does not concur that the AD's should be withdrawn for this reason. These AD's do not affect any existing regulations or FAA-approved operating procedures related to takeoff, dispatch, or release of an airplane in icing conditions, nor do these AD's

prohibit operation in specific meteorological conditions. These AD's only prohibit remaining in icing conditions when certain visual cues are present on the airplane. Operators must comply with existing rules that require an airplane to be free of ice prior to takeoff. Therefore, takeoff in ''light freezing drizzle'' would only be prohibited by existing regulations or FAA-approved operating procedures, not by these AD's. As explained previously, the FAA considers that landing the airplane when freezing rain/freezing drizzle conditions are encountered would, in many cases, be the most expeditious method of exiting the conditions. Such landing would be in compliance with the limitation that requires the flight crew to exit the severe icing conditions.

Comment 25. Request To Withdraw the Proposals: Proposals Leave Unanswered Questions

One commenter contends that the proposals leave unanswered questions. The commenter alleges that without the answers to those questions, affected parties are deprived of the ability to provide informed comments and, thereby, are ''denied their rights under the Administrative Procedures Act (APA) to comment on the proposed rules.'' Specifically, the commenter asks:

—What is unusual icing?
—Does the pilot, Air Traffic Control, dispatch, or the FAA determine when the conditions exist?
—What is splatter effect?
—Where are the operating instructions incorporated—in the AFM, training manuals, or some other document?

The FAA infers from the commenter's remarks that the commenter requests the proposed AD's be withdrawn because informed comments could not be provided.

The FAA does not concur that the AD's should be withdrawn on this basis. The FAA does not agree that the public has been deprived of the ability to provide informed comments, as required by the APA. In general, the APA requires that notice of the terms or substance of a proposed rule be published in the Federal Register. The purpose of this requirement is to ensure that federal agencies thoroughly consider all information and opinions submitted by the public before any requirements are imposed. Notice is intended to improve both the quality of the regulations and their acceptability to the public. The FAA finds that none of the questions raised by the commenter identify areas in which the commenter has not been provided a reasonable opportunity to comment. The fact that the commenter raises questions suggests that the commenter considers a need for further clarification. Even if the commenter is correct in that these questions require clarification, that fact in itself is a comment that can be addressed properly by simply clarifying terms. The fact that clarification is necessary does not mean that the public has been denied reasonable opportunity to comment.

In response to the commenter's questions, the FAA provides the following clarification. The term ''unusual icing'' did not appear in the proposed rules. However, the phrase ''unusually extensive ice'' is referenced in paragraph (a)(1) of the final rules. [This reference appears in paragraph (a)(2) of the final rule for Aerospatiale airplanes.] ''Unusually extensive ice'' accrued on the airframe in areas not normally observed to collect ice is a visual cue that is subject to interpretation by the flight crew; therefore, a specific definition of ''unusually extensive ice'' cannot be provided.

These AD's address changes to AFM limitations, which pertain to the pilot since the pilot is responsible to look for the visual cues defined in the AD's. Therefore, the pilot determines when severe icing conditions exist.

The terminology ''splatter effect'' did not appear in the proposed rules. The FAA infers from the commenter's question that the commenter is referencing terminology used in paragraph (a)(2) of the proposed AD's. ''Droplets that splash or splatter on impact at temperatures below +5 degrees Celsius OAT'' is a visual cue that was included in the proposed AD's as a method of identifying severe icing conditions.

Concerning incorporation of operating instructions, these final rules specify that the AFM's be revised. The AD's do not specify that any other manuals or documents be revised. However, information that is included in the AFM as a limitation is necessarily included in the training program.

Comment 26. Request To Clarify Scope of Icing Conditions Addressed

Transport Canada Aviation suggests that the proposals, which address only freezing rain/freezing drizzle conditions, are not adequate to cover all hazards related to operation of aircraft in icing conditions. The commenter makes no specific request.

The FAA concurs that these AD's do not address all icing related hazards. The FAA's intent is to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing the flight crews with more clearly defined procedures and limitations associated with such conditions. However, no change to the final rules is necessary.

Comment 27. Request To Expand the Applicability of the AD's

One commenter, the CAA, suggests that the ''coverage'' of the proposals should be stated clearly. The CAA believes that a restriction to those operations in ''regularly scheduled passenger service'' is not warranted for a safety issue as it does not cover cargo, charter, or private operations. The commenter does not specify which airplane models should be addressed. The FAA infers from the commenter's remarks that it requests that the proposed AD's be applicable to other airplane models that are used in cargo, charter, or private operations that may have been excluded from the applicability of these AD's.

The FAA does not concur that the applicability of these AD's should be expanded to include additional airplane models used primarily in cargo, charter, or private operation. The FAA is currently considering the need for additional rulemaking to address other airplane models having pneumatic deicing boots and unpowered aileron controls that are used in these types of service that were not addressed by these AD's. Additionally, the applicability of these final rules indicates that the AD's apply to ''all'' of the airplane models identified, certificated in any category. This means that the AD's apply to all of the affected airplanes, regardless of how those airplanes are operated (including passenger service, cargo, charter, or private operation).

Comment 28. Request for Design Changes to the Airplanes

One commenter requests that the FAA require design changes to the airplanes, which, when accomplished, will allow elimination of the AFM limitations. The commenter states that abnormal roll control anomalies could be eliminated by design changes that prevent any ice shapes from forming by using supplemental ice protection added to existing pneumatic boots or other ice protection installations. The commenter concludes that, given this added protection, restricting flight in freezing drizzle could be reduced to allow exposure to these atmospheric conditions for a reasonable time and would not require immediately exiting these conditions when encountered as presently stipulated.

The FAA does not concur that it should require design changes to airplanes in these AD's. Currently, the FAA is unaware of any design changes that would allow elimination or reduction of the AFM limitations specified in these AD's. However, if such design changes are developed, approved, and become available, the FAA would consider additional rulemaking to require such changes. The FAA finds that even if the ice protection system prevented the formation of ice shapes in front of the ailerons when the airframe is exposed to certain freezing drizzle conditions, other meteorological conditions still exist (e.g., freezing rain) for which the airplane would not be certificated.

Comment 29. Request for More Specific Visual Cues

One commenter requests that the FAA provide more specific visual cues for identification of freezing rain or freezing drizzle conditions. The commenter states that the generic visual cues provided in the proposed AD's are not adequate for aircraft types that frequently operate in and encounter SLD conditions. For example, ice could be forming on the upper wing and not the lower wing; therefore, looking at the lower wing would not be a reliable visual cue. Two commenters suggest that specific visual cues be provided for each airplane model. One of these commenters states that subjective cues may be of limited benefit if the pilot's experience with icing is inadequate. The other commenter adds that subjective visual cues will result in varying interpretations (i.e., some unnecessary course changes in altitudes or service interruptions caused by overly conservative interpretations). Transport Canada Aviation does not request more specific visual cues; but states that ''unusually extensive ice,'' ''normally observed,'' and ''farther back than normally observed'' are all variable terms that are largely dependent on flight crew experience. The commenter contends that limitations and procedures described using these terms will not be consistently interpreted. In addition, Transport Canada Aviation states that ice on the lower wing surface aft of the protected area, by itself, is unlikely to cause a hazard. Moreover, the presence or absence of such ice cannot be used as an indication of any hazardous accumulation on the upper wing surface or on the horizontal stabilizer.

The FAA does not concur with the commenters' request to provide more specific (or airplane-specific) visual cues. The FAA agrees with the commenters' assertion that, under certain circumstances, examination of the undersurface of a high wing may not be reliable. The FAA also agrees that other cues, such as unusually extensive ice accrued on the airframe in areas not normally observed to collect ice and accumulation of ice on the propeller spinner farther aft then normally observed, are subjective and that reliance on pilot judgment and experience is necessary in such cases. Additionally, the FAA fully supports the development and use of airplane-specific cues by operators and manufacturers. Unfortunately, no commenter provided airplane-specific cues during this comment period.

In summary, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Transport Canada Aviation states that the term ''protected area'' may not be readily recognizable by the flight crew; for example, not all of a deicing boot surface is ''protected area.'' [This terminology appears in the second visual cue (in the proposals for airplanes other than Aerospatiale airplanes) and in the autopilot limitation in paragraph (a)(1) of the proposals. For Aerospatiale airplanes, this terminology appears in the secondary indications in paragraph (a)(1) of the proposal.] The FAA infers that the commenter requests that more specific language than ''protected area'' be used.

The FAA does not concur that this terminology should be revised. The FAA considers that a pilot understands that a portion of the deicing boot would be considered to be unprotected. Therefore, no additional clarification or definition of the term ''protected area'' is necessary.

Comment 30. Request to Reference Clear Icing Conditions and Clear Component of Mixed Icing Conditions

One commenter also asks that all references to freezing rain and freezing drizzle environments and visual cue identification reference clear icing conditions and the clear component of mixed icing conditions. According to the commenter, mixed icing conditions can contain areas of freezing rain and/or freezing drizzle. The commenter notes that mixed icing has taken on two different definitions within the aviation community—the ''engineering'' definition (which is defined in an FAA icing handbook) and the definition pilots use (which includes areas of clear and rime ice). The commenter states that a clear definition of these conditions is needed. The commenter adds that only pilot reports can show that freezing rain/freezing drizzle exists because forecasting of these conditions is inadequate. The commenter indicates that while the Aerospatiale airplanes have side window cues that will accurately identify freezing rain or freezing drizzle, pilots of other airplanes without such a sophisticated cue may erroneously report mixed icing.

The FAA does not concur. The FAA acknowledges that freezing rain and freezing drizzle may be reported as clear/mixed icing conditions. However, the flight crew must exit icing conditions that produce the visual cues specified in the final rules. Exiting the icing conditions is not dependent upon the terminology used to describe the conditions. Therefore, the FAA has determined that it is not necessary to include references to clear icing conditions and the clear component of mixed icing conditions. In addition, the FAA has determined that including a discussion in these AD's of the phenomenon of mixed icing conditions as it relates to the current state-of-the-art weather forecasting would be premature because no clear definition of this phenomenon has been agreed upon among the aviation community. The FAA is currently considering an assessment during which various icing-related subjects, including mixed icing conditions, would be addressed.

Comment 31. Request for Research and Use of Wing-Mounted Ice Detectors

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

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required. The specifications for automatic detectors having the capabilities to differentiate among freezing rain, freezing drizzle, and other icing conditions have not been determined. However, if such ice detectors are

developed, approved, and become available, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 32. Request to Limit the Applicability of the AD's

One commenter requests that the applicability of the proposals be limited to airplanes having NACA 430xx airfoils. The commenter asserts that the unusual pressure peak on the NACA 430xx airfoils at 9 percent chord caused the ice ridge to form at that point, which resulted in the accident involving a Aerospatiale Model ATR–72 series airplane. The commenter states that ''the accident was caused by the poorly designed, unusual, and fortunately rarely used NACA 430xx airfoils used on this airplane.''

The FAA does not concur with the commenter's request to limit the applicability of the AD's. First, the National Transportation Safety Board (NTSB) has not yet made an official finding of the probable cause of the accident referenced by the commenter. Therefore, the FAA cannot assume that airplanes having NACA 430xx airfoils are more susceptible to the addressed unsafe condition than those airplanes that do not have this type of airfoil. Second, the FAA has examined the data submitted by the commenter, and disagrees with the commenter's assertion concerning the formation of ice ridges. The formation of ice ridges depends on many factors. Ice ridges have been observed to form in areas where there is no pressure (commonly, ''suction'') peak. However, the impingement location of large droplets is more relevant to the development of ice ridges than the particular pressure distribution. The commenter does not address the fact that, regardless of the type of airfoil on an airplane, a substantial sharp edge protuberance in the vicinity of the suction peak can have adverse consequences to the aerodynamic performance of the airfoil. Regardless of the cause of location of ice formations, prevention or removal of the ice is certainly an acceptable remedy for such conditions, should those conditions occur. For example, Aerospatiale extended the deicing boots to prevent the formation of adverse ice ridges.

Comment 33. Request for Approval of Improved Deicing Equipment for Aerospatiale Airplanes

ATR requests that paragraph (b) of the proposed rule for Aerospatiale airplanes be revised to indicate that installation of any improved version of deicing equipment that is approved by the FAA is acceptable for compliance with the requirements of that paragraph. The commenter provides no justification for its request.

The FAA does not concur with the commenter's request to revise the AD. However, if an improved version of deicing equipment is developed, approved, and available, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of the AD.

Comment 34. Request for Re-Evaluation of Modified Deicing Boots on Aerospatiale Airplanes

In response to the proposal for Aerospatiale airplanes, one commenter requests that the new, enlarged deicing boots that are required to be installed on these airplanes must be re-evaluated before total confidence in the modified boots is warranted. The commenter asserts that no test data exist to show that the modified boots will preclude the problem of large droplets outside of Appendix C. The area of exposure outside of Appendix C is essentially open-ended, and only limited testing within a narrow range of droplet diameters was conducted. Additionally, the test conditions that existed during the tanker testing conducted at Edwards Air Force Base, which was intended to be a ''before modification/after modification'' validation program, were not identical. The commenter adds that no modification will ensure that any airplane is safe while flying in icing conditions outside those specified in Appendix C.

The FAA does not concur with the commenter's request for a re-evaluation of the modified deicing boots. The modified deicing boots for these airplanes were subjected to an extensive certification program by both the FAA and the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France. FAA approval of the modified boots was based on engineering analyses, wind tunnel testing, flight testing in natural icing conditions, and a validation program involving a United States Air Force icing tanker. This testing verified that the modified boots continue to perform the intended function within the Appendix C icing envelope. In addition, the extended deicing boots were shown to adequately protect the airplane from the larger, supercooled water droplets that are believed to have existed in the area at the time of the accident in October 1994.

It should be noted, however, that it is not intended that the modified boots provide protection in all possible icing conditions, including freezing rain/freezing drizzle. However, the FAA considers that the combination of the enlarged deicing boots, the AFM operational procedures and restrictions, and the visual cues which indicate entry into freezing rain/freezing drizzle conditions provides for an enhanced level of safety during inadvertent flight in these conditions.

Comment 35. Request for Formal Weather Forecasting System for Freezing Rain/Freezing Drizzle

One commenter supports a requirement to establish a formal system to provide forecasts of freezing rain/freezing drizzle conditions, as proposed in paragraphs (b) and (c) of the original proposed rule for Aerospatiale airplanes. [This proposed requirement was removed from the subsequent supplemental notice of proposed rulemaking (NPRM) issued for these airplanes in January 1996.] The commenter states that such a requirement should remain in effect until forecasting tools are developed or detection methods are established to prevent dispatch or operations in conditions outside those specified in Appendix C. The commenter states that the efficacy of the deicing boots has not been shown completely nor documented; therefore, avoidance of freezing rain/freezing drizzle is paramount to safety of flight.

The FAA does not concur that such a requirement is necessary. The FAA agrees that such a system would enhance the safety of flight operations. However, there is no evidence that lack of a system with such specialized features would lead to an unsafe condition. Forecasts of freezing rain/freezing drizzle are a normal part of pre-flight weather briefings. The FAA is aware, however, of serious limitations for such a system to provide accurate and timely forecasts of these conditions during flight in areas that are removed from weather reporting stations. Quite often, the only indication of the existence of severe icing conditions is from pilot reports or other direct observations.

Research is underway currently in industry and the academic community to address shortcomings in the forecasting of severe icing conditions. The FAA may consider further rulemaking if advancements in weather forecasting provide for a reliable method to predict the occurrence of freezing rain/freezing drizzle conditions during flight or in areas removed from direct observations.

Comment 36. Request To Approve Earlier Service Bulletin Revisions

One commenter to the proposed rule for Aerospatiale airplanes requests that the proposed AD be revised to specify that earlier revisions of service bulletins are acceptable for compliance with the requirements of the proposed rule. The commenter makes this request so as to eliminate the need to apply for approval of alternative methods of compliance when accomplishing service bulletin revisions other than those specified in the proposed rule.

The FAA does not concur that earlier revisions of the referenced service bulletins should be cited in the final rule for Aerospatiale airplanes. However, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of the AD, provided that adequate justification is presented to support such a request.

Additionally, the FAA has revised the revision levels specified for certain service bulletins because those revision levels were omitted inadvertently from paragraph (b) of the proposed rule for Aerospatiale airplanes. That final rule has been revised to indicate that certain modifications are to be accomplished in accordance with Revision 1 of Aerospatiale Service Bulletins ATR42–57–0043, ATR72–57–1015, and ATR72–57–1016. The correct date for Revision 1 of those service bulletins (April 10, 1995) was specified in the proposal for the affected airplanes.

Comment 37. Request To Revise Referenced Service Bulletins

One commenter to the proposal for Aerospatiale airplanes suggests that service bulletin revisions should contain a statement indicating that the revision has no effect on previously modified airplanes. The commenter provides no justification for this request.

The FAA acknowledges that many service bulletins do contain the suggested phrase as an aid to operators that may already have accomplished an earlier service bulletin revision. In fact, if a particular service bulletin is specified in an AD and that service bulletin is revised, the FAA routinely determines whether the service bulletin revision adequately addresses the unsafe condition specified in the AD; if necessary, the FAA amends the AD to cite the later service bulletin revision.

Comment 38. Request To Revise Visual Cue: Ice on Side Window

One commenter suggests revised wording for the first visual cue specified in paragraph (a)(1) of the proposed rule for Aerospatiale airplanes, as follows: ''Freezing rain and freezing drizzle are characterized by ice covering all or a substantial part of the unheated portion of either forward side window and/or water splashing or streaming on the windshield or the side window when in freezing or near freezing temperatures.'' The commenter states that the present wording implies that ice will always appear on the side window; however, this is not the case.

The FAA does not concur with the commenter's request. The commenter's revised wording suggests that water splashing or streaming on the windshield or the side window would be a primary cue used to determine when severe icing conditions are present. The FAA does not concur that water splashing or streaming on the windshield or the side window would be a reliable cue in itself. However, this cue may be used as a supplemental cue to the primary cue of ice accruing on the side window. No change to the final rule for Aerospatiale airplanes is necessary.

Comment 39. Request To Remove Visual Cue: Unusually Extensive Ice Accretion

One commenter, Saab, requests that if the FAA does not withdraw the proposed AD's, paragraph (a)(1) of the proposal for Saab SF340A and SAAB 340B series airplanes should be revised. The commenter suggests that the first visual cue that appears in that paragraph, which relates to unusually extensive ice accretion, be removed from the proposal for those airplanes. Saab indicates that critical ice is believed to be ice that builds up beyond the protected surfaces on the wing. On Saab Model SF340A and SAAB 340B series airplanes, the pilot has a good view of the outer wing and the propeller spinner. Unusually extensive ice in other areas may or may not be significant in determining whether freezing rain or freezing drizzle is present; however, the primary visual cue for these airplanes is ice on the spinner/outer wing.

In light of Saab's remarks, the FAA concurs that the visual cue addressed by the commenter should be removed from the final rule for Saab Model SF340A and SAAB 340B series airplanes. (That visual cue remains in place for Saab Model SAAB 2000 series airplanes.) Paragraph (a)(1) of that final rule has been revised accordingly.

A second commenter, Raytheon, requests that the same visual cue be removed from the proposal for Beech airplanes. Raytheon indicates that it does not believe that observation of this visual cue indicates that the airplane has exceeded the Appendix C icing envelope with respect to Beech airplanes. Therefore, the cue specified in the proposal would be irrelevant in an AFM for these airplanes.

The FAA does not concur with Raytheon's request. The commenter has not submitted data to warrant removal of the visual cue. No change to the final rule for Beech airplanes has been made.

Comment 40. Request To Remove Visual Cue: Accumulation of Ice on Wing Surfaces

JAL requests that the FAA remove the generic information contained in the visual cue concerning accumulation of ice on the wing surfaces from the proposals for Jetstream airplanes. JAL indicates that, for its airplanes, the appropriate visual cue is the accretion of ice behind the protected area of the wing upper surface (not the wing lower surface).

The FAA concurs. The FAA finds that this particular visual cue should be airplane-specific. Therefore, the FAA has customized paragraph (a)(1) of the final rules for all affected airplanes to specify whether accumulation of ice is observed on the upper or lower surface of the wing, depending upon whether the airplane is a high- or low-wing airplane. [Operators should note that, for Aerospatiale airplanes, the cue was customized in paragraph (a)(2) of the final rule.]

Comment 41. Request To Revise Visual Cue: Accumulation of Ice on Propeller Spinner

One commenter requests that the FAA revise the visual cue concerning accumulation of ice on the propeller spinner, as specified in paragraph (a)(1) of the proposals. For consistency, the commenter requests that the word ''back'' be replaced with ''aft.''

The FAA concurs with the commenter's request. The final rules have been revised to change the visual cue to read as follows: ''Accumulation of ice on the propeller spinner farther aft than normally observed.'' [Operators should note that, for Aerospatiale airplanes, this change appears in paragraph (a)(2) of the final rule.]

Comment 42. Request To Remove Visual Cue: Accumulation of Ice on Propeller Spinner

One commenter, JAL, requests that the FAA remove the visual cue concerning accumulation of ice on the propeller spinner from the proposals for Jetstream airplanes. JAL indicates that on Jetstream Model ATP airplanes and Model 748 series airplanes, the propeller spinner is not visible from the

flight deck. On Jetstream Model 3101, 3201, and 4101 airplanes, the propeller spinner is visible from the flight deck, but flight test experience indicates that there is no unique correlation between the extent of spinner ice accretion and the existence of freezing rain/freezing drizzle conditions.

The FAA concurs partially. The FAA concurs that since the propeller spinner is not visible from the flight deck on Jetstream Model ATP airplanes and Model 748 series airplanes, the visual cue can be removed from paragraph (a)(1) of the final rules for these models. The FAA does not concur that this visual cue should be removed from the AD's for Jetstream Model 3101, 3201, and 4101 airplanes. The commenter did not submit data to substantiate its assertion that flight test experience indicates there is no unique correlation between the extent of spinner ice accretion and the existence of freezing rain/freezing drizzle conditions. Therefore, it is uncertain if the commenter's flight test airplane was equipped with instrumentation that would allow the detection and/or measurement of droplets outside the Appendix C conditions, and if the airplane had flown into icing conditions containing freezing rain or freezing drizzle.

Comment 43. Request To Remove Limitation to Immediately Exit Freezing Rain/Freezing Drizzle

Saab requests that the FAA remove a sentence from paragraph (a)(1) of the proposals that requires the pilot to immediately exit freezing rain or freezing drizzle conditions by changing altitude or course. This commenter points out that the first limitation contained in the proposal for Saab airplanes (''Flight in meteorological conditions described as freezing rain or freezing drizzle, as determined by the following visual cues, is prohibited * * *'') already prohibits flight in these conditions, and the pilot should respond accordingly. Raytheon believes a conflict exists between using observations of ice accretion, as required by paragraph (a)(1) of the proposed rules, and the ''determination'' of certain meteorological conditions.

The FAA concurs partially. The FAA does not agree that the sentence discussed by Saab should be removed from paragraph (a)(1) of the final rules. As explained previously, the first limitation in paragraph (a)(1) of the final rules has been revised to read: ''During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exist, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.'' (This wording is slightly different in the final rule for Aerospatiale airplanes because only one visual cue is provided.) The FAA finds that this revision to the final rules addresses the commenters' concerns with regard to the proposed limitations.

One commenter poses various questions concerning the last sentence of the first instruction listed in the procedures for exiting the freezing rain/freezing drizzle environment in paragraph (a)(2) of the proposals. (That sentence reads as follows: ''Asking for priority to leave the area is fully justified under these conditions.'')

—What does the term ''priority'' provide a pilot when asking for priority to leave icing conditions?
—What if there were three simultaneous requests for ''priority?''
—What Air Traffic Control procedures exist for treating an immediate request for ''priority?''
—Where is the term ''priority'' defined?

The commenter states that confusion over terms that have not been defined clearly by the FAA has partially resulted in accidents and incidents. However, the commenter does not cite a specific case in which this occurred.

The FAA has re-examined the last sentence of the first instruction listed in the procedures for exiting the freezing rain/freezing drizzle environment in paragraph (a)(2) of the proposals. The FAA has reconsidered use of the term ''priority.'' The FAA finds that more appropriate language that would be understood clearly by the flight crew and Air Traffic Controllers should be used in that instruction. Existing training for flight crews and Air Traffic Controllers addresses priority handling of airplanes. However, the FAA will issue additional information for Air Traffic Controllers to further clarify priority handling of airplanes in severe icing conditions. The FAA finds that the limitations specified in paragraph (a)(1) of the final rules will result in the pilot taking appropriate steps to exit the icing conditions. Therefore, the FAA finds that the sentence questioned by the commenter may be removed from the final rules without affecting safety. Accordingly, the FAA has removed that sentence from the final rules.

Additionally, in order to use terminology in the procedures for exiting the severe icing environment that is consistent with the terminology used in the revised limitation and to simplify certain language, the FAA has revised the first instruction of the procedures. The revised instruction reads as follows: ''Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.''

Comment 44. Request To Change the Note Concerning the Autopilot

One commenter, ATR, requests that the FAA revise the second note in paragraph (a)(1) of the proposal for Aerospatiale airplanes. As proposed, ATR believes the last sentence of the note is too restrictive. ATR proposes the following: ''The autopilot may mask tactile cues * * * characteristics. Therefore, when any ice is visible on the airplane, the pilot should consider flying manually for short periods in order to check the absence of any anomaly.''

Two commenters request that the FAA remove a similar note concerning the autopilot from the proposals for airplanes other than Aerospatiale models. One of the commenters, JAL, states that the note contains advisory information and should not appear in the Limitations Section of an AFM.

The FAA concurs with ATR's comment that the last sentence of the note is too restrictive; that sentence has been removed from the final rules for all airplanes. However, the FAA does not agree with JAL's contention that the explanation of the relationship between the autopilot and the masking of tactile cues is inappropriate for insertion in the Limitations Section of an AFM. On the contrary, the FAA finds that inclusion of such information will increase the level of understanding and, consequently, will increase the level of safety.

In light of this, the FAA finds that the note may be removed from paragraph (a)(1) of the final rules for all airplanes; however, the information contained in the first sentence of that note has been combined with the autopilot limitation in paragraph (a)(1) of the final rules. The final rules have been revised accordingly.

Comment 45. Requests to Remove Autopilot Limitation

Saab requests that the FAA revise the second limitation that appears in paragraph (a)(1) of the proposal for Saab airplanes. As proposed, this limitation indicates that use of the autopilot is prohibited when any ice is observed forming aft of the protected surfaces of

the wing, or when unusual lateral trim requirements or autopilot trim warnings are encountered. Saab asks that this autopilot limitation be modified to take into consideration the autopilot system design on these airplanes, which provides out-of-trim warnings; therefore, the autopilot can be used up to the point where a warning is triggered. Saab adds that the triggering point is early enough for the warning to be taken, should the reason be ice build-up beyond the protected surfaces. Additionally, there is no automatic disconnect if the autopilot servo reaches its limit torque, which would prevent any surprise to the pilot during an out-of-trim condition.

Another commenter, EMBRAER, requests that use of the autopilot not be limited for EMBRAER Model EMB–120 series airplanes. The commenter states that flight tests have demonstrated the safe ability of these airplanes to depart a freezing rain/freezing drizzle condition with the autopilot on.

Raytheon also objects to the autopilot limitation. Raytheon suggests that a better approach is to inform the pilots of the nature of ice accretion, and then let the pilots decide when to use the autopilot. The commenter believes that prohibiting use of the autopilot when any ice is observed aft of the protected surfaces of the wing is a rigid requirement that takes away a valuable aid to the flight crew when it may be needed most. Raytheon states that there is no evidence that the autopilots on Beech aircraft would mask an icing related control problem. The commenter points out that tests on those aircraft disclosed no icing related control problem to mask. The commenter adds that trying to anticipate every situation with an absolute prohibition may lead to other unsafe conditions.

The FAA does not concur that the autopilot limitation should be modified or removed from the AD's for any of the affected airplanes. The limited amount of time the pilot is using manual controls instead of the autopilot would not result in an unsafe condition. In normal operational environments and conditions, the autopilot is a valuable aid that reduces the workload of the flight crew. However, under abnormal conditions (ice aft of the protected surfaces, unusual lateral trim, or autopilot trim warnings), the autopilot will mask the build-up of large or unusual control forces in one or more axes. Therefore, for the short period of time necessary to exit severe icing conditions, the safest course of action would be manual pilot control. Even if an autopilot does not automatically disconnect, the pilot may choose to disconnect the autopilot and could then be faced unexpectedly with unusual control forces. These reasons also still hold true with airplanes that have been flight tested with the ice shapes.

Since the issuance of the proposed rules, the FAA has re-examined the autopilot limitation specified in paragraph (a)(1) of the proposals. The FAA recognizes that clarification is necessary with regard to its intent concerning that limitation. That limitation, as specified in the proposals, states that use of the autopilot is prohibited when any ice is observed forming aft of the protected surfaces of the wing, or when unusual lateral trim requirements or autopilot trim warnings are encountered. However, the FAA's intent concerning that limitation is that the autopilot be disconnected when the flight crew observes any of the visual cues identified in paragraph (a)(1) of the AD's. The need to disconnect the autopilot arises when an amount of ice accumulates that indicates the limits of the ice protection equipment have been exceeded, regardless of the means by which the flight crew becomes aware of the accumulation of ice.

Additionally, the FAA acknowledges that the autopilot limitation, as proposed, could be misinterpreted to mean that the autopilot must be disengaged when unusual lateral trim or autopilot trim warnings are encountered, regardless of whether the airplane is in icing conditions. However, the FAA only intended that the autopilot limitation apply while the airplane is in icing conditions.

In light of this, the FAA has determined that the autopilot limitation contained in paragraph (a)(1) of the final rules must be revised. The FAA has changed that limitation to read as follows: ''Since the autopilot may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.'' (This wording is slightly different in the final rule for Aerospatiale airplanes because only one visual cue is provided.) This revision more accurately reflects the FAA's intent and is, therefore, a logical outgrowth of the proposed rules.

Comment 46. Request To Insert Procedures in Limitations or Abnormal Procedures Section of AFM

One commenter suggests that operations in icing conditions that exceed the capability of the airplane should be described in the Limitations or Abnormal Procedures Section of the AFM, rather than in the Normal Procedures Section, as specified in paragraph (a)(2) of the proposals.

The FAA concurs partially. The FAA agrees that the Abnormal Procedures Section may be an appropriate location for the procedures for exiting severe icing conditions. However, the FAA does not agree that such operational procedures should appear in the Limitations Section of the AFM since such procedures are not limitations. Additionally, upon further review, the FAA finds that AFM's may have neither an Abnormal Procedures nor a Normal Procedures Section. Consequently, to provide operators with flexibility as to where the procedures specified in paragraph (a)(2) should be incorporated in the AFM, that paragraph has been revised to require that the ''Procedures'' Section of the AFM be revised. This means that the procedures may be inserted in the ''Normal Procedures,'' ''Abnormal Procedures,'' or other ''Procedures'' Section of the AFM, as appropriate.

Comment 47. Request To Remove Duplicate Visual Cues

Two commenters indicate that certain visual cues specified in paragraph (a)(2) of the proposals are duplicated in the ''Warning'' that is also contained in that paragraph. One commenter states that the duplication of text reduces the impact of the message. Another commenter questions whether the visual cues and procedures for exiting the icing environment are intended to be part of the AFM material. The FAA infers from these remarks that the commenters request that duplicate text be removed.

Transport Canada Aviation requests that the ''Warning'' be removed because indications of the possible hazard are progressive and may not necessarily require immediate action from the pilot. The commenter suggests that renaming this as a ''Caution'' may be more appropriate.

The FAA concurs partially. The FAA agrees that duplicate text should be removed from the ''Warning'' section that appeared in the proposals. The FAA finds that only one unique instruction appears in the ''Warning'' in paragraph (a)(2) of the proposals: ''If the flaps are extended, do not retract them until the airframe is clear of ice.'' Therefore, the FAA has added that instruction to the procedures for exiting the severe icing environment in paragraph (a)(2) of the AD's. The remainder of the ''Warning'' section that appeared in the proposals has been removed from the final rules.

Comment 48. Request for Revision to Instruction for Flaps Extension

Saab requests that the FAA revise an instruction contained in the procedures for exiting the freezing rain/freezing drizzle environment in paragraph (a)(2) of the proposals. That instruction indicates to ''Avoid extending flaps during extended operation in icing conditions * * *.'' Saab suggests the following: ''Do not extend flaps when holding in conditions where ice is accreting on the airframe.'' Further, the commenter asks that this instruction be inserted as a ''caution'' in the Limitations Section of the AFM, rather than into the Normal Procedures Section, as specified in the proposed rule. Saab believes that it is imperative that the flaps not be extended in such cases. Inserting the instruction into the Limitations Section, rather than the Normal Procedures Section, would add strength to the requirement.

Another commenter states that this same instruction appears to be in conflict with previously approved AFM revisions which state, ''Sustained flight in icing conditions is prohibited with flaps extended.'' However, the commenter does not provide a suggestion for rewording this instruction.

The FAA concurs that the procedures related to extension of the flaps can be reworded somewhat. For clarification purposes, the FAA has replaced the word ''avoid'' with ''do not'' in that procedure in paragraph (a)(2) of the final rules. This revision eliminates the conflict discussed by the second commenter. However, the FAA does not agree that revising the remainder of the instruction, as suggested by Saab, provides any additional clarification.

The FAA agrees that inserting the revised wording in the Limitations Section of the AFM, rather than in the Normal Procedures Section, would be acceptable; however, this would expand the scope of the originally proposed rules and would necessitate reopening the comment period to provide additional opportunity for public comment. In light of the time required to complete the rulemaking process in advance of the upcoming icing season and in consideration of the safety issues addressed by these final rules, the FAA finds that the AD's should be issued without additional delay. However, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD, to include this information in the Limitations Section of an operator's AFM.

Transport Canada Aviation requests that this instruction be revised to read as follows: ''Do not extend flaps during operation in icing conditions, except for approach and landing. Operation with flaps extended will result in a reduced wing angle-of-attack with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.''

The FAA concurs partially. The FAA does not concur with the commenter's suggested rewording to limit use of the flaps in all operation in icing conditions except approach and landing. The wording proposed in the AD's would affect use of the flaps only during extended operation in icing conditions. The FAA finds that an amount of ice sufficient to cause control problems is more likely to accumulate during prolonged operations in icing conditions. Further, the FAA does not concur that the words ''operation of the flaps can result in a reduced angle-of-attack * * *'' should be changed to ''operation of the flaps will result in a reduced angle-of-attack * * *'' in this instruction. Operation with flaps extended does not always result in a reduced angle-of-attack. For instance, during extension of the flaps while the airplane is slowing, the angle-of-attack will increase.

The FAA concurs with the suggestion to include the words ''the possibility of ice forming on the upper surface further aft * * *.'' The FAA acknowledges that under certain conditions the droplets will not impinge further aft with a reduced angle-of-attack. The final rules have been revised to add the words suggested by the commenter to the sixth instruction specified in the procedures for exiting the severe icing environment contained in paragraph (a)(2) of the AD's. That revised instruction reads as follows: ''Do not extend flaps . . . with the possibility of ice forming on the upper surface * * *.''

Comment 49. Requests To Revise ''Caution'' Paragraph

One commenter asks that the heading, ''Caution,'' which appears in paragraph (a)(2) of the proposals, be renamed ''Warning'' because this section is intended to prevent loss of life or injury. Transport Canada Aviation requests that the ''Caution'' section be changed to a note. The commenter provides no justification.

The FAA concurs partially. The FAA does not concur that the ''Caution'' should be changed to a note because this section is intended to prevent loss of life or injury. In light of this, the FAA concurs with the commenter's request to rename the ''Caution'' section ''Warning.'' The FAA finds that ''Warning'' is a stronger term and would be a more appropriate heading for the paragraph in question. Additionally, the FAA finds that the ''Warning'' provides advisory information that should precede the first limitation in paragraph (a)(1) of the AD's. Accordingly, the FAA has revised the heading ''Caution'' to ''Warning'' in the final rules. In addition, the ''Warning'' has been placed at the beginning of paragraph (a)(1) of the final rules. The FAA has determined that including this information in the Limitations Section of the AFM will not impose an additional burden on any operator, since it is informational only and does not necessitate providing an additional opportunity for public comment.

Additionally, the commenter notes that an undefined term, ''extreme,'' is used in a sentence in the ''Caution'' paragraph of the proposals, as follows: ''Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in extreme ice build-up on protected surfaces * * *.'' The FAA infers from this remark that the commenter asks that the word ''extreme'' be removed from the ''Caution'' paragraph.

The FAA concurs. The FAA finds that removing the word ''extreme'' would not change the intent of the sentence and may eliminate confusion. The word ''extreme'' has been removed from this section of the final rule. In addition, for clarification purposes, the FAA has revised the first sentence of the proposed ''Caution'' from ''Severe icing comprises environmental conditions . . .'' to ''Severe icing may result from environmental conditions * * *.''

Comment 50. Request To Remove Visual Cues: Identification of Freezing Rain/Freezing Drizzle

One commenter indicates that the cues provided in paragraph (a)(2) of the proposals for identifying freezing rain/freezing drizzle conditions are duplicated in material that appears in paragraph (a)(1) of the proposals. The FAA infers from this remark that the commenter requests that duplicative wording be removed from paragraph (a)(2) of the proposed rules.

The FAA concurs. The FAA finds that the section entitled ''The following shall be used to identify freezing rain/freezing drizzle icing conditions'' is duplicated in material that appears in paragraph (a)(1), and does not enhance the effectiveness of the AD's. Therefore, that section has been removed from paragraph (a)(2) of the final rules for all airplanes other than Aerospatiale Model ATR–42 and ATR–72 series airplanes.

Paragraph (a)(1) of the proposals for Aerospatiale airplanes specified secondary indications for identifying possible freezing rain/freezing drizzle conditions. The FAA recognizes that the flight crew could have interpreted that paragraph to mean that if the secondary indicators were observed, the airplane must be flown clear of the severe icing conditions. However, the FAA's intent is that the flight crew must immediately request priority handling to exit the icing conditions only when the visual cue (ice on the side window) specified in paragraph (a)(1) of the AD is observed.

Accordingly, the FAA has deleted the secondary indications of possible severe icing conditions from paragraph (a)(1) of the final rule for Aerospatiale airplanes. In addition, the FAA has removed the visual cue (ice on the side window) from paragraph (a)(2) of the final rule. The FAA has retitled the section containing the secondary indications of possible severe icing as follows: ''The following may be used as secondary indications of severe icing conditions.'' Further, the last two secondary indicators contained in that section are specified in the final rule in a section titled: ''The following weather conditions may be conducive to severe in-flight icing.'' (This change is explained further in Comment 51 below.)

Comment 51. Request To Remove Visual Cues: Identification of Possible Freezing Rain/Freezing Drizzle

One commenter states that the word ''may'' in the following title, which appears in paragraph (a)(2) of the proposals, is confusing: ''The following may be used to identify possible freezing rain/freezing drizzle conditions.'' The commenter indicates that AFM procedures should provide a clear sequence of steps that must be followed and that such procedures should be explicit; general advice, regardless of how prudent, should be published elsewhere. The FAA infers from this remark that the commenter asks that the cues that appear under this section be deleted.

The FAA does not concur that this section should be removed. The cues provided for identification of possible severe icing conditions will alert the pilot to the possibility that unusual ice accretion may develop. The FAA finds that the level of detail provided in the final rules will increase the level of pilot awareness and, consequently, will increase the level of safety over that which exists currently. Therefore, the FAA has determined that it is appropriate to incorporate this section in the AFM.

However, the FAA finds that clarification is necessary with regard to the title of this section. The FAA finds that operators may misinterpret that title, as proposed, to mean that this section contains visual cues that should be used to identify possible severe icing conditions prior to takeoff, dispatch, or release while the airplane is on the ground. Additionally, the FAA finds that confusion could result in differentiating between the weather conditions specified in this section and the visual cues provided in paragraph (a)(1) of the AD's. For clarification purposes, the FAA has revised the title of this section to read as follows: ''The following weather conditions may be conducive to severe in-flight icing.''

Comment 52. Request To Revise Air Temperature References

Transport Canada Aviation states that ambient temperature is indicated as static air temperature (SAT), rather than outside air temperature (OAT), for de Havilland Model DHC–8 series airplanes. The FAA infers from this remark the commenter requests that the ambient temperature that appears in the weather conditions specified in paragraph (a)(2) of the proposals be expressed as SAT for those airplanes.

The FAA does not concur. The FAA does not intend to specify which specific indicator in the cockpit a pilot should use to determine the ambient air temperature. The FAA intends that the pilot use whatever means necessary to determine ambient air temperature.

However, since airplanes may have indicators other than OAT, the FAA has replaced the words ''outside air temperature'' with ''ambient air temperature'' in the weather conditions, and in the procedures for exiting the severe icing environment, specified in paragraph (a)(2) of these final rules to eliminate confusion concerning the need for a specific type of indicator.

In addition, the FAA has re-examined the ambient temperature of +5 degrees Celsius that is specified in paragraph (a)(2) of the proposals. The FAA has determined that this temperature is too high to be used as a reliable indication of whether severe icing conditions may exist during flight. The FAA finds that 0 degrees Celsius is a more appropriate indication. The FAA has revised paragraph (a)(2) of the final rules for all airplanes accordingly.

Comment 53. Request To Replace Reference to Droplets that Splash or Splatter

JAL requests that the weather condition that pertains to ''droplets that splash or splatter'' be removed from paragraph (a)(2) of the proposals. JAL believes that this weather condition places too much emphasis on subjective judgment. JAL states that normal rain conditions will contain droplets that splash or splatter upon impact with the windshield. JAL indicates that information included in its existing AFM revisions, specified as follows, adequately addresses the issue: ''Prolonged operation in altitude bands where temperatures are near freezing and heavy moisture is visible on the windscreen should be avoided.''

The FAA does not concur that this weather condition should be removed from the AD's. This weather condition must be used in conjunction with the temperature specified as a means of identifying severe in-flight icing conditions. The weather condition also will alert the pilot to the possibility that unusual ice accretion may develop. The FAA finds that the AFM information submitted by JAL does not provide an equivalent alert to the pilot.

Comment 54. Request To Revise Procedures for Exiting Freezing Rain/Freezing Drizzle

JAL requests that the procedures for exiting freezing rain/freezing drizzle specified in paragraph (a)(2) of the proposals be restricted to essential instructions that the flight crew must follow. JAL contends that the procedures contained in the proposals are not written in the appropriate format for AFM procedures, but are more representative of advisory material. JAL also states that the current FAA-approved AFM procedures for exiting freezing rain/freezing drizzle already provide this essential information and conform to the existing style of the AFM's. Transport Canada Aviation requests that the first instruction in these procedures be revised to state only: ''Exit the freezing rain or freezing drizzle conditions immediately.'' The commenter also requests clarification of the terms ''extended exposure,'' as used in that instruction.

The FAA concurs partially. The FAA has reviewed the procedures for exiting the severe icing environment and finds that two of the instructions contained in those procedures do not require the level of detail provided in the proposed rules. The FAA finds that the information concerning masking of control system forces is already

provided in the Limitations Section of the AFM. Therefore, the FAA has revised the third instruction of those procedures to read as follows: ''Do not engage the autopilot.'' Additionally, the FAA has determined that the flight crew need not be provided with instructions for reducing the angle-of-attack because instructions such as this are considered to be basic airmanship. Accordingly, the FAA has revised the fifth instruction in the procedures for exiting the severe icing environment to specify only information that is essential for the flight crew. The revised instruction reads as follows: ''If an unusual roll response * * * reduce the angle-of-attack.'' The FAA finds that, for the remainder of the procedures for exiting, the additional level of details provided in the final rules will increase the level of understanding and, consequently, will increase the level of safety over that which exists currently. The FAA finds that these procedures are appropriate for insertion in the AFM's.

Regarding the terms ''extended exposure,'' the intent of that instruction is to advise the flight crew that exiting the severe icing conditions will minimize the exposure to flight conditions outside those for which the airplane has been certificated. The FAA finds that remaining in such conditions for a prolonged period may result in accumulating an amount of ice sufficient to cause control problems. The phrase ''to avoid extended exposure'' is only intended to explain to the flight crew why severe icing conditions should be exited immediately.

Raytheon questions the necessity to tell a commercial pilot not to make any abrupt or excessive maneuvers if the aircraft is in the position of having control difficulties. This instruction appears under the heading ''Procedures for exiting the freezing rain/freezing drizzle environment,'' which appears in paragraph (a)(2) of the proposals. The commenter contends that this is a training issue and is not appropriate for AFM procedures. The FAA infers from the commenter's remark that the commenter requests that these instructions be eliminated from the proposed rules.

The FAA does not concur. The FAA has determined that such instructions provide beneficial guidance to the flight crew, which will enhance the safety of the aircraft.

Saab requests that the FAA revise one of the instructions specified in the procedures for exiting freezing rain/freezing drizzle specified in the proposals. The instruction states that if an unusual roll response or uncommanded control movement is observed, the angle-of-attack should be reduced by increasing the airspeed or rolling the wings level (if in a turn), and applying additional power, if needed. Saab suggests that this instruction be revised to include the word ''aileron'' in the reference to uncommanded control movement. Saab states further that in the case of wing ice beyond the protected surfaces, the application of power may be appropriate to increase airspeed/improve airflow. However, if ice has accrued on the wings beyond the protected surfaces, there is a possibility that there also is ice on the horizontal stabilizers. In this case, a sudden burst of power may be detrimental. An uncommanded pitch control movement is indicative of tail ice, which normally calls for a different action, both concerning power as well as the handling of flaps, if extended. Another commenter, Transport Canada Aviation, requests that the same instruction be revised to include the word ''lateral'' in reference to ''uncommanded control movement,'' and to change the phrase ''or rolling wings level'' to ''and rolling wings level.''

The FAA concurs partially. The FAA agrees that the correct procedures for reducing the angle-of-attack is to increase the airspeed and roll the wings level, if in a turn. However, as explained previously, this portion of the procedure has been removed from the final rules. The FAA does not agree that either ''lateral'' or ''aileron'' should be used to specify the type of uncommanded control movement. The FAA finds that use of the term ''lateral'' may not be understood by the flight crew. The FAA finds that including the word ''aileron'' may clarify which control surface is of concern; however, the FAA has determined that use of a more general term, ''roll'' will correctly specify the type of uncommanded control movement that is of concern. The FAA has revised the fifth instruction in the procedures for exiting the severe icing environment in paragraph (a)(2) of the final rules accordingly. The revised instruction reads as follows: ''If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.''

In addition, the procedures for exiting the freezing rain/freezing drizzle environment contained in the proposals did not specify to use ''a sudden burst of power'' when reducing the angle-of-attack. Rather, the proposed procedure indicates to apply additional power, if needed, to provide the desired flight path. However, as discussed previously, the FAA has removed this reference from the final rules. In addition, as explained previously, the FAA has revised the final rules to add the word ''roll'' to describe the type of uncommanded control movement. This revised wording addresses Saab's concern regarding increasing power for a pitch anomaly.

Saab also notes that this instruction recommends a reduction in the angle-of-attack and application of power, if needed. However, the next instruction of the procedures indicates that reducing the angle-of-attack may cause ice to build up beyond the protected areas of the wing. Saab concludes that there is a conflict in that the proposed AD would require that the angle-of-attack not be reduced or ice will collect beyond the protected surfaces; however, the angle-of-attack must be reduced if there is an unusual roll response or uncommanded control movement.

The FAA does not concur with the commenter's contention that there is a conflict in the AD's. Reducing the angle-of-attack by increasing airspeed or rolling the wings level (if in a turn), and applying additional power, if needed, is a procedure used to exit severe icing conditions following an unusual roll response or uncommanded roll control movement; whereas the instruction that involves not extending the flaps during extended operation in icing conditions is intended to prevent ice build-up beyond the unprotected surfaces.

Raytheon asks for removal of the instruction to reduce the angle-of-attack and apply additional power, if needed, in response to an unusual roll response or uncommanded control movement. The commenter states that these are normal instructions with respect to wing stall and are inappropriate for inclusion in an AFM.

The FAA concurs partially. There may not be a stall warning associated with uncommanded control movements in the case of encounters with severe icing conditions. Since this is not a ''normal'' stall, the flight crew may not recognize that normal stall recovery procedures should be used. However, as stated previously, the instruction referenced by the commenter has been deleted, in part, from the final rules.

Raytheon also states that it is not appropriate to require contact with Air Traffic Control as part of an AFM procedure since this is already addressed in the Aeronautical Information Manual and in section 91.183 of the Federal Aviation Regulations (14 CFR 91.183). The FAA infers from this statement that the commenter requests that the instruction to contact Air Traffic Control should be removed from the procedures for exiting severe icing conditions.

The FAA does not concur. The FAA is aware that this instruction is contained in the references provided by the commenter. However, the FAA finds that the importance of timely dissemination of this instruction warrants its inclusion in the final rules. Inclusion of instructions of this type is not without precedent; for example, similar information also is specified in certain AFM's where the forward look windshear system is addressed.

Comment 55. Request To Revise Procedures for Exiting the Severe Icing Environment: Include Airplane-Specific Instructions

One commenter suggests that any action that might be necessary to optimize aircraft performance and control in conditions of exceptional icing, and exit from those conditions, should be determined separately with each manufacturer; such procedures should be contained in the AFM for each airplane model. The FAA infers from this remark that the commenter requests that the FAA revise the procedures for exiting the severe icing environment in each final rule to include airplane-specific instructions.

The FAA agrees that procedures obtained from each individual manufacturer should be considered and included in the final rules, if appropriate. All manufacturers have been provided with an opportunity to submit such procedures in response to the proposed rules. Some manufacturers requested changes to the final rules. The FAA has revised the final rules for those requests that were substantiated adequately. Following issuance of the final rules, the FAA would consider a request to include additional changes to the AFM revisions, in accordance with the provisions of these AD's, provided that adequate justification is presented to support such a request.

Comment 56. Revision of Procedures for Exiting the Severe Icing Environment

The FAA has re-examined the section titled ''Procedures for exiting the severe icing environment'' in paragraph (a)(2) of the proposals. As proposed, that section states that if the visual cues used for identifying ''possible'' freezing rain or freezing drizzle conditions are observed, the flight crew should follow the procedures specified for exiting those conditions. The FAA did not intend that the flight crew use the procedures for exiting the severe icing environment when the weather conditions specified in paragraph (a)(2) of these AD's are observed. The FAA's intent is that the flight crew use those procedures only when the visual cues identified in the Limitations Section of the AFM are observed.

In order to eliminate any confusion, the FAA has revised the last sentence of the first paragraph in the procedures for exiting the severe icing environment. The FAA has removed the word ''possible'' from that sentence, and has added clarification that the visual cues are specified in the Limitations Section of the AFM. The revised sentence reads as follows: ''If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following.'' (Operators should note that, for Aerospatiale airplanes, the final rule specifies only one visual cue, which involves ice on the side window.)

Comment 57. Request To Revise Cost Estimate

Transport Canada requests that the FAA provide an operational cost estimate in the proposed AD's.

The FAA acknowledges the concern of the commenter. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur other costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically only includes such direct costs. In the case of these AD's, for example, the requirements are to revise the AFM to include certain information. How operators actually ''implement'' that information thereafter (once it is placed in the AFM) may vary greatly among them.

Further, because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain and operate aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining and operating safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD. In any case, the FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

The FAA points out that it is not required to do a full cost-benefit analysis for each AD. AD's were explicitly exempted from the Office of Management and Budget (OMB) coordination process described in Section 6 of that Executive Order. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA later makes a finding of an unsafe condition in an aircraft and issues an AD, it means that the original cost beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost beneficial, and because the AD does not add an additional regulatory requirement that increases the level of safety beyond what has been established by the type design, a full cost-benefit analysis for each AD would be redundant and unnecessary.

Comment 58. Requests To Delay Issuance of the Final Rules

Three commenters request that the FAA extend the comment period for the proposed rules by 90 days. Each of the commenters request the extension in order to complete a comprehensive analysis of this issue. The commenters state their involvement in focusing on ''* * * other recent rulemaking activity, including the Commuter Rule, flight crewmember training requirements, and proposed rules covering flight crew flight, duty and test requirements * * *'' as a reason that did not allow complete analysis of the proposed AD's.

One commenter requests that implementation of the AD's be deferred until further discussion with industry has been undertaken.

The FAA has reviewed these requests and, in consideration of the importance and need for dissemination of this important information to the aviation community, does not concur that the comment period should be extended or issuance of the final rules be deferred until a later date. Issuing the final rules will ensure that the information is available, understood, and implemented by the aviation community before the next icing season. For these reasons, the FAA has determined that it is imperative that the information and actions contained in these final rules be incorporated into the operators' AFM's immediately.

Conclusion

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

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

Cost Impact

The FAA estimates that 158 Aerospatiale Model ATR–42 and ATR–72 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $9,480, or $60 per airplane.

For Model ATR–42 series airplanes, Modification 4216 (or 4222), as required in this AD, will take approximately 52 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact on U.S. operators for this modification is estimated to be $492,960, or $3,120 per airplane.

For Model ATR–72 series airplanes, Modification 4215 (or 4221), as required in this AD, will take approximately 96 work hours per airplane to accomplish. Required parts for this modification will be supplied by the manufacturer at no cost to operators. Modification 4213, as required in this AD, would take approximately 4 work hours to accomplish. Required parts will cost approximately $200 per airplane. The average labor rate for accomplishment of both modifications is $60 per work hour. Based on these figures, the cost impact on U.S. operators for these modifications is estimated to be $979,600, or $6,200 per airplane.

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

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9152 (60 FR 9616, February 21, 1995), and by adding a new airworthiness directive (AD), amendment 39–9604, to read as follows:

96–09–28 Aerospatiale: Amendment 39–9604. Docket 95–NM–146–AD. Supersedes AD 95–02–51, Amendment 39–9152.

Applicability: All Model ATR–42 and ATR–72 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Severe icing is characterized by ice covering all or a substantial part of the unheated portion of either forward side window, possibly associated with water splashing and streaming on the windshield.

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

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

• The ice detector must be operative for flight into icing conditions.

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

''THE FOLLOWING MAY BE USED AS SECONDARY INDICATIONS OF SEVERE ICING CONDITIONS:

- Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.
- Accumulation of ice on the lower surface of the wing aft of the protected area.
- Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

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

- Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.
- Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.
- Do not engage the autopilot.
- If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.
- If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.
- Do not extend flaps during extended operation in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.
- If the flaps are extended, do not retract them until the airframe is clear of ice.
- Report these weather conditions to Air Traffic Control.''

(b) Within 6 months after the effective date of this AD, modify the deicing boots on the leading edges of the wing by accomplishing either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For Model ATR–42 series airplanes: Accomplish Aerospatiale Modification 4216 (during retrofit) or 4222 (during production), as applicable. Modification 4216 shall be accomplished in accordance with Aerospatiale Service Bulletin ATR42–30–0059, Revision 1, dated April 10, 1995; and ATR42–57–0043, Revision 1, dated April 10, 1995. Modification 4222 shall be accomplished in accordance with Aerospatiale Service Bulletin ATR42–57–0043, Revision 1, dated April 10, 1995.

(2) For Model ATR–72 series airplanes: Accomplish Aerospatiale Modification 4215 (during retrofit) or 4221 (during production), as applicable. Modification 4215 shall be accomplished in accordance with Aerospatiale Service Bulletin ATR72–30–1023, Revision 1, dated April 10, 1995; ATR72–57–1015, Revision 1, dated April 10, 1995; and ATR72–57–1016, Revision 1, dated April 10, 1995. Modification 4221 shall be accomplished in accordance with Aerospatiale Service Bulletin ATR72–57–1015, Revision 1, dated April 10, 1995; and ATR72–57–1016, Revision 1, dated April 10, 1995.

(c) For Model ATR–72 series airplanes: Within 6 months after the effective date of this AD, install Aerospatiale Modification 4213, ''Flaps Extension Inhibition above VFE 15 deg.,'' in accordance with Aerospatiale Service Bulletin ATR72–27–1039, dated January 12, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

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

(f) The modifications shall be done in accordance with the following Aerospatiale service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
ATR42–30–0059, Revision 1, April 10, 1995	1–3, 12–17, 31, 32	1	April 10, 1995.
	4–11, 18–30, 33–36	Original	March 20, 1995.
ATR42–57–0043, Revision 1, April 10, 1995	1–4, 6, 8	1	April 10, 1995.
	5, 7, 9–18	Original	March 20, 1995.
ATR72–30–1023, Revision 1, April 10, 1995	1, 2, 12–17, 33, 34	1	April 10, 1995.
	3–11, 18–32, 35–38	Original	March 20, 1995.
ATR72–57–1015, Revision 1, April 10, 1995	1, 2, 5, 6, 8, 11, 15	1	April 10, 1995.
	3, 4, 7, 9, 10, 12–14, 16	Original	March 20, 1995.
ATR72–57–1016, Revision 1, April 10, 1995	1, 2, 5, 6, 8, 11, 15	1	April 10, 1995.
	3, 4, 7, 9, 10, 12–14	Original	March 20, 1995.

The incorporation by reference of these documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The installation shall be done in accordance with Aerospatiale Service Bulletin ATR72–27–1039, dated January 12, 1995. The incorporation by reference of these documents 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 March 8, 1995 (60 FR 9616, February 21, 1995). Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, 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.

(g) This amendment becomes effective on June 11, 1996.

Issued in Renton, Washington, on April 24, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

Certified to be a true copy of the original.

Lori Aliment,

Certifying Officer.

[FR Doc. 96–10744 Filed 5–1–96; 3:25 pm]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 96–NM–13–AD; Amendment 39–9594; AD 96–09–18]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model BAe ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Jetstream Model BAe ATP airplanes was published in the Federal Register on January 25, 1996 (61 FR 2144). That action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 95–NM–146–AD; Amendment 39–9604; AD 96–09–28, Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $600, or $60 per airplane.

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

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–09–18 Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft, Limited): Amendment 39–9594. Docket 96–NM–13–AD.

Applicability: All Model BAe ATP airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice

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

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

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

(d) This amendment becomes effective on June 11, 1996.

Issued in Renton, Washington, on April 24, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10775 Filed 5–1–96; 3:26 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–NM–14–AD; Amendment 39–9595; AD 96–09–19]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Jetstream Model 4101 airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to prevent or minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Jetstream Model 4101 airplanes was published in the Federal Register on January 25, 1996 (61 FR 2142). That action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 95–NM–146–AD; Amendment 39–9604; AD 96–09–28, Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,100, or $60 per airplane.

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

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–09–19 Jetstream Aircraft Limited: Amendment 39–9595. Docket 96–NM–14–AD.

Applicability: All Model 4101 airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.

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

—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

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

(d) This amendment becomes effective on June 11, 1996.

Issued in Renton, Washington, on April 24, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10777 Filed 5–1–96; 3:26 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–NM–15–AD; Amendment 39–9596; AD 96–09–20]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model HS 748 series airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model HS 748 series airplanes was published in the Federal Register on January 25, 1996 (61 FR 2139). That action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 95–NM–146–AD; Amendment 39–9604; AD 96–09–28, Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

Currently, there are no Model HS 748 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–09–20 Jetstream Aircraft Limited (Formerly British Aerospace, Aircraft Group): Amendment 39–9596. Docket 96–NM–15–AD.

Applicability: All Model HS 748 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice

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

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

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

(d) This amendment becomes effective on June 11, 1996.

Issued in Renton, Washington, on April 24, 1996.

Ronald T. Wojnar

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10776 Filed 5–1–96; 3:26 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–NM–16–AD; Amendment 39–9597; AD 96–09–21]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes was published in the Federal Register on January 25, 1996 (61 FR 2169). That action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 95–NM–146–AD; Amendment 39–9604; AD 96–09–28, Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 224 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $13,440, or $60 per airplane.

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

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–09–21 SAAB Aircraft AB: Amendment 39–9597. Docket 96–NM–16–AD.

Applicability: All Model SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

For Saab Model SAAB 2000 Series Airplanes Only

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.
—Accumulation of ice on the propeller spinner farther aft than normally observed.

For Saab Model SAAB SF340A and SAAB 340B Series Airplanes Only

—Accumulation of ice on the upper surface of the wing aft of the protected area.
—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

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

(d) This amendment becomes effective on June 11, 1996.

Issued in Renton, Washington, on April 24, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10772 Filed 5–1–96; 3:27 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–NM–17–AD; Amendment 39–9598; AD 96–09–22]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model C–212 and CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model C–212 and CN–235 series airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gregory Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2799; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all CASA Model C–212 and CN–235 series airplanes was published in the Federal Register on January 25, 1996 (61 FR 2166). That action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 95–NM–146–AD; Amendment 39–9604; AD 96–09–28, Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,160, or $60 per airplane.

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

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–09–22 CASA: Amendment 39–9598. Docket 96–NM–17–AD.

Applicability: All Model C–212 and CN–235 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Accumulation of ice on the propeller spinner farther aft than normally observed.

- Since the autopilot may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.
- All icing detection lights must be operative prior to flight into icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

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

- Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.
- Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.
- Do not engage the autopilot.
- If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.
- If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.
- Do not extend flaps during extended operation in icing conditions. Operation with flaps extended can result in a reduced wing angle-of- attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.
- If the flaps are extended, do not retract them until the airframe is clear of ice.
- Report these weather conditions to Air Traffic Control.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an

appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

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

(d) This amendment becomes effective on June 11, 1996.

Issued in Renton, Washington, on April 24, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 96–10771 Filed 5–1–96; 3:27 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–NM–18–AD; Amendment 39–9599; AD 96–09–23]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2796; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes was published in the Federal Register on January 25, 1996 (61 FR 2157). That action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 95–NM–146–AD; Amendment 39–9604; AD 96–09–28, Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,860, or $60 per airplane.

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

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable.

Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–09–23 Dornier: Amendment 39–9599. Docket 96–NM–18–AD.

Applicability: All Model Dornier 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

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

(d) This amendment becomes effective on June 11, 1996.

Issued in Renton, Washington, on April 24, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10773 Filed 5–1–96; 3:27 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–NM–19–AD; Amendment 39–9600; AD 96–09–24]

RIN: 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John W. McGraw, Aerospace Engineer, Flight Test/Systems Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7336; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all EMBRAER Model EMB–120 series airplanes was published in the Federal Register on January 25, 1996 (61 FR 2163). That action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 95–NM–146–AD; Amendment 39–9604; AD 96–09–28, Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 227 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $13,620, or $60 per airplane.

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

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–09–24 EMBRAER: Amendment 39–9600. Docket 96–NM–19–AD.

Applicability: All Model EMB–120 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing aft of the protected area.
—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

• In icing conditions, use of flaps is restricted to takeoff, approach, and landing only. When the flaps have been extended for approach or landing, they may not be retracted unless the upper surface of the wing aft of the protected area is clear of ice, or unless flap retraction is essential for go-around.

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

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

- Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.
- Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.
- Do not engage the autopilot.
- If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.
- If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.
- Do not extend flaps during extended operation in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.
- If the flaps are extended, do not retract them until the airframe is clear of ice.
- Report these weather conditions to Air Traffic Control.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

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

(d) This amendment becomes effective on June 11, 1996.

Issued in Renton, Washington, on April 24, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10770 Filed 5–1–96; 3:28 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–NM–20–AD; Amendment 39–9601; AD 96–09–25]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–7 and DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all de Havilland Model DCH–7 and DHC–8 series airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7509; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all de Havilland Model DHC–7 and DHC–8 series airplanes was published in the Federal Register on January 25, 1996 (61 FR 2154). That action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 95–NM–146–AD; Amendment 39–9604; AD 96–09–28, Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 183 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,980, or $60 per airplane.

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

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–09–25 de Havilland, Inc.: Amendment 39–9601. Docket 96–NM–20–AD.

Applicability: All Model DHC–7 and DHC–8 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.

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

—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

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

(d) This amendment becomes effective on June 11, 1996.

Issued in Renton, Washington, on April 24, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10769 Filed 5–1–96; 3:28 pm]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–NM–21–AD; Amendment 39–9602; AD 96–09–26]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes, and Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes, was published in the Federal Register on January 25, 1996 (61 FR 2160). That action proposed to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 95–NM–146–AD; Amendment 39–9604; AD 96–09–28, Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,040, or $60 per airplane.

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

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–09–26 Fokker: Amendment 39–9602. Docket 96–NM–21–AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes and Model F27 Mark 050 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

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

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

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

• Do not engage the autopilot.

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

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

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

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

• Report these weather conditions to Air Traffic Control.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

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

(d) This amendment becomes effective on June 11, 1996.

Issued in Renton, Washington, on April 24, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10767 Filed 5–1–96; 3:28 pm]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 96–NM–22–AD; Amendment 39–9603; AD 96–09–27]

RIN: 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–30, SD3–60, and SD3–SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–30, SD3–60, and SD3–SHERPA series airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–30, SD3–60, and SD3–SHERPA series airplanes was published in the Federal Register on January 25, 1996 (61 FR 2151). That action proposed

to require revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in freezing rain or freezing drizzle conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Disposition of Comments

For the disposition of comments on this rulemaking action, see Docket No. 95–NM–146–AD; Amendment 39–9604; AD 96–09–28, Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes, published elsewhere in this issue of the Federal Register.

Conclusion

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

Cost Impact

The FAA estimates that 138 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,280, or $60 per airplane.

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

In addition, the FAA recognizes that this AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–09–27 Short Brothers, PLC: Amendment 39–9603. Docket 96–NM–22–AD.

Applicability: All Model SD3–30, SD3–60, and SD3–SHERPA series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

''WARNING

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

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

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Accumulation of ice on the propeller spinner farther aft than normally observed.

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

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

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

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

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

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

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

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

- Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.
- Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.
- Do not engage the autopilot.
- If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.
- If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.
- Do not extend flaps during extended operation in icing conditions. Operation with flaps extended can result in a reduced wing angle-of- attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.
- If the flaps are extended, do not retract them until the airframe is clear of ice.
- Report these weather conditions to Air Traffic Control.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

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

(d) This amendment becomes effective on June 11, 1996.

Issued in Renton, Washington, on April 24, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–10768 Filed 5–1–96; 3:29 pm]

BILLING CODE 4910–13–P

federal register

Tuesday
May 7, 1996

Part IV

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for Surface Waters in Arizona; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–5467–9]

Water Quality Standards for Surface Waters in Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes water quality standards applicable to waters of the United States in the State of Arizona. EPA is promulgating this rule pursuant to a court order in *Defenders of Wildlife* v. *Browner* (Docket No. Civ. 93–234 TUC ACM). The rule designates fish consumption as a use for certain waters, and requires implementation of a monitoring program regarding mercury's effects on wildlife. On January 29, 1996, EPA published a proposed rule that included other provisions which are not being promulgated as part of today's rule because, after EPA's proposal, the Arizona Department of Environmental Quality adopted revised regulations and policies in those areas which EPA Region 9 has determined are in accordance with the Clean Water Act.

EFFECTIVE DATE: June 6, 1996.

ADDRESSES: This action's administrative record is available for review and copying at the Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105. For access to the docket materials, call (415) 744–1978 for an appointment. A reasonable fee will be charged for copies.

FOR FURTHER INFORMATION CONTACT: Gary Wolinsky, Permits and Compliance Branch, W–5, Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, telephone: 415 744–1978.

SUPPLEMENTARY INFORMATION:

A. Regulated Entities

Entities potentially regulated by this action are those discharging pollutants to waters of the United States in Arizona. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Industries discharging mercury to surface waters in Arizona, or discharging pollutants to particular surface waters in Arizona listed in sec. 131.31(b) of the rule.
Municipalities	Publicly-owned treatment works discharging mercury to surface waters in Arizona, or discharging pollutants to particular surface waters listed in sec. 131.31(b) of the rule.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should examine the list of waterbodies in section 131.31(b) of this rule, and examine 40 CFR 131.2 which describes the purpose of water quality standards such as those established in this rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

Under section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA), states are required to develop water quality standards for waters of the United States within the state. Section 303(c) provides that a water quality standard shall include a designated use or uses to be made of the water and criteria necessary to protect those uses. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c). States are required to submit the results of their triennial review of their water quality standards to EPA. EPA is to approve or disapprove any new or revised standards. Id.

States may include in their standards policies generally affecting the standards' application and implementation. See 40 CFR 131.13. These policies are subject to EPA review and approval. 40 CFR 131.6(f), 40 CFR 131.13.

Section 303(c)(4) of the CWA authorizes EPA to promulgate water quality standards that supersede disapproved State water quality standards, or in any case where the Administrator determines that a new or revised water quality standard is needed to meet the CWA's requirements.

In September 1993, EPA, Region 9, disapproved portions of Arizona's standards pursuant to section 303(c) of the CWA and 40 CFR 131.21. The portions of Arizona's standards disapproved in September 1993 relate to: the exclusion of mining-related impoundments from water quality standards; the absence of ''fish consumption'' as a designated use for certain water bodies; the absence of implementation procedures for the State's narrative nutrient standard; the absence of biomonitoring implementation procedures for the State's narrative toxicity criterion; and the inclusion of practical quantitation limits (PQLs) in Arizona's standards. In April 1994, EPA, Region 9, also disapproved Arizona's lack of water quality criteria protective of wildlife for mercury.

On November 1, 1995, the United States District Court for the District of Arizona ordered EPA to prepare and publish proposed regulations setting forth revised or new water quality standards for those standards disapproved in September 1993 and April 1994 within 90 days. *Defenders of Wildlife* v. *Browner*, Docket No. Civ 93–234 TUC ACM.

On December 29, 1995, the Arizona Department of Environmental Quality (ADEQ) published proposed revisions to its standards. 1 Ariz. Admin. Reg. 2811.

Consistent with the Court's order, on January 29, 1996, EPA published a Federal Register notice proposing standards related to the mining exclusion, fish consumption designated use, PQLs, and implementation policies and procedures. 61 FR 2766. The notice also identified, and sought comment on, policies that EPA, Region 9, intended to use to implement State narrative criteria as they relate to toxicity, nutrients, and mercury.

The Court order in *Defenders of Wildlife* directs EPA to promulgate final water quality standards 90 days after EPA proposes such standards unless Arizona has adopted revised or new water quality standards which EPA determines are in accordance with the CWA. In January 1996, ADEQ adopted implementation procedures for the State's narrative nutrient criteria. In April 1996, ADEQ adopted implementation procedures for the State's narrative toxic criteria. On April 26, 1996, EPA, Region 9, approved Arizona's implementation procedures for the State's narrative nutrient and toxic criteria. Because EPA has

determined that Arizona has addressed EPA's 1993 disapproval action regarding the absence of appropriate implementation procedures for toxicity and nutrients through the adoption of procedures that are in accordance with the Act, EPA is not promulgating provisions in the final rule related to these implementation procedures.

ADEQ adopted revisions to its standards on March 22, 1996, and, after obtaining the approval of the State's Regulatory Review Council, filed revisions to its standards with Arizona's Secretary of State on April 24, 1996. ADEQ's rulemaking repealed the mining related provision (R18–11–103.2) disapproved by EPA, Region 9, in September 1993, and established a revised exemption related to mining impoundments at R18–11–102. In addition, ADEQ's rulemaking added the fish consumption use to most of the waters which would have been designated with the fish consumption use under EPA's proposal. The State's rulemaking also deleted the appendix which prescribed PQLs from the State's water quality standards regulations. On April 26, 1996, EPA, Region 9 approved these revised regulations thereby removing the need to promulgate a Federal regulation addressing these issues.

ADEQ has also participated, with EPA, Region 9, and the U.S. Fish and Wildlife Service, in the development of an interim approach to protect predatory wildlife from mercury until appropriate numeric criteria can be developed. In conjunction with Arizona's priority pollutant program, ADEQ, in cooperation with the Arizona Game and Fish Department, the U.S. Fish and Wildlife Service, and EPA will conduct a tissue monitoring program to assess the magnitude and extent of mercury bioaccumulation in the prey base of the bald eagle and other fish-eating birds in Arizona. The monitoring program identifies further actions related to sampling, source identification and remedy selection which the agencies will undertake if mercury levels in fish are found above a specified action level. Because pursuit of this monitoring program is an important component in addressing the problem of mercury contamination in Arizona waters, EPA has included the proposed regulatory provision related to mercury in the final rule. In addition, EPA is promulgating the fish consumption use designation for waterbodies identified in EPA's proposal for which the State did not adopt the fish consumption use designation. As explained more fully below, should EPA decide to approve ''use attainability analyses'' recently submitted by Arizona, EPA will proceed expeditiously to withdraw the revised use designations contained in today's rule.

C. Summary of Final Rule and Response to Major Comments

A description of EPA's final action, and a summary of major comments regarding the proposal and EPA's response, are set forth below. Additional comments and responses to comments are in the administrative record.

1. ''Fish Consumption'' Use

Arizona has designated several uses for its waters, including uses defined as ''fish consumption'', ''aquatic and wildlife (cold water fishery)'', ''aquatic and wildlife (effluent dominated water)'', ''aquatic and wildlife (ephemeral)'', and ''aquatic and wildlife (warm water fishery)''. See, R–18–11–101, and Appendix B of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations.

In September 1993, EPA disapproved the lack of the ''fish consumption'' (FC) use for water bodies which Arizona designated as having an ''aquatic and wildlife'' use. For the standards to be approvable, EPA stated that the State must either revise its standards to include the FC use, or submit ''use attainability analyses'' (UAAs), for the subject waters. A UAA is a scientific assessment showing whether it is feasible to attain a particular use. See, 40 CFR 131.3(g) and 131.10(j).

ADEQ subsequently completed UAAs showing that it need not designate the FC use for those effluent dominated or ephemeral waters which it had not already designated as having the FC use. EPA approved those UAAs in November 1995.

In December 1995, ADEQ proposed to revise its standards to add the FC use to waters within the State which have the ''aquatic and wildlife (cold water fishery)'' or ''aquatic and wildlife (warm water fishery)'' use. See, 1 Ariz. Admin. Reg. 2811 (Dec. 29, 1995), proposed R–18–11–104 and Appendix B of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations.

In January 1996, EPA proposed to designate the fish consumption use for those waters which Arizona had designated as having an ''aquatic and wildlife'' use, in those cases where the requirements for completing a UAA had not been met. The affected stream segments and water bodies were listed in proposed section 131.31(c). Each of the affected waters were, at the time of EPA's proposal, designated by Arizona as having the ''aquatic and wildlife (cold water fishery)'' or ''aquatic and wildlife (warm water fishery)'' use.

With the exception of fifteen waterbodies, Arizona's April 1996 final rulemaking established the FC use for all the waterbodies subject to EPA's proposal.

EPA is not promulgating a Federal rule designating the FC use for those waters which now have that designated use under Arizona's rules. In addition, EPA is not promulgating a Federal rule designating the FC use for Quarter Circle Bar Tank. EPA has determined that that waterbody is located within the boundaries of the Navajo Reservation and this rulemaking only applies to waters within the jurisdiction of the State of Arizona. The spelling of two waterbodies has been corrected in the final rule.

On April 3 and April 10, 1996, ADEQ submitted UAAs in support of its determination not to designate the FC use for eleven of the fourteen State waterbodies listed in EPA's proposal which did not receive the FC use designation under Arizona's April 1996 rulemaking. EPA is currently reviewing the analyses provided by the State. In accordance with Region 9 practice in this area, the Region has also sent out the new analyses for public review and comment to persons and organizations with interests related to water quality standards determinations in Arizona. EPA has asked for comments by May 15, 1996. ADEQ intends to submit a UAA in support of its determination not to designate the FC use for the three remaining waterbodies (Davidson Canyon and Tinaja Wash in the Santa Cruz River Basin, and Chase Creek in the Upper Gila River Basin) listed in EPA's proposed rule. EPA, Region 9, will send out that UAA for public review and comment.

Because EPA is under court order to promulgate this regulation by the end of April, and the State submitted UAAs with insufficient time for the Agency to adequately review the documentation and solicit public comment prior to its court-ordered deadline, EPA is promulgating the fish consumption use designation for waterbodies identified in EPA's proposal which do not now have the FC designated use. Should EPA approve, after completing its review of the UAAs and public comments, the State's determination that attaining the FC use is not feasible with respect to a waterbody listed in today's rule, EPA will proceed expeditiously to withdraw the revised use designation contained in section 131.31(c) with respect to that waterbody. If EPA approves the State's UAA prior to the effective date of this rule with respect to a waterbody listed

in section 131.31(c), EPA intends to stay the effectiveness of the Federal use designation with respect to that waterbody pending withdrawal of that part of the rule by EPA.

EPA received a number of comments opposing provisions of the proposed rule relating to fish consumption. One commenter submitted extensive comments objecting to EPA's proposal to promulgate the FC designated use, particularly with respect to the segment of the Salt River from the I–10 bridge to the 23rd Avenue WWTP discharge. The commenter contended that EPA should not have disapproved the lack of the FC use on waters designated by Arizona as having the aquatic and wildlife (warm water fishery) use. The commenter stated that EPA's disapproval did not explain how the Arizona standards were inconsistent with section 101(a)(2) of the Act, that EPA's reliance upon 40 CFR 131.10(j)(1) in its disapproval was inappropriate, and that a UAA was not required in order to avoid designating the FC use for the subject waters. The commenter stated that EPA rules and guidance documents do not require a FC designated use if other water quality standards are sufficient to protect the health of persons who may consume harvested aquatic life, and that the Act does not require a specific FC use for any waters at all. This commenter further stated that EPA has generated no evidence to support its hypothesis that the aquatic and wildlife (warm water fishery) designated use is not sufficient for the minimal harvesting of edible aquatic life that could potentially occur on the Salt River segment between the I–10 Bridge and the 23rd Avenue wastewater treatment plant. The commenter stated that Arizona's use designations and criteria, taken as a whole, are entirely ''consistent'' with the goals of the CWA, and that consistency is all that is required in light of 40 CFR 131.5 and 131.6. The commenter stated that the CWA and Arizona law require protection of only those uses that are actually occurring or are reasonably foreseeable, and that EPA erroneously assumed in this case that the Act requires the FC use found in the Arizona water quality standards to apply to all river segments regardless of local environmental conditions, the degree and types of harvesting by humans, and the types of aquatic life in the riverbed.

EPA continues to believe that EPA Region 9's disapproval of the absence of fish consumption use designations for certain waterbodies was consistent with the requirements of the CWA. EPA regulations regarding use designations provide that a State ''must conduct a use attainability analysis as described in 40 CFR 131.3(g) whenever the State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the Act.'' 40 CFR 131.10(j)(1). Section 101(a)(2) of the CWA provides that water quality ''shall provide for the protection of fish, shellfish, wildlife and recreation in and on the water'', and, in EPA's view, the ''protection'' of fish, shellfish, and recreation necessarily includes ensuring that fish are not so contaminated that they are unhealthful for human consumption. Nonetheless, the State had failed to include designated uses that would protect such aquatic life for purposes of human consumption, or to perform a UAA demonstrating that this use was not attainable. EPA, Region 9, therefore appropriately concluded that the State's standards were not ''consistent with'' the goals of the CWA. Finally, while this commenter asserts that a FC designated use is not necessary if other standards are sufficient to protect the health of persons, the State has not contended that it has adopted criteria applicable to these waters that would protect human health. The State's existing water quality criteria were derived to protect aquatic life itself, not humans who consume it. Unlike aquatic life criteria, human health criteria take into account many factors that must be considered to ensure that pollutant residues in fish, when consumed by humans, do not result in adverse health effects. *See* generally 40 CFR Part 132, Appendices A and C, 60 FR 15393–15411 (March 23, 1995) (containing methodologies for deriving aquatic life and human health criteria for the Great Lakes Basin). EPA therefore believes that there is not a reasonable basis to conclude that the State's aquatic life criteria will provide protection for persons consuming fish from these specified waterbodies.

This commenter apparently also would seek to place the burden on EPA Regions to demonstrate that existing uses and criteria are not adequate to protect human health, taking into account local environmental conditions and consumption patterns, prior to disapproving state standards that fail to include the uses reflected in section 101(a)(2) of the Act. This position ignores the fact that, under EPA regulations, a UAA is the appropriate mechanism by which States can determine whether local environmental conditions and other factors justify the absence of a use otherwise meriting protection under the Act. Turning this process on its head and requiring EPA, which has far less familiarity with local circumstances and conditions than does the State agency, to make these determinations would be impracticable and would significantly undermine the health protection goals of the Act. Finally, the issue in Arizona was not whether the State had reasonably concluded that existing standards for these waterbodies would protect human health. Rather, it was the State's failure to adopt standards protecting human health that precipitated the Region's disapproval action.

One commenter stated that, even if an additional use designation were necessary and supported by an administrative record, EPA has failed to promulgate scientifically supportable, reasonable and necessary numeric criteria to protect the use. The commenter stated that the CWA requires numeric criteria only for those toxic pollutants for which criteria have been published under section 304(a) of the CWA, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses, and that EPA has not conducted the analysis required by this section to determine what numeric criteria would be appropriate to support the new FC use on the affected surface waters. The commenter stated that there is no administrative record to support EPA's FC use and associated numeric criteria for all surface waters, and that EPA should have considered whether any of the surface waters potentially subject to the new FC use would be entitled to a modification of the use on the basis of the factors in 40 CFR 131.10(g). The commenter also stated that the social and economic impact of the FC designations would be severe in Phoenix, noting that some of the Phoenix storm water outfalls discharge into the Salt River segment that would be reclassified under the proposed rule. The commenter stated that the proposed rule could have a substantial impact on storm water discharges and substantially increase costs to the public without any demonstrated improvement in public health. The commenter further stated that the upgrading of the Salt River and other segments with the FC use could also have a ripple effect that would result in more costly standards for upstream ephemeral segments, noting that Arizona water quality standards appear to require that designated uses for upstream segments shall not cause a violation of water quality standards in downstream segments, and that economic impact of the proposed FC use could spread

upstream to ephemeral waters that clearly do not warrant the FC use.

The comments regarding the appropriateness of criteria that will now apply to these waterbodies appear to indicate that commenters have misunderstood EPA's action. The State has itself adopted criteria that it believes are appropriate for providing protection of persons consuming fish from many State waters. EPA is not second-guessing this determination by the State. EPA also disagrees that it was under a duty to evaluate the attainability of the fish consumption use taking into account the factors in 40 CFR 131.10(g). Again, under EPA regulations, States have the opportunity and responsibility for conducting UAAs to demonstrate that uses consistent with the goals of the CWA are not attainable. The State had failed to do so here. EPA therefore was within its authority to determine that the use designations needed to be revised to be consistent with the goals in CWA section 101(a)(2). The State remains free to determine, based on local environmental conditions or the costs that it determines could be associated with the revised use designations, to downgrade use designations in accordance with 40 CFR 131.10(g). No commenters provided information during the public comment period indicating that, in fact, the revised use designations were not attainable according to the criteria contained in section 131.10(g).

Another commenter also questioned whether the segment of the Salt River from the I–10 bridge to the 23rd Avenue WWTP discharge should be designated as having the fish consumption use. The commenter stated that, if EPA's rationale for promulgating the fish consumption use is simply because the stream segment had been designated by Arizona as having the ''aquatic and wildlife (warm water fishery)'' use, then the process and rationale for designating the segment is suspect and should be reviewed.

Another commenter stated that the fish consumption designated use should not be presumptively applied to all water bodies, and should be applied only when it is shown that fishing is a legal, continuous, and widespread use of a particular water body. The commenter objected to allowing the addition of designated uses to a stream segment without the requirement to make any particular showing while the removal of a use may take place only after a comprehensive use attainability analysis which is often beyond the financial or technical capability of the individuals most directly affected by the inappropriately designated use.

Another commenter sought clarification that EPA's designation of the fish consumption use would be limited to water bodies which are waters of the United States.

As explained previously, EPA believes that it was appropriate and consistent with the requirements and goals of the CWA to promulgate fish consumption use designations where the State has designated the waters as supporting aquatic life. EPA disagrees that the CWA places a burden on EPA or States to demonstrate legal, widespread and continuous use of a waterbody before adopting a FC use designation. No such restriction is evident in the language or legislative history of the CWA. To support a particular use designation, it is sufficient that such a use be attainable in the waterbody. Regarding the use designation for the Salt River from the I–10 bridge to the 23rd Avenue WWTP discharge, that segment is not addressed by today's rule since the State adopted the FC use for this waterbody. See, R–18–11–101, and Appendix B of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations, as filed on April 24, 1996.

The one commenter is correct that the revised use designations only apply to waters that meet the definition of waters of the United States.

2. Water Quality Criteria Protective of Wildlife for Mercury

Arizona has established numeric criteria for mercury for ''aquatic and wildlife'', ''fish consumption'', ''domestic water source'' and other uses designated for its waters. See, Appendix A of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations. As part of its consultation with EPA regarding Arizona's water quality standards pursuant to section 7 of the Endangered Species Act, the U.S Fish and Wildlife Service (FWS) determined that Arizona's mercury criteria for protection of aquatic and wildlife uses were developed without consideration of bioaccumulative effects for predatory wildlife, and the FWS identified the adoption of mercury criteria protective of wildlife as a means to remove jeopardy to endangered and threatened species in the context of the Endangered Species Act.

Based upon FWS's determinations, EPA, Region 9, in April 1994 disapproved Arizona's lack of water quality criteria protective of wildlife for mercury.

While the FWS identified the adoption of a mercury criterion protective of wildlife as a reasonable and prudent alternative to avoid jeopardizing endangered and threatened wildlife species, further discussions between EPA, ADEQ, Arizona Game and Fish Department, and the FWS led to the development of an alternative program to address the problem of mercury's impacts on endangered and threatened species. The Service indicated its overall approval of this approach to dealing with the problem of mercury as it relates to the protection of wildlife and, on January 17, 1996, revised its determination which initially identified adoption of a mercury criterion as a reasonable and prudent alternative for removing jeopardy to endangered species. Accordingly, in January 1996, EPA proposed section 131.31(f) to address the deficiency in the State's standards related to mercury's effect on wildlife, and solicited comment upon EPA's intent to implement a monitoring and source identification program to assist EPA in implementing Arizona's narrative toxicity criteria.

ADEQ has continued to participate, with EPA, Region 9, and the U.S. Fish and Wildlife Service, in the development of an interim program to protect predatory wildlife from mercury until appropriate numeric criteria can be developed. The program developed by the agencies is described in ''Arizona Priority Pollutant Sampling Program, ADEQ/AGFD/USFWS/USEPA Cooperative Program'', March 29, 1996. Under that program, ADEQ, in cooperation with the Arizona Game and Fish Department, the U.S. Fish and Wildlife Service, and EPA will conduct a tissue monitoring program to assess the magnitude and extent of mercury bioaccumulation in the prey base of the bald eagle and other fish-eating birds in Arizona. This monitoring program identifies further actions related to sampling, source identification, and remedy selection which the agencies will undertake if mercury levels in fish are found above a specified action level.

EPA received comment upon its proposal to adopt section 131.31(f) and upon the monitoring and source identification program identified in the Federal Register notice. A commenter stated that, even with the implementation procedures proposed by EPA, Arizona's narrative toxicity criteria would not protect against food chain accumulation in birds and other fish-eating species. The commenter contended that there was no deadline for completion of the monitoring and stated that there is no need to wait for further fish tissue monitoring because recent tests in certain lakes have found mercury levels exceeding the 0.1 mg/kg level identified under the proposed

monitoring program as the trigger for further control efforts. The commenter also noted that a mercury criterion to protect against food chain accumulation has been established for the Great Lakes, and that a similar criterion could be developed for Arizona. The commenter stated that the Arizona criterion might differ if there were evidence that mercury uptake rates among Arizona fishes are markedly different than among Great Lakes fishes, but that EPA has offered no evidence to suggest this is so.

EPA's long-term goal is the adoption of a mercury criterion for wildlife. However, despite the claims by the commenter, the data currently are not available to derive a mercury criterion for wildlife in Arizona using the methodology developed for the Great Lakes. A detailed discussion of the data needed to develop a criterion is discussed below. In lieu of a numeric criterion, EPA believes that the approach of using Arizona's narrative criterion in R18–11–108 for toxicity in combination with the implementation of the tissue monitoring program will satisfy the requirements of the CWA to provide protection of designated uses, including wildlife protection and propagation.

With regard to the commenter's general point regarding the necessity of having numeric criteria in order to meet the requirements of the CWA, it should be emphasized that the absence of a numeric criterion for a specific pollutant is not unusual. EPA has not published criteria guidance for the protection of aquatic life for all pollutants. To account for this unavoidable absence of numeric criteria for all pollutants, States include narrative criteria as part of their standards. Narrative criteria are intended to cover all pollutants and endpoints for which the state has not adopted numeric criteria. The role of narrative criteria in the CWA's regulatory program is evident in EPA's permitting regulations which include explicit provisions requiring permit limits to ensure narrative criteria are not exceeded. 40 CFR 122.44(d)(1)(vi).

In addition, the commenter was concerned that there was no deadline for completion of the tissue monitoring program. However, sampling will commence in the spring of 1996 and continue through the year 2000. The FWS biological opinion, and the FWS's revised determination regarding reasonable and prudent alternatives, are included in the administrative record for this rulemaking.

The purpose of the tissue monitoring program is to provide information that can be used to assist in evaluating the magnitude of mercury contamination of wildlife in Arizona. The monitoring program was developed in consultation with the FWS, ADEQ, and Arizona Game and Fish Department. EPA believes the sampling program is a reasonable first step for identifying those areas in the State where problems may exist and for designing control strategies that will help remediate such problems to benefit wildlife protection in Arizona. The program will assist EPA in determining whether contaminated fish species are isolated cases due to particular sources of pollution (in which case development of permit limits for a particular discharger based on the State's existing narrative criterion may be the best means of remedying the problem) or whether they are indicative of a larger State-wide problem which needs to be addressed (potentially based on state-wide numeric criteria, when development of such criteria are technically feasible). If during the tissue monitoring it is determined that the mercury tissue levels are consistently found above the action level of 0.1 mg/kg in the prey base of bald eagle or Yuma clapper rail, then steps will be taken to identify the sources of the contamination and identify possible corrective measures.

EPA is concerned with the elevated mercury levels at the waterbodies identified by the commenter. While neither of the two lakes specifically cited by the commenter were identified by FWS as priority water bodies for sampling for mercury for threatened and endangered species, EPA is seeking to identify the sources contributing to the mercury levels detected in the two lakes and corrective measures for them.

The commenter is correct that a methodology for deriving wildlife criteria and a mercury criterion for wildlife were recently established in the Great Lakes Water Quality Initiative (''GLI''). It is important to note that the GLI wildlife methodology and criteria were developed over several years with input from two national conferences and several consultations with EPA's Science Advisory Board along with over 5000 public comments on the proposed GLI. In addition to the large effort undertaken to develop the methodology and criteria, EPA stated very clearly in the Supplementary Information Document to the GLI that:

> EPA would like to reemphasize that the provisions in the proposed and final Guidance are expressly applicable only to the waters of the Great Lakes System * * * States or Tribes with waters outside the Great Lakes Systems, in whole or in part, are encouraged to implement any of the Guidance methodologies or procedures that are scientifically and technically appropriate for their situations. Supplementary Information Document, p. 82.

EPA believes the methodology used in the GLI for deriving a mercury wildlife criteria may be appropriate for use in Arizona with some modifications based on the specific conditions in Arizona. This does not mean, however, that a criterion can simply be developed using the data from the Great Lakes. In addition, the commenter implies that the only question which needs to be considered when applying the GLI methodology is whether the mercury uptake rates among Arizona fishes are markedly different than among Great Lakes fishes. In fact, the bioaccumulation potential is only one component that goes into the derivation of wildlife criteria.

ADEQ reviewed the GLI methodology for deriving wildlife criteria to evaluate its applicability to Arizona and submitted their comments to EPA on May 12, 1995, which are part of the administrative record. EPA agrees with ADEQ that ecological conditions differ in Arizona from the Great Lakes region. Therefore direct application of the GLI methodology without modification is probably not appropriate. Development of a wildlife criterion to protect wildlife from mercury in Arizona will likely require the completion of tasks analogous to those undertaken by EPA in the GLI. This effort is necessary because several components within the wildlife methodology are specific to the type of aquatic ecosystem and associated wildlife species. It would not be scientifically defensible to directly adopt the mercury wildlife criterion for the Great Lakes in the regulation of Arizona ecosystems without further analyses to support such a decision. Issues that will require further data evaluation and analyses include: (1) The establishment of representative wildlife species for aquatic ecosystems in Arizona, including a determination of their water and food intake rates and the prey that comprises their diets; (2) a determination of appropriate mercury toxicity thresholds for the representative wildlife species identified for Arizona ecosystems; and (3) the establishment of mercury bioaccumulation factors appropriate for Arizona ecosystems and their associated food chains.

The technical analyses needed to establish the representative species (and their associated attributes) and appropriate mercury bioaccumulation factors will likely require the largest effort because these items are most closely associated with the site-specific nature of wildlife criteria. In addition to

the data evaluation and analyses, peer review would be appropriate for any wildlife methodology and associated criteria developed in Arizona given the numerous technical and scientific issues involved in developing such a methodology.

In summary, while EPA believes the development of a wildlife criterion for mercury may be possible, with some modifications, using the methodology developed in the GLI, the data to support the development of such a criterion are not currently available. Therefore, until this information is collected, EPA believes the approach of relying on the narrative criterion combined with the tissue monitoring program will provide protection of wildlife in a manner consistent with the requirements of the Endangered Species Act and Clean Water Act.

EPA is continuing to evaluate the comments upon the substance of the monitoring program, for the purpose of determining whether modifications to the program are warranted.

Another commenter indicated that EPA's disapproval of Arizona's lack of water quality criteria protective of wildlife for mercury should have been limited to the need for a mercury criterion applicable to only those surface waters where affected endangered species are likely to be adversely impacted.

EPA's disapproval action was based upon the biological opinion issued by the FWS, which found that the State's existing criteria for mercury failed to consider the effects of bioaccumulation of pollutants on wildlife. Because bioaccumulative effects may extend beyond threatened and endangered species to other species of wildlife, EPA's disapproval appropriately extended to Arizona's waters generally.

D. Summary of Provisions in Proposal Not Included in Final Rule

1. Mining Exclusion

In September 1993, EPA, Region 9, disapproved the exclusion related to mining contained in the State's standards at Arizona Administrative Rules and Regulations, R18–11–103.2. That exclusion provided that Arizona's standards did not apply to certain impoundments and associated ditches and conveyances used in the extraction, beneficiation and processing of metallic ores.

In EPA's January 1996 Federal Register notice of proposed rulemaking, EPA sought comment on a proposed Federal rule that would adopt standards for any waters of the United States not governed by State standards due to R18–11–103.2, as that State rule then existed. In the preamble to the proposed Federal rule, EPA also solicited comment regarding revisions to R18–11–102 that the State had proposed in December 1995 regarding the applicability of its standards to impoundments and associated ditches and conveyances used in the extraction, beneficiation and processing of metallic ores.

In April 1996 Arizona repealed R18–11–103 in its entirety and revised R18–11–102 by, among other things, adding provisions related to the applicability of the State's standards to mining-related impoundments. R18–11–102 as promulgated differs in certain respects from the proposed revision upon which EPA sought comment in its January 1996 Federal Register notice.

EPA has determined that Arizona's repeal of R18–11 103.2, and Arizona's adoption of revisions to R18–11–102 regarding the applicability of the State's standards to certain impoundments and associated ditches and conveyances, are consistent with the CWA, and that a Federal rule with respect to such impoundments and associated ditches and conveyances is not therefore needed to meet the CWA's requirements. EPA believes that the State's revision to R18–11–103.2 adequately addresses EPA's concerns because it excludes from standards only those waters that are not waters of the United States. Accordingly, EPA is not promulgating the provision which it proposed regarding mining-related impoundments, and comments opposing the adoption of the proposed Federal rule are moot.

Other commenters objected to mining-related exclusions under consideration in Arizona's rulemaking or encouraged adoption of a Federal rule in order to clarify the applicability of water quality standards to mining-related activities. One commenter supported the application of water quality standards to surface water bodies that have been converted into mining impoundments. The commenter also indicated that EPA's rule should address the extent to which water quality standards are applicable in cases involving stream diversions and the placement of mining wastes in dammed creek beds or valleys. The commenter indicated its support for broadening the protections associated with water quality standards to cover impoundments built in the drainages of diverted water bodies. Another commenter suggested that uncertainty would be created if Arizona adopted the mining-related revisions then under consideration. The commenter noted that it would be difficult for persons to determine whether the particular conditions for exempting water bodies under Arizona's proposal had been met. The commenter suggested that accuracy and simplicity might be better served by deleting the State's mining impoundment exemption. EPA considered these comments prior to determining that Arizona's final rulemaking with respect to mining impoundments is consistent with the CWA and that a Federal rule is unneeded.

Under section 303 of the CWA, States must adopt standards for all waters of the United States within the State. See, *Kentucky* v. *Train*, 9 ERC 1280, 1281 (E.D. Ky. 1976). States, however, need not adopt standards for any water body which is not a water of the United States. EPA has defined waters of the United States to include, among other waters, rivers and streams the use, degradation, or destruction of which would affect or could affect interstate commerce; impoundments of such waters are also waters of the United States. See, 40 CFR 122.2 and 40 CFR 230.3(s). Accordingly, EPA's disapproval was based on the premise that Arizona must adopt standards governing mining impoundments which are waters of the United States. In the view of EPA, Region 9, the State's revised mining language accords with the CWA because only impoundments that are not waters of the United States will not be subject to standards. EPA agrees that additional guidance addressing the extent to which water quality standards are applicable in cases noted by the commenters is desirable.

2. Practical Quantitation Limits

At the time of EPA's actions disapproving portions of Arizona's water quality standards, Arizona had prescribed practical quantitation limits (PQLs) in the regulations establishing its water quality standards. See, R18–11–120, and Appendix C of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations (1992). Under Arizona's regulations, ''practical quantitation limit means the lowest level of quantitative measurement that can be reliably achieved during routine laboratory operations.'' R18–11–101.37. In September 1993, EPA, Region 9, disapproved Arizona's inclusion of the PQLs in its regulations. EPA, Region 9, stated that, in order for the standards to be approvable under CWA section 303(c), they must protect the designated uses and must not be compromised by constraints related to analytical methods. EPA, Region 9, further stated that Arizona may choose to include the

PQLs in a policy or guidance document separate from the standards regulations.

In December 1995, ADEQ proposed deleting the PQLs prescribed in Appendix C from its regulations and adopting the PQLs in a guidance document. See, 1 Ariz. Admin. Reg. 2811 (Dec. 29, 1995), proposed R18–11–120.

In its January 1996 action, EPA proposed to adopt a Federal rule that would provide that Appendix C of Arizona's regulations would not be water quality standards for the purposes of the CWA.

In its April 1996 rulemaking, Arizona deleted Appendix C from its regulations. Accordingly, EPA is not promulgating a rule addressing this issue.

3. Implementation Policies

In September 1993, EPA disapproved the lack of implementation procedures for Arizona's narrative nutrient criteria. Arizona's narrative nutrient criteria provides that navigable waters shall be free from pollutants in amounts or combinations that cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth or propagation of other aquatic life or that impair recreational uses. See, R18–11–108.A.6. At the time of the disapproval, Arizona had not adopted an implementation process for its narrative criteria.

Also in September 1993, EPA, Region 9, disapproved the lack of implementation procedures for Arizona's narrative toxicity criterion. Arizona's narrative toxicity criterion provides that navigable waters shall be free from pollutants in amounts or combinations that are toxic to humans, animals, plants and other organisms. See, R18–11–108.A.5. At the time of the disapproval, Arizona had not adopted implementation procedures for toxicity.

In its January 1996 proposal, EPA proposed to adopt a Federal rule to address these deficiencies in the State's standards. Proposed 40 CFR 131.31(e). In its January 1996 proposal, EPA also solicited comment regarding the Region's use of two policies to guide the Region's implementation of the subject narrative criteria: ''EPA, Region 9, Policy for the Implementation of Arizona's Narrative Nutrient Criteria'' and ''EPA, Region 9, Policy on Using Biomonitoring to Implement Arizona's Narrative Toxicity Criterion''. As noted in EPA's January 1996 Federal Register notice, EPA does not believe that it is necessary that the State itself adopt regulatory provisions addressing these implementation issues. EPA explained in the Federal Register notice that such policies and procedures may be contained either in water quality standards regulations themselves, or may be included in a standards submission as policy or guidance documents. EPA also stated in its January 1996 preamble that, should the State adopt acceptable policies and procedures prior to promulgation of a final rule by EPA, the Agency would not include the subject regulatory provisions in the final rule.

In January 1996, Arizona adopted a policy for the implementation of the State's narrative criteria for nutrients. ADEQ, Water Quality Assessment Unit, ''Implementation Guidelines for the Narrative Nutrient Standard''. In April 1996, Arizona adopted a policy for the implementation of the State's narrative criteria for toxicity. ADEQ, ''Interim Whole Effluent Toxicity Implementation Guidelines for Arizona''.

After reviewing the State-adopted implementation policies and the comments received in response to the January 1996 Federal Register notice, EPA, Region 9, approved the policies adopted by the State. With respect to EPA's prior disapproval of Arizona's standards due to the lack of implementation policies related to narrative criteria for nutrients and toxicity, EPA has determined that Arizona's water quality standards, as supplemented by the State's newly adopted implementation plans, are consistent with the CWA and that no new Federal water quality standard is necessary to meet the CWA's requirements. Accordingly, EPA is not promulgating proposed 40 CFR 131.31(e).

EPA received comments regarding its implementation policies in response to the January 1996 Federal Register notice. Because EPA has approved Arizona's implementation policies, and therefore not promulgated a final rule related to these policies, those comments are no longer relevant to this rulemaking action. However, those comments regarding EPA's policies that are material to EPA's decision to approve Arizona's policies have been considered by the Agency in its approval action and responses to those comments have been prepared and are part of the record supporting EPA's approval of Arizona's narrative toxicity and narrative nutrient standards implementation policies. A number of comments having to do with the appropriateness of adopting Federal implementation policies, or the necessity of having State policies, are moot since the State has now adopted its own implementation policies. Other comments received were specific to EPA's own toxicity policy for Arizona (''EPA, Region 9, Policy on Using Biomonitoring to Implement Arizona's Narrative Toxicity Criterion''). These comments addressed the purpose and function of toxicity requirements in permits. Since Arizona's toxicity policy does not address how the narrative toxicity standard will be implemented in permits, these comments have not been responded to in EPA's action approving the Arizona toxicity policy. EPA will take these comments into account as we further refine the implementation of toxicity narrative standards in National Pollutant Discharge Elimination System permits in Arizona.

E. Endangered Species Act

Pursuant to section 7 of the Endangered Species Act (16 U.S.C. 1656 *et seq.*), Federal agencies must assure that their actions are unlikely to jeopardize the continued existence of listed threatened or endangered species or adversely affect designated critical habitat of such species. Today's action adds the fish consumption use to various waters which previously did not have the protections afforded by that designation, and establishes that a monitoring program will be undertaken to implement the State's narrative water quality criteria with respect to the effects of mercury on wildlife.

EPA has completed section 7 consultation with the FWS regarding this action.

F. Executive Order 12866

Under Executive Order 12866 (58 FR 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, of 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 of 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.

Because the annualized cost of this final rule would be significantly less than $100 million and would meet none of the other criteria specified in the Executive Order, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

G. Executive Order 12875, Enhancing the Intergovernmental Partnership

In compliance with Executive Order 12875 EPA has involved state, local, and tribal governments in the development of this rule. EPA, Region 9, consulted with ADEQ through conference calls, meetings and review of draft and final documents. EPA held a meeting on December 14, 1995, in Phoenix, AZ, with members of the potentially impacted public (e.g., municipalities, industries and environmental groups) to discuss the proposed action. EPA held a public hearing on the proposed action on February 29, 1996.

H. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires EPA to assess whether its regulations create a disproportionate effect on small entities. Among its provisions, the Act directs EPA to prepare and publish an initial regulatory flexibility analysis (IRFA) for any proposed rule which may have a significant impact on a substantial number of small entities. For purposes of this rulemaking, small entities are small dischargers, whether industrial or municipal.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is limited to the designation of the fish consumption use for fourteen waters within Arizona, and the requirement that EPA or Arizona implement a monitoring program to assess attainment of a specified State-adopted water quality standard. In light of the limited geographic scope of the use designations included in the final rule adopted by EPA (i.e., fourteen waterbodies), the Agency does not believe that there will be significant impacts associated with this aspect of the rule. The mercury monitoring program, moreover, will be carried out by EPA and ADEQ, and does not itself impose any additional obligations on small entities.

I. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is limited to the designation of the fish consumption use for fourteen waters within Arizona, and the requirement that EPA or Arizona implement a monitoring program to assess attainment of a State-adopted water quality standard. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Paperwork Reduction Act

This action requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards, Toxic pollutants.

Dated: April 29, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 131 of title 40 of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.31 is amended by adding paragraphs (b), and (c), to read as follows:

§ 131.31 Arizona.

* * * * *

(b) The following waters have, in addition to the uses designated by the State, the designated use of fish consumption as defined in R18–11–101 (which is available from the Arizona Department of Environmental Quality, Water Quality Division, 3033 North Central Ave., Phoenix, AZ 85012):

COLORADO MAIN STEM RIVER BASIN:
- Hualapai Wash

MIDDLE GILA RIVER BASIN:
- Agua Fria River (Camelback Road to Avondale WWTP)
- Galena Gulch
- Gila River (Felix Road to the Salt River)
- Queen Creek (Headwaters to the Superior WWTP)
- Queen Creek (Below Potts Canyon)

SAN PEDRO RIVER BASIN:
- Copper Creek

SANTA CRUZ RIVER BASIN:
- Agua Caliente Wash
- Nogales Wash
- Sonoita Creek (Above the town of Patagonia)
- Tanque Verde Creek
- Tinaja Wash
- Davidson Canyon

UPPER GILA RIVER BASIN

Chase Creek

(c) To implement the requirements of R18–11–108.A.5 with respect to effects of mercury on wildlife, EPA (or the State with the approval of EPA) shall implement a monitoring program to assess attainment of the water quality standard.

[FR Doc. 96–11080 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
May 7, 1996

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 21

Type Certification Procedures: Changes in Helicopter Type Design for External Equipment; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 28334; Amendment No. 21–73]

RIN 2120–AF10

Amendment of the Type Certification Procedures for Changes in Helicopter Type Design to Attach or Remove External Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the existing helicopter noise certification procedures with respect to certain changes in type designs. The applicability of the noise certification procedures is amended to exclude those changes in type design that involve the attachment or removal of external equipment, floats and skis, and certain airframe and operational changes made to accommodate such changes in type design (acoustical change requirements). Also excluded from the applicability of the acoustical change requirements are helicopter flight operations with doors and/or windows removed or in an open position. This amendment also makes U.S. helicopter noise certification regulations more consistent with the International Civil Aviation Organization (ICAO) standards.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth E. Jones, Research and Engineering Branch (AEE–110), Technology Division, Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–8933, facsimile (202) 267–5594.

SUPPLEMENTARY INFORMATION: The purpose of this rulemaking is to amend the applicability of the helicopter noise certification procedures to exclude those changes in helicopter type design that involve the attachment or removal of external equipment, floats and skis, and certain airframe and operational changes made to accommodate such changes in type design (acoustical change requirements). Also excluded from the acoustical change requirements are helicopter flight operations with doors and/or windows removed or in an open position. This amendment is based on Notice of Proposed Rulemaking (NPRM) Notice No. 95–15 (60 FR 48790, September 20, 1995; Docket No. 28334) in which comments were invited. No comments were received in the docket in response to the NPRM. Accordingly, the final rule is adopted as proposed in the NPRM.

Background

Statement of the Problem

The certification procedures for aeronautical products and parts are contained in 14 CFR part 21. Under part 21, an applicant for approval of a change to a helicopter type certificate must show compliance with the noise regulations in 14 CFR part 36 (part 36) if the change in type design may increase the noise level of the helicopter (an acoustical change). Section 21.93 defines an ''acoustical change'' and classifies the aircraft which must demonstrate compliance with part 36 following an acoustical change. Section 21.93(b)(4) describes helicopters required to demonstrate compliance with part 36 for an acoustical change, and specifically excludes helicopters designated exclusively for ''agricultural aircraft operations,'' ''dispensing firefighting materials,'' or ''carrying external loads.'' The intent of the existing § 21.93(b)(4) is to exclude helicopters designated exclusively to carry external loads from the requirement to demonstrate compliance with part 36.

This amendment addresses type certification (including noise requirements) procedures for changes to helicopter type designs to configure helicopters for carriage of external equipment. External equipment is defined herein as any instrument, mechanism, part, apparatus, or accessory that is attached to or extends from the helicopter exterior but is not used nor is intended to be used in operating or controlling a helicopter in flight and its not part of an airframe or engine. Examples of external equipment are spotlights, cameras, airborne signs, and cargo tanks and baskets.

External equipment may be attached to a helicopter as a Class A Rotorcraft External Load Combination under 14 CFR part 133 (part 133) ''Rotorcraft External Load Operations'', or alternatively, the external equipment may be attached to the helicopter as a change in type design under Subpart D of part 21. The noise certification requirements do not apply to any helicopter, regardless of airworthiness certification category, that is designated exclusively for carrying external loads pursuant to part 133. Section 133.51 states that ''[a] Rotocraft External-Load Operator Certificate is a current and valid airworthiness certificate for each rotocraft . . . listed by registration number on a list attached to the certificate, when the rotocraft is being used in operations conducted under [part 133].'' However, when the original helicopter noise certification rules were adopted in part 21, external equipment was not excluded from the acoustical change provisions of § 21.93. Thus, except for helicopters operated under part 133, the addition of external equipment was, prior to this amendment, subject to the acoustical change provisions of § 21.93. This amendment of § 21.93 reconciles the procedural treatment of external equipment added to helicopters with the intent of § 21.93(b)(4) by expanding the acoustical change exception to include carriage of external equipment.

History of Aircraft Noise Certification Regulations Relevant to This Amendment

On November 3, 1969, the Administrator of the FAA adopted part 36 entitled ''Noise Standards: Aircraft Type Certification.'' That action implemented the FAA's regulatory noise abatement program by prescribing type certification noise standards for subsonic turbojet powered airplanes. Procedural changes were concurrently made to part 21, ''Certification Procedures for Products and Parts,'' to provide criteria and requirements for demonstrating compliance with the specifications in part 36 (34 FR 18355, November 18, 1969). The noise certification requirements of parts 21 and 36 are designed to promote the incorporation of noise abatement technology into aircraft design. Parts 21 and 36 have been amended as appropriate to add new aircraft types to the certification requirements or change the technical specifications as necessary. Subsequently, helicopter noise certification requirements were adopted with amendment 36–14 to part 36 and amendment 21–61 to part 21 (53 FR 3534, February 5, 1988).

The first amendment to part 21 relevant to the original aircraft noise certification regulation was amendment 21–27 (34 FR 18355, November 10, 1969). That amendment established the general requirement that an applicant must demonstrate compliance with the applicable provisions of the part 36 procedures prior to issuance of an original, amended, or supplemental type certificate. The same amendment to part 21 included the addition under § 21.93(b) that specified an ''acoustical change'' as any voluntary change in type design of a transport category or turbojet-powered airplane that may increase the noise levels of that airplane. Section 21.93 was subsequently amended in response to

the promulgation of part 36 noise standards for propeller-driven airplanes (Amdt. 21–42; 40 FR 1029, January 6, 1975), supersonic airplanes (Amdt. 21–47; 43 FR 28406, June 29, 1978), commuter category airplanes (Amdt. 21–59; 52 FR 1806, January 15, 1987), and helicopters (Admt. 21–61; 53 FR 3534, February 5, 1988).

Section 21.93 has also been amended to exclude certain changes in aircraft type design from the acoustical change requirements. The necessity for excluding these changes in type design became apparent only after experience was gained from implementation of the original noise certification regulations for the aircraft type in question. For turbojet-powered airplanes, amendment 21–56 (47 FR 756, January 7, 1982) excludes time-limited engine and/or nacelle changes, where the change in type design specifies that the airplane may not be operated for a period of more than 90 days, and amendment 21–62 (53 FR 16360, May 6, 1988) excludes both gear down flight with one or more retractable landing gear down during the entire flight and spare engine and nacelle carriage external to the skin of the aircraft. For propeller-driven commuter category and propeller-driven small airplanes, amendment 21–63 (53 FR 47394, November 22, 1988) excludes ''antique'' airplanes (i.e., those airplanes that have flight time before January 1, 1955) and land configurated aircraft reconfigured with floats and skis.

Synopsis of the Amendment

This amendment changes the acoustical change provisions of § 21.93 to exclude helicopters that have been modified by the addition or removal of external equipment mounted on the helicopter airframe or floats (rigid or bag) and skis. This amendment also excludes certain changes in helicopter type design from the acoustical change requirements otherwise applicable to certain airframe changes made to accommodate the external equipment and to helicopter flight operations with doors and/or windows removed or in an open position. This amendment also applies to any operating limitations placed on, or removed from the helicopter as a consequence of the addition or removal of external equipment, floats, and skis.

The FAA recognizes the utility aspect of the helicopter as an aerial platform of external equipment. It is a common practice in the helicopter industry to add or remove external equipment as mission requirements vary. Although external equipment may be offered by the original manufacturer of the helicopter, it is usually added as an after-market addition by individual operators to meet specific mission needs. Given the potential variety of external equipment, the nature of the external equipment is not considered part of the basic design of a given helicopter and does not influence the basic aerodynamic design or the incorporation of noise abatement technology into the helicopter design. As stated in the preamble of the final rule (cited previously) for the original helicopter noise certification rulemaking, ''. . . the [helicopter] noise standards apply [only] to internal load configurations.''

This amendment is consistent with a similar provision in the applicability section of the helicopter noise certification standard approve by the ICAO under its International Standards and Recommended Practices: Environmental Protection; Annex 16, Volume 1, Chapters 8 and 11 (Third Edition-July 1993). This amendment brings the acoustical change provision in the U.S. noise certification regulations into closer harmony with that used by foreign noise certification authorities.

The FAA has determined that this amendment will provide benefits in the form of regulatory relief to the helicopter industry and to individual helicopter operators. This amendment will result in little or no increase of public exposure to helicopter noise emissions. Prior to this amendment, type certification procedures and the helicopter regulations changed by this amendment imposed an undue financial burden on the helicopter industry and operators without providing any measurable benefit to the public.

Details of the amendment and limitations of the amendment are provided in the following analysis.

§ 21.93 Classification of changes in type design.

Part 21 prescribes that certain types of aircraft, including helicopters, must demonstrate compliance with the applicable requirements of part 36 if a change in type design results in an acoustical change. Section 21.93 specifies an ''acoustical change'' as any voluntary change in type design (including operational limitations) that may increase the noise levels of an aircraft. This amendment, applicable only to helicopters, excludes the installation or removal of external equipment from being considered an acoustical change. The amendment specifically excludes from the acoustical change provision the addition or removal of all external equipment where ''external equipment'' means any instrument, mechanism, part, apparatus, appurtenance, or accessory (e.g., spotlights, cameras and other optical devices, public address systems, hoists, airborne signs, tow banners, cargo tanks and baskets, emergency flotation gear, personnel platforms, wire strike kits, crop spraying equipment, scientific apparatus and their accessories) that is not used or intended to be used in operating or controlling an aircraft in flight, that is attached to the helicopter, and is not part of an airframe or engine. This amendment applies to changes in the airframe made to:

(1) Accommodate the addition or removal of external equipment:

(2) Facilitate the use of external equipment; or

(3) Facilitate the safe operation of the helicopter with external equipment mounted on the helicopter.

Examples of airframe changes that are excepted include fairings, attachment hardware, cavities constructed in the airframe to accommodate conformally attached equipment, and bubble windows. This amendment also excludes from the acoustical change provision external load attaching means, the airworthiness certification of which is specified in §§ 27.865 and 29.865.

This amendment excludes the addition or removal of floats and skis on helicopters from the acoustical change provision. This amendment makes it clear that any changes in the operating limitations placed on the helicopter as a consequence of the addition or removal of external equipment, floats, and skis is not an acoustical change. Similarly, it also excludes flight operations conducted with one or more doors and/or windows removed or in an open position.

The FAA has included addition or removal of floats and skis on helicopters under this amendment in order to provide the same provision for helicopters as is currently provided small propeller driven airplanes and propeller driven commuter category airplanes under § 21.93(b)(3). The acoustical change requirements of § 21.93 do not require a noise certification compliance demonstration for such airplanes because the FAA did not have a rational basis to consider such design configurations in the original rulemaking that established noise certification requirements for theses aircraft. While the addition of floats and skis adversely affects the aerodynamic performance, and consequently the noise levels, of both small airplanes and helicopters, the FAA lacks the acoustical and performance data necessary to develop

noise certification regulations relevant to small airplanes and helicopters that are reconfigured by the addition of floats or skis.

If a noise compliance demonstration is otherwise required for compliance with part 36, the noise flight test must be conducted without any external equipment, floats, or skis mounted to the helicopter and with doors and windows mounted and closed (i.e., aerodynamically clean configuration) unless otherwise approved or required by the FAA. In granting such approvals or establishing such requirements, the rationale for the FAA's decision will be based on whether or not the measured helicopter noise levels from a proposed noise compliance demonstration would be representative of a ''clean configured'' helicopter. For example, assume a cavity was created in the fuselage (as a related airframe change) to accommodate a conformally (flush) fitted camera. Under this amendment, both the camera and the cavity are excluded from the acoustical change requirements of part 21. However, in the event of any future noise testing of that helicopter for a change in type design unrelated to the camera and cavity, such a noise test without the camera mounted and the cavity exposed would likely lead to unrepresentative noise levels due to alternation of the aerodynamic performance of the helicopter. In this example, during the actual noise test for the unrelated change in type design, the FAA would probably require that the flush-mounted camera be inserted in its associated fuselage cavity or that the fuselage cavity be covered in a manner that would return the fuselage to its original aerodynamic shape. Similarly, any analysis for the purpose of demonstrating a ''non-acoustical change'' under § 21.93 must assume performance levels consistent with an aerodynamically clean helicopter (relative to the changes in type design excluded under this amendment). That is, a decrease in a noise certification level effected by the addition of equipment excluded under this amendment may not be used to ''mathematically'' offset an increase in noise from a change in type design not affected by this amendment. For example, assuming the certification basis for a given helicopter is part 36 Appendix J, an increase in the flyover noise certification level caused by the upgrade of a transmission may not be offset by the decrease in noise from the assumed addition of external equipment, floats or skis as part of the change in type design for the transmission.

The FAA also deletes by this amendment the previous text in § 21.93(b)(4)(i) and (ii). Those paragraphs indicated examples of design changes which would be considered acoustical changes. Since § 21.93(b) already makes it clear that ''any voluntary change in the type design of an aircraft that may increase the noise levels of the aircraft is an 'acoustical change' . . . .'' paragraphs § 21.93(b)(4)(i) and (ii) could have been erroneously interepreted to indicate that (any) change to a muffler (including a change to a quieter muffler) is by regulation an acoustical change. Paragraphs (i) and (ii) did not represent a regulatory requirement and added nothing toward the interpretation of the acoustical change requirements for helicopters. The amended text addresses the definition of external equipment and the exclusions discussed earlier in this synopsis.

The FAA has examined such factors as the utility aspect of the helicopter mission, the necessity for the addition or removal of external equipment to meet mission needs, the relevance of such equipment with regard to the incorporation of noise abatement technology in the design of the helicopter, and the desire for commonality of U.S. noise certification regulations with relevant international standards and foreign national regulations. After consideration of these factors, the Administrator determined that the amendment is consistent with the criteria set forth for proposing and amending aircraft noise abatement regulations under the authority of § 611(d) of the Federal Aviation Act of 1958.

International Compatibility

The FAA has reviewed corresponding ICAO standards and JAA regulations, were they exist. This amendment makes U.S. helicopter noise certification regulations more consistent with the ICAO standards.

Paper Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this amendment.

Regulatory Evaluation Summary

Three principal requirements pertain to the economic impacts of changes to the Federal Regulations. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the expected benefits to society outweigh the expected costs. Second, the regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits exceeding costs; (2) is not ''significant'' as defined in the Executive Order and DOT's policies and procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will lessen restraints on international trade. These analyses, available in the docket, are summarized below.

Benefits

The final rule will provide regulatory relief and a cost savings of $31,690,468 (non-discounted) or $23,409,159 discounted, over a ten year period, to helicopter manufacturers, modifers, and operators. Of this amount, the projected cost savings for part 36 noise certification testing are as follows: Appendix H testing for helicopter manufacturers is $4,800,000 (non-discounted) or $4,264,244 discounted; Appendix J testing for helicopter manufacturers is $3,000,000 (non-discounted) or $2,330,305 discounted; and Appendix J Testing for modifers, $22,500,000 (non-discounted) or $15,803,025 discounted. The FAA will also realize administrative cost savings under these appendices as follows: Appendix H, $222,460 (non-discounted) or $178,312 discounted; Appendix J, $231,740 (non-discounted) or $173,525 discounted; and Appendix J (for modifiers), $936,268 (non-discounted) or $659,748 discounted.

Costs

From a number of noise certification studies, the FAA has learned that allowing applicants to attach external equipment to their helicopters will result in no net increase in helicopter noise or, at worst, insignificant increases in noise levels.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance prescribes standards for complying with RFA review requirements in FAA

rulemaking actions. The order defines ''small entities'' in terms of size thresholds, ''significant economic impact'' in terms of annualized cost threshold, and ''substantial number'' as a number that is not less than eleven and that is more than one-third of the small entities subject to the final rule.

The FAA has determined that, in accordance with the above order, the final rule to part 21 will not have a significant economic impact on a substantial number of small entities. The final rule will directly affect two types of entities: (1) Light helicopter manufacturers, and (2) small helicopter modifiers.

For small aircraft and aircraft parts manufacturers, Order 2100.14A specifies a size threshold for classification as a small entity as 75 or fewer employees. Based upon this size threshold, all of the affected U.S. manufacturers are large. For the purpose of the regulatory flexibility determination, an aircraft modifier is considered a small entity if it has 200 on fewer employees.

The FAA concludes that a substantial number of small entities (less than one third) will not be significantly affected by the final rule. Therefore, the final rule will not impose a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Trade Impact Assessment

The FAA has determined that the final rule will neither affect the sale of foreign aviation products and services in the United States nor the sale of U.S. products and services in foreign countries. This determination is based on the FAA's contention that the final rule will align the U.S. standards more closely with foreign standards for noise certification of external equipment.

Federalism Implications

The regulations herein will not have a 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 proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Analysis

Pursuant to the Department of Transportation ''Policies and Procedures for Considering Environmental Impacts'' (FAA Order 1050.1D), the FAA has determined that this rule does not significantly affect the human environment. A Finding of No Significant Impact has been prepared and placed in the docket.

Justification for Immediate Adoption

The FAA has determined that further delay in the adoption of this rule would cause undue burden to U.S. manufacturers, modifiers, and operators of helicopters. This final rule does not impose new regulatory requirements; rather, it corrects an oversight in the original helicopter noise certification rulemaking, which unnecessarily applied acoustical change noise certification requirements to some external load configurations. Although the preamble of that original rulemaking stated that the noise certification regulations applied only to internal load configurations, the necessary amendatory language that would effect that applicability was not made in all of the relevant portions of the noise certification regulations. At present, there are several applications pending for changes in helicopter type design which call for the addition of external equipment. Without this rule, those applicants are unintentionally subject to costly noise certification testing. Accordingly, the FAA has determined that good cause exist to make this rule effective in less than 30 days.

Conclusion

The FAA has determined that this final rule: (1) is not a significant regulatory action under Executive Order 12866; (2) is not a significant regulatory action 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. In addition, this final rule will have little or no affect on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States.

List of Subjects in 14 CFR Part 21

Aircraft, Helicopters, Noise control.

The Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 21 as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

2. Section 21.93 is amended by revising paragraph (b)(4) to read as follows:

§ 21.93 Classification of changes in type design.

* * * * *

(b) * * *

(4) Helicopters except:

(i) Those helicopters that are designated exclusively:

(A) for ''agricultural aircraft operations'', as defined in § 137.3 of this chapter, as effective on January 1, 1966;

(B) for dispensing fire fighting materials; or

(C) for carrying external loads, as defined in § 133.1(b) of this chapter, as effective on December 20, 1976.

(ii) Those helicopters modified by installation or removal of external equipment. For purposes of this paragraph, ''external equipment'' means any instrument, mechanism, part, apparatus, appurtenance, or accessory that it attached to, or extends from, the helicopter exterior but is not used nor is intended to be used in operating or controlling a helicopter in flight and is not part of an airframe or engine An ''acoustical change'' does not include:

(A) addition or removal of external equipment;

(B) changes in the airframe made to accommodate the addition or removal of external equipment, to provide for an external load attaching means, to facilitate the use of external equipment or external loads, or to facilitate the safe operation of the helicopter with external equipment mounted to, or external loads carried by, the helicopter;

(C) reconfiguration of the helicopter by the addition or removal of floats and skis;

(D) flight with one or more doors and/or windows removed or in an open position; or

(E) any changes in the operational limitations placed on the helicopter as a consequence of the addition or removal of external equipment, floats, and skis, or flight operations with doors and/or windows removed or in an open position.

* * * * *

Issued in Washington DC on May 1, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–11374 Filed 5–6–96; 8:45 am]

BILLING CODE 4910–13–M

Reader Aids

Federal Register

Vol. 61, No. 89

Tuesday, May 7, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Public inspection announcement line	**523–5215**

Laws

Public Laws Update Services (numbers, dates, etc.)	**523–6641**
For additional information	**523–5227**

Presidential Documents

Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**

Other Services

Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
TDD for the hearing impaired	**523–5229**

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, MAY

19155–19502 1
19503–19804 2
19805–20116 3
20117–20418 6
20419–20700 7

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6889 19503
6890 19803
6891 20419

Administrative Orders:
Memorandums:
April 26, 1996 19505
April 28, 1996 19507

4 CFR

Proposed Rules:
21 19205

5 CFR

300 19509
Ch. LXIX 20117

7 CFR

28 19511
53 19155
54 19155
272 19155
273 19155
915 19512
916 19160
917 19160
946 20119
956 20121
985 20122
1007 20124
1280 19514

Proposed Rules:
958 20188
1005 19861
1007 19861
1011 19861
1046 19861

8 CFR

3 19976
242 19976

9 CFR

78 19976
130 20421

Proposed Rules:
92 ..... 20189, 20190
93 20190
94 20190
95 20190
96 20190
98 20190
301 19564
304 19578
308 19578
317 ..... 19564, 19578
318 ..... 19564, 19578
319 19578
320 19564
381 ..... 19564, 19578

12 CFR

5 19524
19 20330
20 19524
28 19524
205 ..... 19662, 19678
220 20386
250 19805
263 20338
308 20344
509 20350
614 20125

Proposed Rules:
207 20399
215 19863
220 20399
221 20399

13 CFR

Proposed Rules:
121 20191

14 CFR

21 20696
39 ..... 19540, 19807, 19808, 19809, 19811, 19813, 19815, 20125, 20127, 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682
43 19498
71 ..... 19541, 19542, 19816, 19817
73 20127
159 19784
205 19164
323 19164
385 19166

Proposed Rules:
39 ..... 20192, 20194
71 ..... 19590, 19591, 19592, 19593

15 CFR

902 19171

Proposed Rules:
946 19594

16 CFR

1500 19818

Proposed Rules:
254 19869
1210 20503

17 CFR

1 ..... 19177, 19830
3 20127
5 19830
31 19830

Proposed Rules:
1 19869

156 19869

18 CFR

1300 20117
Proposed Rules:
161 19211
250 19211
284 ....19211, 19832
346 19878

19 CFR

10 19834
103 19835
Proposed Rules:
101 19834

20 CFR

345 20070
601 19982
617 19982
626 19982
658 19982
702 19982

21 CFR

101 20096
201 20096
369 20096
500 19542
501 20096
582 19542
589 19542
740 20096
801 20096
Proposed Rules:
25 19476
102 19220
130 19220
131 19220
133 19220
135 19220
136 19220
137 19220
139 19220
145 19220
146 19220
150 19220
152 19220
155 19220
156 19220
158 19220
160 19220
161 19220
163 19220
164 19220
165 19220
166 19220
168 19220
169 19220
210 20104
211 20104

22 CFR

126 19841
514 20437

24 CFR

0 19187
201 19788
290 19188
941 19708
970 19708
Proposed Rules:
901 20358

25 CFR

Proposed Rules:
250 19600

26 CFR

1 ....19188, 19189, 19544, 19546
301 19189
602 19189
Proposed Rules:
1 20503
301 20503

29 CFR

1 19982
2 19982
4 19982
5 19982
6 19982
7 19982
8 19982
22 19982
24 19982
32 19982
96 19982
504 19982
507 19982
508 19982
530 19982
1910 19547
1978 19982
Proposed Rules:
4 19770

30 CFR

Proposed Rules:
904 19881
946 19885

31 CFR

361 20437

33 CFR

100 ....19192, 20132
165 ....19192, 19841
401 19548
Proposed Rules:
100 20196
154 20084
155 20084

36 CFR

1228 19552
Proposed Rules:
100 19220
117 19223

37 CFR

Proposed Rules:
1 19224
Ch. II 20197

38 CFR

2 ....20133, 20437
3 20438
4 ....20438, 20440
9 20134
19 20447
20 20447

40 CFR

52 ....19193, 19555, 20136, 20139, 20142, 20145, 20147, 20453, 20455, 20458
70 20150
81 20458
131 20686
180 ....19842, 19845, 19847, 19849, 19850, 19852, 19854, 19855
300 20473
355 20473
Proposed Rules:
51 19231
52 ....19233, 19601, 20199, 20200, 20201, 20504
63 19887
70 20202
81 19233
180 19233
170 19889
300 ....19889, 20202
Ch. I 19432

41 CFR

50–203 19982
60–1 19982
60–30 19982
60–250 ....19366, 19982
60–741 ....19336, 19982

42 CFR

405 19722
486 19722

43 CFR

11 20560

44 CFR

61 19197
64 19857
206 19197

46 CFR

10 19858
15 19858
114 20556
116 20556
117 20556
118 20556
119 20556
120 20556
121 20556
122 20556
170 20556
173 20556
175 20556
176 20556
177 20556
178 20556
179 20556
180 20556
181 20556
182 20556
183 20556
185 20556

47 CFR

3 20155
73 20490
Proposed Rules:
1 ....19236, 20505
2 19236
21 19236
73 ....19601, 20206, 20207, 20505
94 19236

48 CFR

801 20491
803 20491
804 20491
805 20491
806 20491
808 20491
810 20491
812 20491
813 20491
815 20491
816 20491
820 20491
822 20491
828 20491
833 20491
834 20491
836 20491
837 20491
846 20491
871 20493
2401 19468
2402 19468
2404 19468
2405 19468
2406 19468
2409 19468
2411 19468
2412 19468
2413 19468
2414 19468
2415 19468
2416 19468
2417 19468
2419 19468
2420 19468
2426 19468
2428 19468
2429 19468
2432 19468
2434 19468
2436 19468
2437 19468
2442 19468
2452 19468
2453 19468
Proposed Rules:
901 19891
905 19891
906 19891
908 19891
915 19891
916 19891
917 19891
922 19891
928 19891
932 19891
933 19891
935 19891
936 19891
942 19891
945 19891
952 19891
971 19891

49 CFR

228 20494
397 20496
564 20497
571 ....19201, 19202, 19560, 19561, 20170, 20172, 20497
604 19562
609 19562
1051 19859
1053 19859
1312 19859
Proposed Rules:
571 19602

1100 19236
1101 19236
1102 19236
1103 19236
1104 19236
1105 19236
1106 19236
1107 19236
1108 19236
1109 19236
1110 19236
1111 19236
1112 19236
1113 19236
1114 19236
1115 19236
1116 19236
1117 19236
1118 19236
1119 19236
1120 19236
1121 19236
1122 19236
1123 19236
1124 19236
1125 19236
1126 19236
1127 19236
1128 19236
1129 19236
1130 19236
1131 19236
1132 19236
1133 19236
1134 19236
1135 19236
1136 19236
1137 19236
1138 19236
1139 19236
1140 19236
1141 19236
1142 19236
1143 19236
1144 19236
1145 19236
1146 19236
1147 19236
1148 19236
1149 19236
1312 19902

50 CFR

253 19171
255 19171
620 20175
661 20175
672 19976
675 19976

Proposed Rules:

17 19237
600 19390
601 19390
602 19390
603 19390
605 19390
611 19390
619 19390
620 19390
621 19390
625 20506
649 20207
650 20207
651 20207
652 19604
673 19902

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Ohio; published 5-7-96

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; published 5-7-96

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Virginia and North Carolina; published 5-7-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Aircraft products and parts; certification procedures:

Helicopter design; noise level compliance; type certificates; published 5-7-96

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor vehicle safety standards:

Hazardous materials transportation; technical amendment; published 5-7-96

UNITED STATES INFORMATION AGENCY

Exchange visitor program:

Program extension procedures, research programs design and conduct, etc.

Partial stay; published 5-7-96

VETERANS AFFAIRS DEPARTMENT

Acquisition regulations:

Loan guaranty and vocational rehabilitation and counseling programs; published 5-7-96

Miscellaneous amendments; published 5-7-96

Adjudication; pensions, compensation, dependency, etc.:

Vicious habits; references removed; published 5-7-96

Board of Veterans Appeals:

Appeals regulations and rules of practice--

Single member and panel decisions, reconsiderations, etc.; published 5-7-96

Disabilities rating schedule:

Fibromyalgia; published 5-7-96

Organization, functions, and authority delegations:

Miscellaneous amendments; published 5-7-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Rural Utilities Service

Rural development:

Distance learning and telemedicine grant program; comments due by 5-16-96; published 4-16-96

AGRICULTURE DEPARTMENT

Administrative regulations:

Claims based on negligence, wrongful act, or omission; Federal regulatory review; comments due by 5-13-96; published 4-12-96

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans with Disabilities Act; implementation:

Accessibility guidelines--

Detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools; comments due by 5-13-96; published 4-12-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic bluefish; comments due by 5-13-96; published 3-28-96

Limited access management of Federal fisheries in and off of Alaska

Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; comments due by 5-14-96; published 3-20-96

Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; comments due by 5-17-96; published 4-2-96

Northeast multispecies; comments due by 5-15-96; published 4-18-96

Summer flounder; comments due by 5-17-96; published 4-22-96

DEFENSE DEPARTMENT

Acquisition regulations:

Ball and roller bearings; comments due by 5-17-96; published 3-18-96

EDUCATION DEPARTMENT

Family educational rights and privacy:

Regulatory burden reduction; comments due by 5-13-96; published 3-14-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

Federal regulatory review; comments due by 5-13-96; published 4-11-96

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Kentucky; comments due by 5-17-96; published 4-17-96

Michigan; comment period extension; comments due by 5-16-96; published 5-1-96

Clean Air Act:

Accidental release prevention; regulated substances and thresholds list; comments due by 5-15-96; published 4-15-96

Proposed stay of effectiveness; comments due by 5-15-96; published 4-15-96

Fuel and fuel additives--

Federal gasoline Reid Vapor Pressure volatility standard (1996 and 1997); relaxation; comments due by 5-15-96; published 4-15-96

Hazardous waste program authorizations:

Louisiana; comments due by 5-13-96; published 3-28-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Diflubenzuron; comments due by 5-17-96; published 4-17-96

Pentaerythritol stearates; comments due by 5-17-96; published 4-17-96

Prosulfuron; comments due by 5-17-96; published 4-17-96

Sodium salt of acifluorfen; comments due by 5-17-96; published 4-17-96

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 5-13-96; published 4-11-96

National priorities list update; comments due by 5-13-96; published 4-12-96

Water pollution; effluent guidelines for point source categories:

Ore mining and dressing; comment period extension; comments due by 5-13-96; published 4-10-96

FARM CREDIT ADMINISTRATION

Farm credit system:

Loan policies and operations--

Loan underwriting; Federal regulatory review; comments due by 5-15-96; published 4-15-96

FEDERAL COMMUNICATIONS COMMISSION

Personal communications services:

Mobile-satellite services; allocation of 70 MHz range satellites operation use; comment period reopening; comments due by 5-17-96; published 4-25-96

Radio broadcasting:

Broadcast facilities; minor changes without construction permit; comments due by 5-16-96; published 4-8-96

Radio stations; table of assignments:

Alaska; comments due by 5-13-96; published 3-29-96

Colorado; comments due by 5-13-96; published 3-29-96

Hawaii; comments due by 5-13-96; published 3-29-96

New Mexico; comments due by 5-13-96; published 3-29-96

Telecommunications Act of 1996; implementation:

Local competition provisions; comments due by 5-16-96; published 4-25-96

Television broadcasting:

Cable Television Consumer Protection and Competition Act of 1992--

Leased commercial access; comments due by 5-15-96; published 4-15-96

Television stations; table of assignments:

Wisconsin; comments due by 5-13-96; published 3-29-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Investigational new drugs; clinical investigator disqualification; comments due by 5-16-96; published 2-16-96

Labeling of drug products (OTC)--

Phenylpropanolamine preparation drug products; warning label; comments due by 5-14-96; published 2-14-96

Topical antimicrobial drug products for over-the-counter human use--

OTC first aid antibiotic drug products; final monograph; comments due by 5-14-96; published 2-14-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Ohio; comments due by 5-17-96; published 4-17-96

JUSTICE DEPARTMENT

Americans with Disabilities Act; implementation:

Accessibility guidelines--

Detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools; comments due by 5-13-96; published 4-12-96

TRANSPORTATION DEPARTMENT

Coast Guard

Federal regulatory reform:

Regattas and marine parades; comments due by 5-17-96; published 4-17-96

Regattas and marine parades:

Miami Super Boat Race; comments due by 5-15-96; published 3-26-96

River Race Augusta; comments due by 5-15-96; published 3-26-96

TRANSPORTATION DEPARTMENT

Americans with Disabilities Act; implementation:

Accessibility guidelines--

Detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools; comments due by 5-13-96; published 4-12-96

Omnibus Transportation Employee Testing Act of 1991:

Drug and alcohol testing requirements for foreign-based drivers operating in U.S.; participation by Canadian and Mexican laboratories; comments due by 5-13-96; published 3-28-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airports:

Passenger facility charges; comments due by 5-16-96; published 4-16-96

Airworthiness directives:

Boeing; comments due by 5-14-96; published 3-21-96

Dornier; comments due by 5-15-96; published 4-4-96

JanAero Devices; comments due by 5-17-96; published 3-15-96

McDonnell Douglas; comments due by 5-13-96; published 3-18-96

Airworthiness standards:

Transport category airplanes--

Reference stall speed; comments due by 5-17-96; published 1-18-96

Class E airspace; comments due by 5-13-96; published 4-8-96

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:

New drivers; safety performance history; comments due by 5-13-96; published 3-14-96

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad workplace safety:

Roadway worker protection; comments due by 5-13-96; published 3-14-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Lamps, reflective devices, and associated equipment--

Signal lamps geometric visibility requirements, and rear side marker color; harmonization; comments due by 5-16-96; published 12-27-95

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List May 6, 1996