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November 20, 1996

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Presidential Documents

Title 3—

The President

Executive Order 13027 of November 15, 1996

Establishing an Emergency Board To Investigate a Dispute Between the Southeastern Pennsylvania Transportation Authority and Its Employees Represented by the Brotherhood of Locomotive Engineers

A dispute exists between Southeastern Pennsylvania Transportation Authority and certain of its employees represented by the Brotherhood of Locomotive Engineers.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*) (the ''Act'').

A party empowered by the Act has requested that the President establish a second emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(e) of the Act provides that the President, upon such request, shall appoint a second emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me as President, by the Constitution and the laws of the United States, including section 9A of the Act, it is hereby ordered as follows:

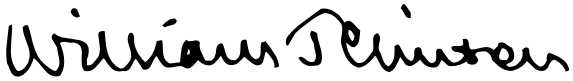
Section 1. *Establishment of the Board.* There is established effective 12:01 a.m., eastern standard time, on November 16, 1996, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after creation of the board, the parties to the dispute shall submit to the board final offers for settlement of the dispute. Within 30 days after submission of final offers for settlement of the dispute, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(h) of the Act, from the time a request to establish a board is made until 60 days after the board makes its report, no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

Sec. 4. *Records Maintenance.* The records and files of the board are records of the Office of the President and upon the board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The board shall terminate upon submission of the report provided for in section 2 of this order.



THE WHITE HOUSE,
November 15, 1996.

[FR Doc. 96–29815
Filed 11–19–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1645

Allocation of Earnings

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing final regulations describing the Board's allocation of earnings for the three funds in which assets of the Thrift Savings Fund may be invested. These are the Government Securities Investment Fund (G Fund), the Common Stock Index Investment Fund (C Fund), and the Fixed Income Index Investment Fund (F Fund). The final rule reflects policies adopted by the Board since publication of the interim rule on May 2, 1988.

EFFECTIVE DATE: These final rules are effective November 20, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Woodruff, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005. Telephone: (202) 942–1661. Telefacsimile: (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board (Board) administers the Thrift Savings Plan (TSP) pursuant to the authority vested in it by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514 (1986), which has been codified, as amended, largely at 5 U.S.C. 8401–8479 (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Part 1645 describes the process for determining and allocating earnings for each of the three investment funds—the G Fund, the C Fund, and the F Fund—to individual accounts of participants in the TSP.

The final rule reflects the Board's policies of allocating earnings as of month-end and of applying a single allocation factor for each source of contributions. There has been no change in the formula for calculating the amount of earnings.

On August 30, 1996, the Board published a proposed rule with a request for comments in the Federal Register (61 FR 45906). The Board received no comments on the proposed rule. Therefore, the Board is adopting the provisions of the proposed rule as a final rule without change.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations will affect only internal Board procedures for allocating earnings.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Public Law 104–4, section 201, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA), as amended by the Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, tit. II, 110 Stat. 847, 857–875 (5 U.S.C. 801(a)(1)(A)), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to the publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined in section 804(2) of the APA as amended (5 U.S.C. 804(2)).

List of Subjects in 5 CFR Part 1645

Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board

Roger W. Mehle,

Executive Director.

For the reasons set out in the preamble, 5 CFR Part 1645 is amended as set forth below.

PART 1645—ALLOCATION OF EARNINGS

1. The authority citation for Part 1645 continues to read as follows:

Authority: 5 U.S.C. 8439(a)(3) and 5 U.S.C. 8474.

2. Section 1645.1 is amended by revising the definitions of ''Allocation date'', ''Employer contributions'', ''Forfeitures'', ''Source'', and ''Valuation period''; by removing the definitions of ''Employer basic contributions'' and ''Employer matching contributions''; and by adding in alphabetical order the definitions of ''Agency automatic (1%) contributions'', ''Agency matching contributions'', and ''Month-end account balance'', to read as follows:

§ 1645.1 Definitions.

* * * * *

Agency automatic (1%) contributions means contributions made pursuant to 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3).

Agency matching contributions means contributions made pursuant to 5 U.S.C. 8432(c)(2).

* * * * *

Allocation date means the last day of each calendar month.

* * * * *

Employer contributions means agency automatic (1%) contributions and agency matching contributions.

* * * * *

Forfeitures means amounts forfeited pursuant to 5 U.S.C. 8432(g)(2) and other nonstatutory forfeited amounts, net of restored forfeited amounts.

* * * * *

Month-end account balance means the value, as of the allocation date, of the funds for each source of contributions in each investment fund, including all earnings, and any

forfeiture, restored forfeited amount, adjustment, earnings correction, loan, withdrawal, or interfund transfer transactions posted as of the allocation date.

* * * * *

Source means the origin of any one of the three types of contributions that are made to the Fund on behalf of participants—employee contributions, agency automatic (1%) contributions, or agency matching contributions.

* * * * *

Valuation period means the calendar month during which earnings accrue.

3. Section 1645.2 is revised to read as follows:

§ 1645.2 Posting of receipts.

Agency and employee contributions and loan repayments will be posted by source and by investment fund to the appropriate individual account on the day they are processed by the recordkeeper.

§ 1645.3 [Amended]

4. Section 1645.3 is amended by revising all references to ''Investment Fund'' to read ''investment fund''.

5. Section 1645.4 is revised to read as follows:

§ 1645.4 Administrative expenses attributable to each investment fund.

A portion of administrative expenses accrued during each valuation period will be charged to each investment fund. The investment funds' respective portions will be determined as follows:

(a) Investment managers' fees and other accrued administrative expenses attributable only to the C or F Fund will be charged to the C or F Fund, respectively;

(b) All other accrued administrative expenses will be reduced by forfeitures and earnings on forfeitures accrued during the valuation period;

(c) The amount of accrued administrative expenses not covered by forfeitures under paragraph (b) of this section will be charged on a *pro rata* basis to the investment funds, based on the respective investment fund balances on the last day of the prior valuation period.

6. Section 1645.5 is revised to read as follows:

§ 1645.5 Basis for allocation of earnings.

(a) *Individual account basis.* Except for the amounts described in paragraph (b) of this section, the individual account basis on the earnings allocation date for each source of contributions in each investment fund equals:

(1) The month-end account balance as of the previous allocation date; plus

(2) One-half of contributions posted to the individual account during the current valuation period (except for contributions referred to in paragraph (b) of this section); plus

(3) One-half of all loan repayments posted to the individual account during the current valuation period.

(b) *Inclusion of retroactive contributions.* The individual account basis for agency automatic (1%) contributions will also include all amounts attributable to retroactive contributions that are made to the individual account pursuant to 5 U.S.C. 8432(c)(3) and that are processed by the recordkeeper during the current valuation period.

(c) *Computation of fund basis.* For each valuation period, the total fund basis for each investment fund will be the sum of all individual account bases for all sources of contributions in that investment fund, calculated as described in paragraphs (a) and (b) of this section.

7. Section 1645.6 is revised to read as follows:

§ 1645.6 Earnings allocation for individual accounts.

(a) *Computation of earnings for each individual account.* Earnings for each source of contributions for each investment fund will be allocated to each individual account separately. The total net earnings for each investment fund (as computed under § 1645.3) will be divided by the total fund basis for that investment fund (as computed under § 1645.5(c)). The resulting number (the ''allocation factor'') will be multiplied by the individual account basis for the respective source of contributions in that investment fund (as computed under § 1645.5(a)), to determine the individual account earnings for the valuation period attributable to that source of contributions in that investment fund. The earnings of the individual account for each source of contributions in each investment fund, when added together, will constitute the earnings for that individual account during the valuation period.

(b) *Residual net earnings.* Amounts allocated to individual accounts may not exceed the total amount of earnings available to be allocated. To avoid allocating excessive amounts, computation of earnings for individual accounts described in paragraph (a) of this section will not include fractions of a cent. Residual net earnings attributable to unallocated fractions of a cent will be allocated with the earnings for the following valuation period.

8. Section 1645.7 is revised to read as follows:

§ 1645.7 Posting of earnings to individual accounts.

For each source of contributions for each investment fund, the amount of earnings computed for each individual account in a valuation period, as described in § 1645.6, will be posted to the individual account as of the allocation date.

[FR Doc. 96–29450 Filed 11–19–96; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R–0934]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has approved an amendment to subpart B of its Regulation S. Subpart B cross-references the substantive provisions of a joint rule adopted by the Board and the Department of the Treasury relating to the recordkeeping requirements for funds transfers and transmittals of funds under the Bank Secrecy Act. The amendment clarifies that Regulation S does not apply to any person or transaction or class of persons or transactions that the Treasury has exempted from the joint rule.

EFFECTIVE DATE: December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Louise Roseman, Associate Director, (202/452–2789), Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel (202/452–3625), or Elaine Boutilier, Senior Counsel (202/ 452–2418); Legal Division. For the hearing impaired *only,* contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202/452–3544).

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act,[1] as amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992,[2] authorizes, and in some cases requires, the Secretary of the Treasury[3] and the

[1] Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5329.

[2] Pub. L. 102–550, title XV.

[3] The Secretary of the Treasury has delegated the authority to administer the Bank Secrecy Act to the Director of the Financial Crimes Enforcement Network.

Board to prescribe recordkeeping rules for domestic and international funds transfers and money transmittals. The Board and the Treasury issued a joint rule,[4] effective May 28, 1996, that sets forth recordkeeping and reporting requirements for funds transfers and money transmittals by banks and nonbank financial institutions. These requirements are intended to assist in the investigation and prosecution of money-laundering activities. In promulgating these rules, the Board and the Treasury determined that the requirements would have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The substance of the joint rule is codified with the Treasury's Bank Secrecy Act regulations in 31 CFR part 103.[5] At the same time, the Board added subpart B to its Regulation S (12 CFR part 219) to cross-reference the joint rule.

Under its general Bank Secrecy Act regulations, the Treasury may make exceptions or grant exemptions from the requirements in 31 CFR part 103 for particular persons or classes of persons or particular transactions or classes of transactions.[6] The Board has no similar exemptive provisions in Regulation S. The Board recognizes the possibility that the Treasury could grant an exception or exemption for a person or transaction subject to the joint rule. Therefore, on August 21, 1996 (61 FR 43195), the Board requested comments on an amendment to clarify that subpart B does not apply to a particular person or class of persons, or particular transaction or class of transactions, to the extent that the Treasury has determined that the joint rule does not apply to that person, transaction, or class of persons or transactions.

Four comments, all favorable, were received in response to the proposed change. Three comments were received from Federal Reserve Banks, all of which supported the proposed amendment to clarify the intent of subpart B of Regulation S. One comment was received from a bank trade association, which supported the amendment, stating that ''any revisions that eliminate potential confusion help to alleviate regulatory burden.'' That comment did suggest that the final language be revised and put into clearer language—less ''legalese.'' The language used in the amendment to subpart B adopts the terminology used in the exemption authority given the Secretary of the Treasury in 31 CFR 103.45; and, to avoid confusion, the Board will continue to use the same terminology.

Accordingly, to avoid confusion and to ensure consistent application of the joint rule and subpart B of Regulation S, the Board has amended Regulation S to clarify that subpart B does not apply to a particular person or class of persons or particular transaction or class of transactions to the extent that the Treasury has determined that the joint rule does not apply to that person, transaction, or class of persons or transactions.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board hereby certifies that this amendment to subpart B of Regulation S will not have a significant economic impact on a substantial number of small entities. The amendment eliminates uncertainty as to the application of the joint final rule and may result in reduced compliance burden to the extent that the Treasury exempts persons or transactions that would otherwise be subject to Regulation S. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

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

List of Subjects in 12 CFR Part 219

Banks, Banking, Currency, Foreign banking, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 219 is amended as set forth below.

PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS (REGULATION S)

* * * * *

Subpart B—Recordkeeping and Reporting Requirements for Funds Transfers and Transmittals of Funds

1. The authority citation for subpart B is revised to read as follows:

Authority: 12 U.S.C. 1829b(b)(2) and (3).

2. In § 219.21, the first word ''Such'' in the last sentence is revised to read ''These'' and a new sentence is added immediately preceding the last sentence to read as follows:

§ 219.21. Authority, purpose, and scope.

* * * This subpart does not apply to a particular person or class of persons or a particular transaction or class of transactions to the extent that the Treasury has determined that 31 CFR 103.33(e) or (f) do not apply to that person, transaction, or class of persons or transactions. * * *

By order of the Board of Governors of the Federal Reserve System, November 14, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–29638 Filed 11–19–96; 8:45 am]

BILLING CODE 6210–01–P

[4] 60 FR 231 (January 3, 1995), as modified by 60 FR 44144 (August 24, 1995) and 61 FR 14382 (April 1, 1996).

[5] 31 CFR 103.11 and 103.33 (e) and (f).

[6] *See* 31 CFR 103.45.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–45; Amendment 39–9815; AD 96–23–10]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT3D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT3D series turbofan engines, that requires inspection of steel high pressure compressor (HPC) disks for corrosion, recoating or replating those disks, or replacing those disks as necessary. This amendment is prompted by reports of a failure of a PW JT8D steel HPC disk, which is similar in design to the PW JT3D steel HPC disks. The actions specified by this AD are intended to prevent steel HPC disk failure due to corrosion, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective January 21, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. This information may be

examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7146, fax (617) 238–7199.

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 Pratt & Whitney (PW) JT3D series turbofan engines was published in the Federal Register on October 31, 1995 (60 FR 53337). That action proposed to require inspection of steel high pressure compressor (HPC) disks, stages 10–15, for corrosion, recoating or replating those disks, or replacing those disks as necessary in accordance with PW Alert Service Bulletin (ASB) No. A6208, Revision 2, dated July 7, 1995.

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

Twelve commenters state that the compliance time to accomplish the AD should be extended. The commenters state that due to the complex workscope, aircraft down time, high cost, severe economic and operational burden, significant impact on parts procurement, and shop availability, the compliance times need to be extended. Times suggested range from four to seven years, or next shop visit, or at exposure. Pratt & Whitney has updated their risk analysis based on new data provided by operators and a study concerning disk fractures resulting in uncontained events. Based on this update they have revised Alert Service Bulletin (ASB) No. A6208, extending the threshold and drawdown intervals. The FAA concurs in part. The FAA has reviewed and approved the technical contents of PW ASB No. A6208, Revision 3, dated January 11, 1996, and therefore the compliance time will be extended to that included in the ASB based on PW's risk analysis. Other intervals proposed are not technically justified.

Nineteen commenters state that the cost estimate in the NPRM is too low since that estimate does not include the cost of additional maintenance required under Part 121 (additional parts that must be replaced that are unrelated to the AD requirements); engine testing, fuel, oil, transportation/shipping, aircraft downtime, etc. The FAA does not concur. The FAA's cost estimate is based on information from the engine manufacturer to remove and replace the engine, teardown and replacement of a percentage of HPC disks, and engine buildup. It does not include costs not directly associated with the AD, because those costs result from other maintenance requirements. The compliance schedule of this AD allows for operators to schedule the required actions with other, normally scheduled maintenance, thereby minimizing the direct costs of the AD.

Six commenters state that part availability and shop capacity are not adequate for the fleet to perform the AD. There is only one source for new parts, and the supplier will not be able to keep up with the demand for new disks and other parts. Some operators will not be able to obtain parts to meet AD requirements. Operators will be competing for shop space at the limited number of repair shops during a restricted period of time. The FAA does not concur. The manufacturer has advised the FAA that parts will be available to meet demand. In addition, the FAA has determined, based on repair station input, that shop capacity over the extended compliance time of this AD will be satisfactory.

Eleven commenters state that there have been no PW JT3D disk failures due to corrosion, and therefore no flight safety problem exists, and that the AD should be withdrawn. The FAA does not concur. Although there have been no known PW JT3D series disk failures to date attributable to corrosion, the risk analysis by PW shows that if corrosion inspection is not accomplished in accordance with the applicable Service Bulletins' schedules the probability of a disk fracture is unacceptably high.

Eight commenters question using JT8D experience as the basis for this AD, as no consideration was given to differences in engine application: i.e., four-engine versus twin-engine; that the PW JT3D disk is heavier, and therefore has adequate safety margin; and that the PW JT3D disk operates at slower speeds, different temperatures and pressures. The FAA concurs in part. The commenters are correct in that AD action was initiated because of similarity between the engines; however, the analysis to generate inspection intervals and drawdown times used data specific to the PW JT3D series.

Four commenters suggest that PW test a JT3D disk to failure to evaluate the need for an AD and to verify the failure mode. The FAA does not concur. The FAA determined that an unsafe condition exists based on an actual failure of a similarly designed disk and a risk analysis using JT3D data. No further testing is necessary, and the FAA has concluded that the actions required by this AD are necessary to address that unsafe condition.

Two commenters request a meeting between FAA, PW, and industry. The FAA does not concur. A meeting was held with PW and a group of operators in August 1995 prior to the publication of the NPRM; PW requested operator input data for risk analysis at that time.

Three commenters state that only limited numbers of JT3D disks were analyzed by PW in their risk analysis. The FAA does not concur. Since publication of the NPRM, PW updated their risk analysis based on additional data supplied by JT3D operators and the new data confirms the earlier findings.

Three commenters state that the FAA underestimated the number of affected engines in the economic analysis, and that 6,000 engines worldwide are affected, including military and foreign. The FAA does not concur. The FAA does not include military engines in its economic analyses; these only refer to the civilian fleet.

Two commenters state that the AD should take operators' maintenance programs into consideration and give flexible compliance schedules based on maintenance programs. Operators' current disk inspection and maintenance practices call for inspection of HPC disks for corrosion, recoating, replating, or replacement. The FAA does not concur. The criticality of this inspection warrants that it be separate and distinct from routine maintenance tasks.

One commenter states that the FAA should consider using half-life inspection on life-limited parts in conjunction with studies conducted on HPC disks (based on the NPRM's statement ''corrosion is more apt to occur if the steel HPC disk is not recoated/replated during its life span and retains original production protective coating/plating.'') The FAA does not concur. The referenced statement from the NPRM is for informational purposes only, and the compliance time is based on PW's risk analysis, which takes into account many factors, including disk geometry, stress distribution, critical corrosion pit depth, crack propagation rates, and engine utilization rates.

One commenter states that the FAA should allow metallurgists appointed by operators to explore available data from

PW and examine how the correlation between PW JT8D and JT3D disks were achieved, as the commenter does not accept the manufacturer's conclusions. The FAA does not concur. Operators were given the opportunity to present differing findings during the meeting that was held with PW and a group of operators in August 1995.

One commenter states that there is no need for the AD as industry is currently complying with the ASB. The FAA does not concur. Airworthiness directive action is necessary to ensure compliance.

One commenter states that they were not consulted by the FAA prior to the issuance of the NPRM, that their operational service experience with HPC disks was not taken into account, and, accordingly, the AD should not issue. The FAA does not concur. The FAA, as a rule, does not usually consult with individual operators to gather facts for the development of an airworthiness directive. The FAA does, however, consult with the manufacturer of the product and industry groups and associations. For this AD, the FAA did solicit input from Pratt & Whitney, who, in turn, solicited input from operators for inclusion in the risk analysis.

Two commenters agree with the rule as proposed.

Since publication of the NPRM, the FAA has received additional economic data from the manufacturer and has recalculated the economic analysis to reflect this new information.

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

There are approximately 2,000 engines of the affected design in the worldwide fleet. The FAA estimates that 1,000 engines installed on aircraft of U.S. registry will be affected by this AD. Based on domestic fleet-wide data, the FAA estimates that approximately 40%, or 400 engines, will be required to be removed at times other than regularly scheduled maintenance to accomplish the AD's actions. Approximately 16 work hours are necessary to remove and replace the engine, and the average labor rate is $60 per work hour. Approximately 100 work hours are required to teardown and rebuild the engine. The FAA estimates that approximately 15% of disks removed from engines will need to be scrapped at a cost of $9,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $33,384,000 over a 15-year period.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–23–10—Pratt & Whitney: Amendment 39–9815. Docket 95– ANE–45.

Applicability: Pratt & Whitney (PW) Models JT3D–1, –1A, –3, –3B, –3C, –1–MC6, –1A-MC6, –1–MC7, –1A-MC7, –7, –7A turbofan engines, installed on but not limited to Boeing 707 and 720 series aircraft and McDonnell Douglas DC–8 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent steel high pressure compressor (HPC) disk failure due to corrosion, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Inspect steel HPC disks, stages 10–15, for corrosion, recoat or replate, or replace as necessary, in accordance with PW Alert Service Bulletin (ASB) No. A6208, Revision 3, dated January 11, 1996, and the following schedule:

(1) For disks coated with PWA 110–2/-3 Aluminide (non top coat system) and for disks with unknown coating or plating, as follows:

(i) Initially inspect, recoat or replate, or replace as necessary, within 14 years since new or since last recoat or replate, or within 36 months after the effective date of this AD, whichever occurs later.

(ii) Thereafter, inspect, recoat or replate, or replace as necessary, at intervals not to exceed 14 years since new or last coating, if PWA 110–2/-3 Aluminide (non top coat system) is applied, or not to exceed 15 years since new or last plating, if PWA 110–21/-31 Aluminide (top coat system) or Nickel Cadmium (NI–CAD) plating is applied.

(2) For disks coated with PWA 110–21/-31 Aluminide (top coat system) or plated with NI–CAD, as follows:

(i) Initially inspect, recoat or replate, or replace as necessary, within 15 years since new or since last replate, or within 36 months after the effective date of this AD, whichever occurs later.

(ii) Thereafter, inspect, recoat or replate, or replace as necessary, at intervals not to exceed 14 years since new or last coating, if PWA 110–2/-3 Aluminide (non top coat system) is applied, or not to exceed 15 years since new or last plating, if PWA 110–21/-31 Aluminide (top coat system) or Nickel Cadmium (NI–CAD) plating is applied.

(3) For disks with unknown coating or plating, and unknown time since last coating or plating; or for disks with known coating or plating and unknown time since last coating or plating, as follows:

(i) Initially inspect, recoat or replate, or replace as necessary, within 36 months after the effective date of this AD.

(ii) Thereafter, inspect, recoat or replate, or replace as necessary, at intervals not to exceed 14 years since new or last coating, if PWA 110–2/-3 Aluminide (non top coat system) is applied, or not to exceed 15 years since new or last plating, if PWA 110–21/-31 Aluminide (top coat system) or Nickel Cadmium (NI–CAD) plating is applied.

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

provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

(d) The actions required by this AD shall be done in accordance with the following PW ASB:

Document No.	Pages	Revision	Date
A6208	1	3	Jan. 11, 1996.
	2	1	May 8, 1995.
	3	3	Jan. 11, 1996.
	4	1	May 8, 1995.
	5–9	3	Jan. 11, 1996
	10–18	1	May 8, 1995.

Total Pages: 18.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 21, 1997.

Issued in Burlington, Massachusetts, on November 1, 1996.

James C. Jones,

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

[FR Doc. 96–28988 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–82–AD; Amendment 39–9819; AD 96–23–13]

RIN 2120–AA64

Airworthiness Directives; Canadair Model CL–215–1A10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair Model CL–215–1A10 series airplanes. This action requires a one-time inspection of the three DC generators to ensure that the extra unconnected bare copper wire is properly stowed. This amendment is prompted by reports indicating that unconnected bare copper wire, which was fitted inside of some DC generators installed on these airplanes, could cause a short circuit. The actions specified in this AD are intended to prevent a fire hazard that would be posed if a short circuit were to occur at this area in the presence of a combustible fuel-air mixture.

DATES: Effective December 5, 1996.

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

Comments for inclusion in the Rules Docket must be received on or before January 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7511; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Canadair Model CL–215–1A10 series airplanes. Transport Canada Aviation advises that it has received reports that extra unconnected bare copper wire was fitted inside some DC generators [having part number (P/N) 2CM70D( )] that were installed on these airplanes. The bare copper wire could cause a short circuit and, if a combustible fuel-air mixture is present at this location, it could present a fire hazard.

Explanation of Relevant Service Information

Canadair has issued Service Bulletin 215–414, dated January 4, 1989, which describes procedures for performing a one-time visual inspection of the three DC generators (ENG 1, ENG 2, and GPU2) to ensure that the extra unconnected bare copper wire (if fitted from inside of the generator) is properly and safely stowed. The service bulletin also contains procedures for properly insulating and stowing the wire. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–89–05, dated July 15, 1989, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent a fire hazard that would be created if a short circuit, associated with the extra unconnected bare copper wire fitted in the DC generators, were to occur in the presence of a combustible fuel-air mixture. This AD requires a one-time visual inspection to ensure that the bare copper wire fitted in the DC generators is properly insulated and stowed. The actions are required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

None of the Canadair Model CL–215–1A10 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 4 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this AD would be $240 per airplane.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–82–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–23–13 Canadair: Amendment 39–9819. Docket 96–NM–82–AD.

Applicability: Model CL–215–1A10 series airplanes; having serial numbers 1001 to 1107 inclusive, and 1110 to 1113 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a fire hazard that would be posed if a short circuit were to occur in the presence of combustible fuel-air mixture at the location of the DC generators, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, perform a visual inspection of the three DC generators, part number (P/N) 2CM70D–( ) (ENG1, ENG2, and GPU2), to determine if the extra unconnected copper wire in proximity to terminal ''D'' on the terminal block is properly insulated and stowed. Accomplish this inspection in accordance with Canadair Service Bulletin 215–414, dated January 4, 1989. If any wire is not properly insulated and stowed, prior to further flight, rework it in accordance with that service bulletin.

(b) As of the effective date of this AD, no person shall install a DC generator, P/N 2CM70D–( ), on any airplane unless the extra unconnected copper wire in proximity to terminal ''D'' on the terminal block is properly insulated and stowed in accordance with this AD.

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

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

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

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

(e) The actions shall be done in accordance with Canadair Service Bulletin 215–414, dated January 4, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 5, 1996.

Issued in Renton, Washington, on November 7, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–29258 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–259–AD; Amendment 39–9816; AD 96–23–11]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This action requires a one-time test to verify if the disconnect lock of the aileron disconnect control system functions properly, and follow-on actions, if necessary. This amendment is prompted by a report that a disconnect unit of the aileron control system was found to be jammed and unserviceable. The actions specified in this AD are intended to detect and correct such jamming, which could result in reduced controllability of the airplane.

DATES: Effective December 5, 1996.

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

Comments for inclusion in the Rules Docket must be received on or before January 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–259–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

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

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that it has received a report that, during a maintenance check of an in-service airplane, the disconnect unit of the aileron control system was found to be jammed and unserviceable. Investigation revealed that some disconnect units can jam if the disconnect lock is allowed to extend rapidly under spring tension into the locked position. This condition, if not dectected and corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Jetstream has issued Alert Service Bulletin J41–A27–042, dated May 13, 1996, which describes procedures for performing a one-time test to verify if the disconnect lock of the aileron disconnect control system functions properly, and follow-on actions, if necessary. (These follow-on actions include replacing the aileron interconnect strut with a new aileron interconnect strut, and performing a test of the disconnect lock.) The CAA classified this alert service bulletin as mandatory and issued CAA airworthiness directive 001–05–96, dated May 31, 1996, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct jamming of the disconnect units of the aileron control system, which could result in reduced controllability of the airplane. This AD requires a one-time test to verify if the disconnect lock of the aileron disconnect control system functions properly, and follow-on actions, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–259–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–23–11 Jetstream Aircraft Limited: Amendment 39–9816. Docket 96–NM–259–AD.

Applicability: Model 4101 airplanes, constructors numbers 41004 through 41084 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the disconnect units of the aileron control system, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time test to verify if the disconnect lock of the aileron disconnect control system functions properly, in accordance with Jetstream Alert Service Bulletin J41–A27–042, dated May 13, 1996.

(1) If the lock functions properly, no further action is required by this AD.

(2) If the lock moves, but it does not move easily or could jam, prior to further flight, accomplish the actions specified in paragraph 2.A.(3)(c) of the Accomplishment Instructions of the alert service bulletin.

(3) If the lock does not move, prior to further flight, accomplish the actions specified in paragraph 2.A.(3)(d) of the Accomplishment Instructions of the alert service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

(d) The actions shall be done in accordance with Jetstream Alert Service Bulletin J41–A27–042, dated May 13, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 5, 1996.

Issued in Renton, Washington, on November 7, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–29259 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–258–AD; Amendment 39–9817; AD 96–23–12]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This action requires a one-time check of the left and right main landing gear leg assemblies to determine whether certain assemblies have been installed; and the replacement of certain discrepant retaining bolts on these assemblies with correctly manufactured bolts. This amendment is prompted by a report indicating that some of these retaining bolts have failed during the assembly and installation of a main landing gear unit, due to an incorrect process that was used during the manufacture of the bolts. The actions specified in this AD are intended to prevent structural damage to the main landing gear due to failure of the retaining bolts which, if not corrected, could result in reduced controllability of the airplane during takeoff, landing, and taxiing.

DATES: Effective December 5, 1996.

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

Comments for inclusion in the Rules Docket must be received on or before January 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–258–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

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

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that it has received a report indicating that some of the retaining bolts that secure the uplock attachment plate to the cylinder of the shock absorber strut on left and right main landing gear leg assemblies of certain Model 4101 airplanes failed during the assembly and installation of a main landing gear unit; these failures occurred as these bolts were being tightened to the torque specified for them.

An investigation revealed that the discrepant bolts were incorrectly heat-treated during manufacture, which causes them to be less capable of sustaining required loads. Other incorrectly heat-treated retaining bolts have been installed on airplanes now in service. Continued use of these bolts could result in failure of the bolts and consequent structural damage to the main landing gear. This condition, if not corrected, could result in reduced controllability of the airplane during takeoff, landing, and taxiing.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin J41–32–054, dated July 4, 1996, which describes procedures for a one-time check of the serial numbers on the left and right main landing gear leg assemblies to determine whether assemblies with discrepant retaining bolts have been installed. This service bulletin also describes procedures for replacing discrepant retaining bolts that secure the uplock attachment plate to the cylinder of the shock absorber strut on those assemblies. The replacement bolts have been correctly heat-treated. (The Jetstream service bulletin references APPH Precision Hydraulics Ltd. Service Bulletin AIR83090–32–03, dated June 1996, as an additional source of procedural service information for the one-time check and the replacement of discrepant bolts.)

The CAA classified this service bulletin as mandatory and issued CAA airworthiness directive 004–07–96, dated July 23, 1996, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the retaining bolts and consequent structural damage to the main landing gear leg assemblies which, if not corrected, could result in reduced controllability of the airplane during takeoff, landing, and taxiing. This AD requires a one-time check of the serial numbers of the left and right main landing gear leg assemblies on certain Jetstream Model 4101 airplanes. It also requires the replacement of discrepant retaining bolts that secure the uplock attachment plate to the cylinder of the shock absorber strut on certain main landing gear leg assemblies with bolts that have been correctly heat-treated. The actions are required to be accomplished in accordance with the Jetstream service bulletin described previously.

Determination of Rule's Effective Date

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic,

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–258–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–23–12 Jetstream Aircraft Limited: Amendment 39–9817. Docket 96–NM–258–AD.

Applicability: Model 4101 airplanes having constructor numbers 41081 through 41086 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the retaining bolts and consequent structural damage to the main landing gear, which could result in reduced controllability of the airplane during takeoff, landing, and taxiing, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time check of the left and right main landing gear leg assemblies to determine the serial numbers on these units, in accordance with Jetstream Service Bulletin J41–32–054, dated July 4, 1996.

Note 2: The Jetstream service bulletin references APPH Precision Hydraulics Ltd. Service Bulletin AIR83090–32–03, dated June 1996, as an additional source of procedural service information for the one-time check and replacement of discrepant bolts.

(1) If the serial number indicates that the unit is not subject to having discrepant retaining bolts installed, no further action is required for that unit.

(2) If the serial number indicates that the unit is subject to having discrepant retaining bolts installed, prior to further flight, replace each retaining bolt that secures the uplock attachment plate to the cylinder of the shock absorber strut of that unit with a bolt that is correctly heat-treated, in accordance with the Jetstream service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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) The one-time check and the replacement shall be done in accordance with Jetstream Service Bulletin J41–32–054, dated July 4, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 5, 1996.

Issued in Renton, Washington, on November 7, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–29261 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–163–AD; Amendment 39–9822; AD 96–23–17]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–102 and –103 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–102 and –103 series airplanes, that requires repetitive external inspections to detect cracks in the skin exterior of the fuselage at floor level, and repair, if necessary. This amendment also requires repetitive internal inspections to detect cracks of the subject area, which terminates the repetitive external inspections. This amendment is prompted by a report that one of the tasks in the Maintenance Program Airworthiness Limitations List inadvertently excluded certain airplanes from the instructions for the

inspections. The actions specified by this AD are intended to prevent undetected cracking of the frames and skin panels of the fuselage, which could result in reduced structural integrity of the airplane.

DATES: Effective December 26, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 26, 1996.

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

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–102 and – 103 series airplanes was published in the Federal Register on August 30, 1996 (61 FR 45914). That action proposed to require repetitive external detailed visual inspections to detect cracks in the left-and right-hand skin exterior of the fuselage at the floor level. That action also proposed to require repetitive internal visual inspections to detect cracks of the fuselage frames; initiation of these inspections would constitute terminating action for the repetitive external inspection requirements.

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

Conclusion

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

Cost Impact

The FAA estimates that 80 de Havilland Model DHC–8–102 and – 103 series airplanes of U.S. registry will be affected by this AD.

The required external inspections will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,800, or $60 per airplane, per inspection.

The required internal inspections will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $14,400, or $180 per airplane, per inspection.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–23–17 De Havilland, Inc.: Amendment 39–9822. Docket 95–NM–163–AD.

Applicability: Model DHC–8–102 and –103 series airplanes having serial numbers 101 through 180, inclusive; on which de Havilland Modification 8/0427 has been installed, and on which Maintenance Program Manual PSM 1–8–7, Task 5310/30C (Section 3–53, page 12, dated August 10,1993) has not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected cracking of the frames and skin panels of the fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,343 total flight cycles, or within 200 landings after the effective date of this AD, whichever occurs later, perform an external detailed visual inspection to detect cracks in the left-and right-hand skin exterior of the fuselage at floor level, in accordance with paragraph III, External Inspection, of the Accomplishment Instructions of de Havilland Service Bulletin S.B. 8–53–48, dated August 26, 1994.

(1) If no crack is detected, repeat the external detailed visual inspection thereafter at intervals not to exceed 750 landings.

(2) If any crack is detected, prior to further flight, perform an internal visual inspection to detect cracks of the fuselage frames in accordance with the service bulletin. Accomplishment of this internal visual inspection constitutes terminating action for the repetitive external detailed visual inspections required by of paragraph (a)(1) of this AD.

(i) If no crack is detected during the internal inspection, prior to further flight, repair the cracked area(s) found during the

external inspection, in accordance with the de Havilland DHC–8 Structural Repair Manual; or in accordance with a method approved by Transport Canada; or in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

(ii) If any crack is detected during the internal inspection, prior to further flight, repair all cracks found during both the external and internal inspections, in accordance with the de Havilland DHC–8 Structural Repair Manual, or in accordance with a method approved by Transport Canada Aviation; or in accordance with a method approved by the Manager, New York ACO, FAA, Engine and Propeller Directorate. Repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

(b) Prior to the accumulation of 31,000 flight cycles, or within 12 months after the effective date of this AD, whichever occurs later, perform an internal visual inspection to detect cracking of the fuselage frames, in accordance with de Havilland Service Bulletin S.B. 8–53–48, dated August 26, 1994. Accomplishment of the internal visual inspection constitutes terminating action for the repetitive external detailed visual inspections required by paragraph (a)(1) of this AD.

(1) If no cracking is detected during the internal inspection, repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

(2) If any cracking is detected during the internal inspection, prior to further flight, repair it in accordance with the de Havilland DHC–8 Structural Repair Manual, or in accordance with a method approved by Transport Canada Aviation; or in accordance with a method approved by the Manager, New York ACO, FAA, Engine and Propeller Directorate. Repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

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

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

(e) The inspections shall be done in accordance with de Havilland Service Bulletin S.B. 8–53–48, dated August 26, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 26, 1996.

Issued in Renton, Washington, on November 8, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–29416 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–55–AD; Amendment 39–9823; AD 96–23–19]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. AT–300, AT–400, and AT–500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Air Tractor, Inc. (Air Tractor) Models AT–300, AT–400, and AT–500 series airplanes. This AD requires installing both a new flap actuator overtravel stop and a roll pin through the overtravel stop and jack screw. This AD results from incidents where the flap actuator overtravel stop nut disengaged from the jack screw. The flap pushrod pressed against the aileron pushrod, which caused difficulty in moving the ailerons. The actions specified by this AD are intended to prevent interference between the flap pushrod and the aileron pushrod caused by the flap actuator overtravel nut disengaging, which could result in loss of aileron control.

DATES: Effective December 18, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bob May, Aerospace Engineer, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5156; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

The FAA has received reports involving Air Tractor Models AT–402 and AT–502 airplanes, where the flap actuator overtravel stop nut disengaged from the jack screw. The flap pushrod pressed against the aileron pushrod, which caused difficulty in moving the ailerons. Snow Engineering Co. (the parent company of Air Tractor) and the FAA have simulated this condition on factory airplanes through a laboratory environment, which resulted in the same difficulty in moving the ailerons.

This condition, if not detected and corrected, could result in loss of aileron control on certain Air Tractor Models AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–401A, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, AT–502A, AT–502B, and AT–503A airplanes.

Applicable Service Information

Snow Engineering Co. has issued Service Letter (SL) #140, dated November 27, 1995, Revised October 10, 1996, which applies to certain Air Tractor AT–300, AT–400, and AT–500 series airplanes. This SL specifies procedures for installing both a new flap actuator overtravel stop nut and a roll pin through the overtravel stop and jack screw.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent interference between the flap

pushrod and the aileron pushrod caused by the flap actuator overtravel nut disengaging, which could result in loss of aileron control.

Explanation of the Provision of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Air Tractor AT–300, AT–400, and AT–500 series airplanes of the same type design, this AD requires installing both a new flap actuator overtravel stop and a roll pin through the overtravel stop and jack screw. Accomplishment of these installations is required in accordance with Snow Engineering Co. SL #140, dated November 27, 1995, Revised October 10, 1996.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–55–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–23–19 Air Tractor Inc: Amendment 39–9823; Docket No. 96–CE–55–AD.

Applicability. The following airplane models and serial numbers, certificated in any category:

Models AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–401A, AT–401B, AT–402, AT–402A, and AT–402B, airplanes, serial numbers 300–0001 through 401B–1013;

Models AT–501, AT–502, AT–502A, AT–502B, AT–503A airplanes, serial numbers 502–0001 through 502B–0398;

Note 1. This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed action to address it. Compliance: Required within the next 25 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent interference between flap pushrod and the aileron pushrod caused by the flap actuator overtravel nut disengaging, which could result in loss of aileron control, accomplish the following:

(a) Install both a new flap actuator overtravel stop and a roll pin through the overtravel stop and jack screw in accordance with the *REWORK INSTRUCTIONS* section of Snow Engineering Co. Service Letter #140, dated November 27, 1995, Revised October 10, 1996.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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

(d) The installations required by this AD shall be accomplished in accordance with Snow Engineering Co. Service Letter #140, dated November 27, 1995, Revised October 10, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Tractor Inc., P.O. Box 485, Olney, Texas 76374. Copies my be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9823) becomes effective on December 18, 1996.

Issued in Kansas City, Missouri, on November 12, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–29492 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 96–NM–262–AD; Amendment 39–9825; AD 96–23–16]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting airworthiness directive (AD) 96–23–16 that was sent previously to all known U.S. owners and operators of Fokker Model F28 Mark 0070 and 0100 series airplanes by individual notices. This AD requires a revision to the Airplane Flight Manual that will enable the flightcrew to determine if the thrust reversers are properly locked prior to take-off. This AD also prohibits dispatch of the airplane, under certain conditions, with both autothrottle channels inoperative. In addition, this AD requires revising the maintenance program to provide instructions to correct thrust reverser malfunctions. This amendment is prompted by preliminary results of an investigation of an accident in which a thrust reverser may have deployed inadvertently during flight. The actions specified by this AD are intended to prevent an unannunciated failure of the secondary lock of the thrust reversers, which could result in reduced protection against inadvertent deployment of the thrust reversers during flight.

DATES: Effective November 25, 1996 to all persons except those persons to whom it was made immediately effective by emergency AD 96–23–16, issued November 8, 1996, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–262–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this rulemaking action may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: On November 8, 1996, the FAA issued emergency AD 96–23–16, which is applicable to all Fokker Model F28 Mark 0070 and 0100 series airplanes.

That AD was prompted by notification from the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, that an unsafe condition may exist on all Fokker Model F28 Mark 0070 and 0100 series airplanes. The RLD advised that, on October 31, 1996, a Fokker Model F28 Mark 0100 series airplane was involved in an accident shortly after take-off in Sao Paulo, Brazil.

Preliminary accident investigation results indicate that, during take-off, the thrust reverser of the right-hand engine may have inadvertently deployed. The cause of this possible deployment is unknown at this time.

However, the results of a study conducted by Fokker following the accident revealed that a malfunction of the secondary lock of the thrust reverser may occur without indication to the flightcrew. The secondary lock of the thrust reverser may remain in the unlocked position (i.e., No. 1 relay energized) in conditions when it should be locked. The secondary lock is a backup to the primary actuator lock and is designed to open only when thrust reverser deployment is commanded. If the flightcrew is unaware that the secondary lock is in the unlocked position, the airplane may take off with reduced safety margins. Currently, there are no indications that the secondary lock No. 1 relay failure contributed to the accident that occurred on October 31.

An unannunciated failure of the secondary lock of the thrust reversers could result in reduced protection against inadvertent deployment of the thrust reversers in-flight.

The thrust reverser system that is installed on Fokker Model F28 Mark 0100 series airplanes is identical in design to that installed on Fokker Model F28 Mark 0070 series airplanes. Therefore, the FAA finds that both of these models are subject to the same unsafe condition identified in this AD.

Explanation of Relevant Service Information

Fokker has developed procedural information, for inclusion in the Airplane Flight Manual (AFM) of the affected airplanes, that will enable the flightcrew to determine if the thrust reversers are properly locked prior to take-off by monitoring proper engagement of the autothrottle system (ATS).

Fokker also has developed procedural information to prohibit dispatch of the airplane with both autothrottle channels inoperative, unless both thrust reversers are deactivated and secured in the stowed position, and no operations are conducted that are predicated on thrust reverser operation.

In addition, Fokker has developed procedural information, for inclusion in the airplane maintenance program of the affected airplanes, that will provide instructions to correct thrust reverser malfunctions.

All of the procedures described in these documents will contribute to preventing the unannunciated failure of the secondary lock of the thrust reversers, which could result in reduced protection against inadvertent deployment of the thrust reversers during flight.

The RLD classified these procedures as mandatory, and issued Netherlands airworthiness directive BLA 1996–138 (A), dated November 7, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

Explanation of the Requirements of the AD

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA

issued emergency AD 96–23–16 to prevent an unannunciated failure of the secondary lock of the thrust reversers, which could result in reduced protection against inadvertent deployment of the thrust reversers during flight. The AD requires:

1. Revising the Limitations Section of the FAA-approved AFM to enable the flightcrew to determine if the thrust reversers are properly locked prior to take-off by monitoring proper engagement of the ATS;

2. Prohibiting the dispatch of the airplane with both autothrottle channels inoperative, unless both thrust reversers are deactivated and secured in the stowed position, and no operations are conducted that are predicated on thrust reverser operation; and

3. Revising the FAA-approved maintenance program to provide instructions to correct thrust reverser malfunctions.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on November 8, 1996, to all known U.S. owners and operators of Fokker Model F28 Mark 0070 and 0100 series airplanes. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Interim Action

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–262–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–23–16 Fokker: Amendment 39–9825. Docket 96–NM–262–AD.

Applicability: All Model F28 Mark 0070 and 0100 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 prevent an unannunciated failure of the secondary lock of the thrust reversers, which could result in reduced protection against inadvertent deployment of the thrust reversers in-flight, accomplish the following:

(a) Within 48 hours after receipt of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Revise the Section 1 of the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''• Before take-off, arm the autothrottle system (ATS).

• When cleared for take-off, activate the take-off/go-around (TOGA) trigger(s), and positively verify ATS engagement [throttle movement *and* white steady AT1, AT2, or AT in the flight mode annunciator (FMA) engage window].

• If the ATS does NOT engage correctly, abort the take-off, return, and report to maintenance.

• If the ATS does engage correctly, you may continue take-off with either ATS engaged or disengaged, as necessary.''

(2) Dispatch of the airplane with both autothrottle channels inoperative is prohibited, unless both thrust reversers are deactivated and secured in the stowed position, and no operations are conducted that are predicated on thrust reverser operation.

(3) Revise the FAA-approved maintenance program to incorporate the following:

"DETAILED MAINTENANCE PROCEDURE

If the autothrottle system does NOT engage correctly, perform the following:

• Select the engine multiplexer (EMUX) 1 and 2 input verification page [refer to Chapter 31–61–00 of the airplane maintenance manual (AMM)].

• If the multi-function display unit (MFDU) shows:

REVERSER
NOT DEPL
REVERSER
STOWED

These indications mean that the autothrottle (A/T) fault is not caused by a thrust reverser problem. Repair the affected ATS in accordance with the FAA-approved airplane maintenance program (refer to Chapter 22–41–00 of the AMM).

• If the MFDU shows:

REVERSER
NOT DEPL
REVERSER
NOT STOWED

AND

If there is no reverser alert [REVERSER ENG 1 (2)] on the MFDU, prior to further flight, accomplish either of the following:

—Replace the left-hand relay K1265A or right-hand relay K1266A. Check the thrust reverser system (refer to Chapter 78–30–00 of the AMM); or

—Deactivate both thrust reversers (refer to task 78–00–00–040–812 of the AMM).

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

(d) This amendment becomes effective on November 25, 1996 to all persons except those persons to whom it was made immediately effective by emergency AD 96–23–16, issued November 8, 1996, which contained the requirements of this amendment.

Issued in Renton, Washington, on November 13, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–29608 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–81–AD; Amendment 39–9824; AD 95–26–15 R1]

RIN 2120–AA64

Airworthiness Directives; Allied Signal Commercial Avionics Systems CAS–81 Traffic Alert and Collision Avoidance Systems (TCAS) as Installed in, but not Limited to, Various Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to various transport category airplanes equipped with Allied Signal Commercial Avionics Systems CAS–81 TCAS, that currently requires a revision to the Airplane Flight Manual (AFM) to provide the flightcrew with procedures to cycle power to the TCAS processor via the circuit breaker or power bus, and to perform a TCAS functional test to verify proper operation of the TCAS. That AD was prompted by reports of failure of the audio output of the CAS–81 TCAS. The actions specified by that AD are intended to ensure that the flightcrew is advised of the potential hazard associated with failure of the audio output of the CAS–81 TCAS, and of the procedures necessary to address it. This amendment adds a revision of the AFM requirements that provides an alternative method of compliance with the currently required AFM revision; and provides for a modification to the TCAS processor, which, if accomplished, terminates the requirements of the AD.

DATES: Effective December 26, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Allied Signal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Crew, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7335; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 95–26–15, amendment 39–9495 (61 FR 2699, January 29, 1996), which is applicable to various transport category airplanes equipped with Allied Signal Commercial Avionics Systems CAS–81 TCAS, was published in the Federal Register on June 5, 1996 (61 FR 28518). The action proposed to continue to require a revision to the Airplane Flight Manual (AFM) to provide the flightcrew with procedures to cycle power to the TCAS processor via the circuit breaker or power bus, and to perform a TCAS functional test to verify proper operation of the TCAS. The action also proposed to require a revision of the AFM requirements that would provide an alternative method of compliance with the currently required AFM revision; and would provide for a modification to the TCAS processor, which, if accomplished, terminates the requirements of the AD.

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

Support for the Proposal

Three commenters support the rule.

Request to Cite Additional Service Instructions

One commenter requests that paragraph (c) of the proposed rule be revised to indicate that modification of the TPA–81A Traffic Alert and Collision Avoidance Systems (TCAS) processor may be accomplished either in accordance with Allied Signal Service Bulletin TPA–81A–34–82, dated January 1996, or with Allied Signal Service Bulletin TPA–81A–34–84, dated January 1996.

The FAA concurs, and has revised the final rule to reflect that the modification can be accomplished in accordance with either of the service bulletins.

Request to Specify Part Numbers of Affected Items

One commenter requests that the proposed rule specifically define the part numbers (by serial number) that are subject to the proposed requirements so that applicability could be established by using those serial numbers of the parts. The commenter states that using specific serial numbers to define applicability does not remove the burden of the manufacturers and

operators to have a process that controls serial numbers.

The FAA does not concur. The requirements of this AD are applicable to all CAS–81 TCAS that are installed in any airplane. Therefore, there is no special need to cite every specific serial number manufactured. However, for the optional modification provided by this AD, the service bulletins that are cited in this action sufficiently define the applicable processor part numbers.

Request to Add Airplane Models to Applicability

This same commenter requests that the FAA add Boeing Model 777 series airplanes to the applicability of the proposed rule since the CAS–81 TCAS processors may be installed on that model.

The FAA concurs. The FAA points out, however, that this AD (as well as the previously issued AD) is applicable to the subject TCAS unit itself, notwithstanding the model of airplane on which it is installed. As an aid to operators in identifying whether or not they may be subject to the rule, the FAA has included a list of the airplane models on which the TCAS unit is known to be installed.

However, this list is not intended to include every airplane on which the TCAS may be installed. Operators are required to determine if the unit is installed on their airplanes, even if the airplane model does not appear on the list. The FAA has revised the wording of the applicability of the final rule to clarify this point.

Request to Correct Compliance Time for Paragraph (a)

One commenter notes that the compliance time in paragraph (a) of the proposed rule does not specify the number of hours that the airplane must not exceed at the mid-point of any one flight. In order to clarify this compliance time, the commenter requests that the phrase be changed to: ''* * * and at the mid-point of any one flight scheduled to exceed 10 hours of power.''

The FAA concurs. The FAA acknowledges that the specific number of hours that the airplane must not exceed at the mid-point of any one flight did appear in the originally issued AD 95–26–15, but was inadvertently omitted from paragraph (a) of the proposed rule. It was the FAA's intent that the requirement in the proposal in this regard be the same as that of the originally issued AD. The FAA, therefore, has corrected paragraph (a) of this final rule to include the phrase ''10 hours of power'' in the specified compliance time.

Additionally, certain other wording of the same AFM revision that appeared in paragraph (a) of the proposal was inadvertently omitted, and not identical to that which appeared in the originally issued AD 95–26–15. In the proposal, the wording describing the compliance time for cycling the power to the TCAS processor inadvertently stated, ''* * * prior to the accumulation of 10 hours of power.'' However, that phrase should have been identical to what appeared in AD 95–26–15, which stated, ''* * * prior to the accumulation of 10 hours of *uninterrupted* power.'' This correction has been made to the final rule.

Conclusion

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

Cost Impact

There are approximately 5,000 various transport category airplanes in the worldwide fleet on which the subject TCAS unit may be installed. The FAA estimates that as many as 3,650 airplanes of U.S. registry may be affected by this AD.

The actions that are currently required by AD 95–26–15, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the existing AD on U.S. operators is estimated to be $219,000, or $60 per airplane.

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

Should an operator elect to accomplish the optional terminating modification rather than continue using the AFM revision, it would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be furnished by the manufacturer at no cost to the operator. Based on these figures, the cost impact of this optional terminating action on U.S. operators is estimated to be $180 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9495 (61 FR 2699, January 29, 1996), and by adding a new airworthiness directive (AD), amendment 39–9824, to read as follows:

95–26–15 R1 Allied Signal Commercial Avionics Systems: Amendment 39–9824. Docket 96–NM–81–AD. Revises AD 95–26–15, Amendment 39–9495.

Applicability: CAS–81 Traffic Alert and Collision Avoidance Systems (TCAS) installed in transport category airpanes, including but not limited to, the following airplane models, certificated in any category:

Aerospatiale Models ATR42 and ATR72 series airplanes;

Airbus Industrie Models A300B2, A300B4, A310–200, A310–300, A300–600, A320–100,

A320–200, A321–100, A330–300, A340–200, and A340–300 series airplanes;

Beech Models 1900 and BE–65 through –90 (inclusive) series airplanes;

Boeing Models 727–100, 727–200, 737–200, 737–300, 737–400, 737–500, 747–100, 747–200, 747–300, 747–400, 747SP, 757–200, 767–200, 767–300, and 777–200 series airplanes;

Convair Model CV–580 airplanes;

de Havilland DHC–7 series airplanes and Model DHC–8–100 airplanes;

Embraer Model EMB–120 series airplanes;

Fairchild Model F227 airplanes;

Fokker Models F28 Mark 100, Mark 1000, and Mark 4000 series airplanes;

General Dynamics Models Convair 340 and 440 airplanes;

Gulfstream Models G–159 and G–IV airplanes;

Lockheed Model L1011 series airplanes;

McDonnell Douglas Models DC–8–60, DC–9–31, DC–9–51, DC–10–10; DC–10–30, DC–10–30F, MD–11, and MD–80 series airplanes;

Rockwell International NA–265–65 airplanes;

Saab Model 340 series airplanes; and

Shorts Model 360 series airplanes.

Note 1: This AD applies to each airplane on which the TCAS unit identified in the preceding applicability provision has been installed, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For affected TCAS units or 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.

Note 2: CAS–81 Traffic Alert and Collision Avoidance Systems (TCAS) processors having serial numbers 6066 and subsequent, are not subject to the requirements of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of the potential hazard associated with failure of the audio output of the CAS–81 TCAS, and of the procedures necessary to address it, accomplish the following:

(a) Except as provided by paragraph (b) of this AD: Within 3 calendar days after February 5, 1996 (the effective date of AD 95–26–15, amendment 39–9495), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''In order to ensure that the audio output of the CAS–81 TCAS operates properly, accomplish the following:

- Prior to the first flight of the day; prior to the accumulation of 10 hours of uninterrupted power; and at the mid-point of any one flight scheduled to exceed 10 hours of power: Cycle the power to the TCAS processor via the circuit breaker or power bus.
- Prior to taxi before takeoff: Initiate the TCAS functional test in accordance with AFM procedures to verify operational condition of the CAS–81 TCAS.''

(b) For airplanes on which the manufacturer has substantiated 30 degrees Celsius as a maximum ambient temperature for the TCAS processor location, the following is considered to be an alternative method of compliance for the AFM revision requirements specified in paragraph (a) of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM. After revising the AFM, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

''In order to ensure that the audio output of the CAS–81 TCAS operates properly, accomplish the following:

Prior to each flight of up to 18 hours duration, reset the TCAS circuit breaker and conduct a TCAS self-test.''

(c) Modification of the TPA–81A TCAS processor receiver in accordance with Allied Signal Service Bulletin TPA–81A–34–82, dated January 1996, or Allied Signal Service Bulletin TPA–81A–34–84, dated January 1996, constitutes terminating action for the requirements of this AD. After this modification is accomplished, the AFM revisions specified in paragraphs (a) and (b) of this AD may be removed from the AFM.

(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, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

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

(f) This amendment becomes effective on December 26, 1996.

Issued in Renton, Washington, on November 13, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–29605 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 131, and 133

[Docket Nos. 95P–0125, 95P–0250, 95P–0261, and 95P–0293]

Lowfat and Skim Milk Products, Lowfat and Nonfat Yogurt Products, Lowfat Cottage Cheese: Revocation of Standards of Identity; Food Labeling, Nutrient Content Claims for Fat, Fatty Acids, and Cholesterol Content of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing the standards of identity for various lowfat milk, sour half-and-half, and cottage cheese products, based in part on a petition filed jointly by the Milk Industry Foundation (MIF) and the Center for Science in the Public Interest (CSPI), and a petition filed by the American Dairy Products Institute (ADPI). FDA is also amending the standard of identity for dry cream; deferring action on its proposal to revoke the standards of identity for lowfat and nonfat yogurt; and amending the nutrient content claims regulations for fat, fatty acids, and cholesterol content to provide for ''skim'' as a synonym for ''nonfat'' when used in labeling milk products. This rule will provide for consistency in the nomenclature and labeling of most nutritionally modified milk products and other foods bearing ''lowfat'' and ''nonfat'' claims; promote honesty and fair dealing in the interest of consumers; increase flexibility for manufacturers of lower-fat dairy products; and increase product choices available to consumers. This action is a part of the agency's ongoing review of existing regulations under President Clinton's Regulatory Reinvention Initiative.

DATES: Effective January 1, 1998, except as to any provisions in revised parts 131 and 133 (21 CFR parts 131 and 133) that may be stayed by, or as a result of, the filing of proper objections. Compliance may begin on November 20, 1996. If any provisions are stayed, FDA will publish timely notification in the Federal Register. Written objections and requests for a hearing for parts 131 and 133 by December 20, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory History

One of the main purposes of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535), which amended the Federal Food, Drug, and Cosmetic Act (the act), was to establish the circumstances in which claims that describe the nutrient content of food could be made. In response to the mandates of the 1990 amendments, in part 101 (21 CFR part 101), FDA established definitions for specific nutrient content claims together with principles for their use (hereinafter referred to as the nutrient content claims final rule) (58 FR 2302, January 6, 1993). In addition, in the Federal Register of January 6, 1993 (58 FR 2431), FDA published a final rule, entitled ''Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term'' (hereinafter referred to as the general standard final rule), which established the general standard in § 130.10 (21 CFR 130.10) for foods named by use of a nutrient content claim defined in part 101, such as ''nonfat,'' ''lowfat,'' ''reduced fat,'' ''light,'' or ''reduced calorie,'' in conjunction with a standardized term, for example, ''sour cream.''

As FDA noted in that final rule, certain standards of identity for dairy products incorporate terms such as ''nonfat,'' ''light,'' and ''lowfat'' in the names of the foods, such as the standards for lowfat dry milk (§ 131.123), nonfat dry milk (§ 131.125), nonfat dry milk fortified with vitamins A and D (§ 131.127), lowfat milk (§ 131.135), acidified lowfat milk (§ 131.136), cultured lowfat milk (§ 131.138), light cream (§ 131.155), lowfat yogurt (§ 131.203), nonfat yogurt (§ 131.206), and lowfat cottage cheese (§ 133.131). The agency has also established standards for skim milk products that provide for use of the synonym ''nonfat'' in place of the term ''skim'' in the names of these foods. The use of the terms ''nonfat,'' ''light,'' and ''lowfat'' in some of the names in these standards are inconsistent with the definitions established for the same terms as nutrient content claims under the 1990 amendments.

Under section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A)), a food is misbranded if it bears a claim that characterizes the level of any nutrient unless the claim is made using terms defined by the regulations of the Secretary of the Department of Health and Human Services (the Secretary). Section 403(r)(5)(C) of the act provides an exemption from this requirement, however, for nutrient content claims that are part of the name of a food that is defined by a standard of identity that was issued before enactment of the 1990 amendments. However, the legislative history of the 1990 amendments affirmed that the Secretary (and, by delegation FDA) has the authority to amend the standards of identity to conform with the regulations issued under section 403(r) of the act (H. Rept. 101–538, 101st Cong., 2d sess. 22 (1990)).

The agency stated in the general standard final rule that, at a later date, it would consider amending the existing standards of identity for foods that use nutrient content claims in their names to make the content requirements for these foods consistent with the claims definitions that it adopted (58 FR 2431 at 2444). The agency stated that, alternatively, it could delete some of the standards and allow the foods defined by these standards to be named using a nutrient content claim with a standardized term in accordance with the general standard (§ 130.10).

B. Petitions

Two petitions dated May 10, 1995 (Docket No. 95P–0125) and August 2, 1995 (Docket No. 95P–0250), respectively, were filed by MIF and CSPI. These petitions requested that the agency revoke the standards of identity for lowfat milk (§ 131.135) and skim milk (§ 131.143), as well as those for certain related lower-fat dairy products in parts 131 and 133 (i.e., sweetened condensed skimmed milk (§ 131.122), acidified lowfat milk (§ 131.136), cultured lowfat milk (§ 131.138), acidified skim (nonfat) milk (§ 131.144), cultured skim (nonfat) milk (§ 131.146), sour half-and-half (§ 131.185), acidified sour half-and-half (§ 131.187), lowfat yogurt (§ 131.203), nonfat yogurt (§ 131.206), and lowfat cottage cheese (§ 133.131)). The petitions requested that FDA regulate these products under the general standard in § 130.10. Subsequently, ADPI filed a petition (Docket No. 95P–0261) requesting that the agency revoke the standards of identity for two additional products in part 131, evaporated skimmed milk (§ 131.132) and lowfat dry milk (§ 131.123), and that it amend the standard of identity for dry cream in § 131.149 by removing the reference to § 131.135 (the lowfat milk standard). The petitioners stated that the purpose of their request is to promote consistency in the use of nutrient content claims concerning fat on food labels and to remove product specifications that potentially conflict with authorized nutrient content claims applicable to foods in general.

MIF submitted a third petition, dated August 2, 1995 (Docket No. 95P–0293), requesting that, if FDA revokes the standards for skim milk products, it concurrently amend the nutrient content claims regulations in § 101.62 to permit the continued use of the term ''skim'' as a synonym for the term ''nonfat.'' A similar petition, dated August 10, 1995 (Docket No. 95P–0293), was submitted by ADPI.

C. Regulatory Reinvention Initiative—Review of Regulations

This final rule is a part of a larger agency project being undertaken in response to President Clinton's memorandum of March 4, 1995, to heads of departments and agencies, entitled ''Regulatory Reinvention Initiative.'' This memorandum, among other things, directs departments and agencies to do a page-by-page review of their regulations and to eliminate or revise those that are outdated or otherwise in need of reform. The review of the standards of identity for dairy products revealed that a number of the products that are defined by individual standards in parts 131 and 133 could be more appropriately covered by the general standard in § 130.10.

D. The Proposal

In the Federal Register of November 9, 1995 (60 FR 56541), FDA proposed (hereinafter referred to as the November 9, 1995, proposal) to remove those standards cited by the MIF, CSPI, and ADPI petitions that are inconsistent with food labeling regulations established under the 1990 amendments and that are unnecessary in light of the general standard in § 130.10. Interested parties were given until January 23, 1996, to comment on the proposal.

II. Summary of and Response to Comments to Proposal

FDA received 15 letters, each containing one or more comments, on the November 9, 1995, proposal. The majority of comments supported the proposal. A few comments expressed concerns about, or included suggestions for, implementing the proposed revocations. Several comments addressed issues outside the scope of the proposal (e.g., amending the milk solids content requirements in whole

milk) that will not be discussed here. A summary of the comments and the agency's responses follow.

A. ''Skim'' as a Synonym for ''Nonfat''

As noted in the November 9, 1995, proposal (60 FR 56541 at 56543), MIF and CSPI stated that most products currently labeled as ''nonfat milk'' would be eligible to retain that name under the general standard because these products generally contain less than 0.5 gram (g) of fat per serving, which would comply with the definition of ''nonfat'' in § 101.62(b)(1)(i). However, the fat content claims regulations in § 101.62 do not authorize the use of the term ''skim.'' Consequently, at the request of the petitioners, and because of its historic use in dairy product nomenclature, FDA proposed to amend the fat content claims regulations in § 101.62(b)(1)(i) to provide for ''skim'' as a synonym for ''nonfat'' when used in labeling milk products.

1. All comments that addressed this issue supported FDA's proposal to provide for the use of the term ''skim.'' Several comments maintained that most consumers understand that ''skim'' and ''nonfat'' have the same meaning. Other comments noted consumers' reliance on the term ''skim'' to readily identify nonfat milk products.

Thus, given the support expressed in comments to the November 9, 1995, proposal, and given consumer reliance on the term ''skim'' to identify nonfat milk products, FDA is amending its claims regulations under sections 403(r) and 701(a) of the act (21 U.S.C. 371(a)) to provide for the use of the term ''skim'' as a synonym for ''nonfat'' in describing milk products (§ 101.62(b)(1)). Because of the history of use of the term ''skim'' to identify nonfat milk products, FDA concludes that providing for continued use of this term to identify nonfat milk products will minimize consumer confusion and facilitate trade.

B. Dry Cream

As noted in the November 9, 1995, proposal (60 FR 56541 at 56542), ADPI requested that the agency amend the standard of identity for dry cream in § 131.149 by removing the reference to § 131.135 (the lowfat milk standard, which FDA proposed to revoke). The petitioner maintained that the requested change would bring the standard for dry cream into conformity with the other suggested changes in the milk product standards. FDA agreed with ADPI that, because it was proposing to delete the standard of identity for lowfat milk (§ 131.135), reference to that standard should be deleted from the standard of identity for dry cream (60 FR 56541 at 56545). Therefore, the agency proposed to amend the standard of identity for dried cream to remove the reference to the standard of identity for lowfat milk. FDA did not receive any comments on this proposed action. Consequently, FDA is amending the standard of identity for dry cream in § 131.149, in the manner that it proposed.

C. Percent Fat Declaration

As noted in the November 9, 1995, proposal (60 FR 56541 at 56544), MIF stated in its petition that it views the indication of the milkfat percentage before the name of the product as an indispensable aspect of lower-fat milk labeling because consumers have come to rely so heavily on these numbers to differentiate among milk products. The petitioner further stated that it would not be requesting the revocation of the lower-fat milk standards if it believed that such an action would affect milk processors' ability to state the milkfat percentage in the name of the foods.

FDA responded to this concern in the November 9, 1995, proposal, noting that while standards of identity require that the percentage of milkfat be declared as part of the name of the food (e.g., lowfat cottage cheese (§ 133.131(b)(2)), there is no provision requiring percentage declaration of milkfat content in the name of the food under § 130.10. However, under § 101.13(i), manufacturers may continue to declare fat content as part of the name of the food for lower-fat milk products, and on the labels of other products, when such statements are not misleading.

2. Two comments expressed concern about percent fat labeling in general but stated that, in the case of reduced fat and lowfat milk products, special circumstances mitigate these concerns. These comments noted that, under § 130.10, lower-fat milks, originally exempt from the 1990 amendments, will need to comply with the claims requirements. Thus, percentage fat declaration would appear only on labels of milk products that qualify to make a fat content claim (i.e., that contain at least 25 percent less fat compared to whole milk). The comments also noted that fat content per serving is provided in nutrition labeling, and that products labeled as ''reduced fat'' must also bear a comparative statement comparing the amount of fat per serving of the food with the amount of fat in the reference food (§ 101.62(b)(4)). The comments concluded that, therefore, percent fat declaration on labels of milk products that are lower in fat than whole milk would not be misleading.

FDA agrees with the comments that the nutrient content claims requirements (§ 101.13(i)(1)) will be sufficient to ensure that, when percent fat labeling in the names of reduced fat and lowfat milk products characterizes the level of fat in the food, such statements are consistent with the terms defined under the act. Furthermore, under § 101.13(i)(3), foods that do not meet the requirements for a nutrient content claim (e.g., whole milk containing 3.25 percent milkfat) may still bear statements about the percent milkfat in the food provided that the statement does not in any way implicitly characterize the level of fat in the food, and that it is not false or misleading in any respect.

D. Light Cream

In the November 9, 1995, proposal (60 FR 56541 at 56545), the agency noted that standards of identity for two cream products contain the term ''light'' in the name of the foods, i.e., light cream in § 131.155 and light whipping cream in § 131.157. FDA noted that these products have a different texture than the higher fat cream product, heavy cream, defined in § 131.150. Because of the long history of use of these names (since 1940), FDA did not propose to change these standards. However, FDA requested comment on the appropriateness of these names and on whether consumers find the use of the term ''light'' in the names of these foods to be misleading. The agency stated that if comments demonstrated that amendment of these regulations is necessary, such action would be the subject of a later rulemaking.

3. One comment objected to the continued use of the term ''light'' in the names ''light cream'' and ''light whipping cream.'' The comment maintained that retaining the term ''light'' in the names of these foods would undermine the agency's attempt to make all dairy products subject to the same nutrient content claim definitions as other food products. The comment did not, however, include any data or other evidence that consumers find the use of the term ''light'' in the names of these foods to be misleading.

As the agency noted in the nutrient content claims final rule (58 FR 2302 at 2359), the term ''light'' can be used to describe physical or sensory characteristics of a food (e.g., to describe color or texture). The agency also stated that, to the extent that the term ''light'' had become part of the statement of identity (i.e., it describes characteristics of a food), use of the term would not be considered a nutrient content claim (58 FR 2302 at 2359). FDA notes that the

standards of identity for light cream (§ 131.155) and light whipping cream (§ 131.157) describe foods that differ from heavy cream (§ 131.150) in that they are less dense. The agency acknowledges that light cream and light whipping cream also contain less milkfat compared to heavy cream, and that it is this difference in fat content that is largely responsible for differences in the density of these products. However, FDA does not have any evidence, nor did the comment provide any, that the use of the term ''light'' in the names of these standardized foods is misleading. Therefore, FDA is not persuaded that there is a need to amend or revoke the standards of identity for light cream or light whipping cream. However, FDA reiterates that if it is demonstrated that amendment of these regulations is necessary to prevent consumers from being misled, such action will be the subject of a future rulemaking.

E. Deviations From Traditional Products

4. A few comments expressed concern about how the composition of traditional dairy products may change under the general standard. One comment questioned the impact of this action on consumer acceptance of new products, while another comment stated that FDA may need to educate consumers about the possible changes in ingredients and characteristics of foods to which they have become accustomed.

FDA acknowledges that this action will permit products to be formulated in ways that were not previously allowed. For example, § 130.10 will allow a product named ''nonfat milk'' to contain flavors, colors, and texturizers that provide defatted milk with the sensory properties of whole milk. The standard of identity for nonfat milk does not permit the addition of such flavors, colors, and texturizers. Some manufacturers may continue to produce foods under § 130.10 that are identical to the traditional lower-fat dairy products to which consumers have become accustomed, except that nutrient content claims in the name of the food (e.g., nonfat milk or lowfat cottage cheese) will be subject to the claims requirements. Alternatively, some manufacturers may choose to formulate new products, e.g., a nonfat milk product with the sensory characteristics of whole milk.

Further, some individuals may prefer a new food to a traditional food, whereas others may prefer the traditional food. It is not the function of the agency to determine the likes or dislikes of consumers. Rather, the function of the agency is to ensure that foods are safe, and that labeling is informative and not misleading. Section 130.10 provides for proper labeling of these foods and their ingredients. Adequate product labeling, including defined nutrient content claims, label statements required to accompany certain claims, nutrition labeling, and ingredient declaration, will enable consumers to distinguish traditional foods from modified versions of these products.

5. One comment maintained that the driving force behind the petitioners' request to revoke the standards of identity for lower-fat dairy products is to allow manufacturers to use ''non-dairy fillers'' in lower-fat dairy products made under the general standard, thus cheapening the standardized products.

FDA disagrees with the comment's contention that this action would promote the cheapening of products covered by standards of identity. As noted in response to the preceding comment, this action will permit products to be formulated in ways that were not previously allowed. However, § 130.10 contains a number of provisions to ensure that modified foods named by use of a nutrient content claim and a standardized term bear a close enough resemblance to the standardized food to warrant use of the term. For example, ingredients required by the standard must be present in the substitute food and may not be replaced by a similar ingredient from another source. Ingredients prohibited by the standard are also prohibited in modified foods made under the general standard. Ingredients not provided for, and ingredients used in excess of the levels provided for, by the standard must be identified, at least in the ingredient declaration. Furthermore, in the preamble for the general standard final rule (58 FR 2431 at 2439), FDA specifically provided examples of circumstances in which certain ingredients, such as caseinate, would, or would not, be appropriate for use in dairy products made under § 130.10. FDA concludes, therefore, that the provisions set out in § 130.10 are adequate in this regard.

F. Vitamin Addition—Milk Products

As noted in the November 9, 1995, proposal (60 FR 56541 at 56545), under the existing standards of identity for lowfat and skim milk products in part 131, vitamin A addition is mandatory, while vitamin D addition is optional. Vitamin A is required to be added to a level of 2,000 International Units (IU) per quart (500 IU or 10 percent of the daily value (DV) per reference amount customarily consumed (RACC)). When vitamin D is added to lower-fat milk products, the level must be 400 IU per quart (100 IU or 25 percent of the DV per RACC). However, under the general standard, the only requirement for lower-fat milk products is that they not be nutritionally inferior to milk as defined in § 131.110. The standard of identity for whole milk provides for the optional addition of vitamin A to a level of not less than 2,000 IU per quart and vitamin D to a level of 400 IU per quart. Because the addition of these nutrients to whole milk is optional, their addition at these levels to lower-fat milks under § 130.10 would also be optional.

On average, whole milk, before fortification, contains approximately 6 percent of the DV of vitamin A per RACC. Thus, lower-fat milks made according to § 130.10 may contain less vitamin A than currently required under the standards of identity for lowfat and skim milks.

6. Two comments urged FDA to retain current levels of vitamin A and D in lower-fat milk products to ensure that reduced fat, lowfat, and nonfat milk contain sufficient amounts of these vitamins. These comments noted the importance of standardized, lower-fat milks as a dietary source of vitamins A and D. One comment expressed concern that, in the absence of the standards of identity, the levels of vitamins A and D in lower-fat milk products would decline. Another comment appeared to believe that revoking the standards of identity for lower-fat milks would allow these products to have less vitamin A and D than whole milk. Based on this assumption, the comment stated that some consumers may be discouraged from drinking the lower-fat milks. One comment acknowledged that, while the addition of vitamin D is currently optional for all milk products, most fluid milk (up to 95 percent) is fortified to contain 400 IU per quart. However, the comment urged FDA to take the opportunity of this rulemaking to make the addition of vitamin D mandatory for all fluid milk.

In contrast, another comment stated that revoking the standards of identity for lower-fat milk products would not diminish the nutritional benefits of these foods. This comment maintained that the current milk fortification practices would almost certainly continue in the absence of the specific standards of identity for lower-fat milks. In support of its contention, the comment noted that the general standard (§ 130.10(b)) requires that a food named by use of a nutrient content claim and a standardized term be nutritionally equivalent to its

standardized counterpart. The comment stated that since the process of removing fat from milk unavoidably removes some vitamin A, processors will have to add some amount of vitamin A to lower-fat milk products to bring their vitamin A levels at least up to the level naturally found in whole milk (i.e., approximately 6 percent of the DV per RACC). However, under the applicable terms of the whole milk standard (§ 131.110), processors will still have the option of fortifying lower-fat milk products with vitamin A up to 10 percent of the DV per RACC.

The comment maintained that, in the absence of standards of identity, several incentives remain for fortifying lower-fat milk products to the current level (10 percent of the DV). First, ''good source'' nutrient content claims (§ 101.54(c)) require that a food contain at least 10 percent of the DV for the subject nutrient. In contrast, if processors choose to add vitamin A only to the level normally found in milk before fortification, they cannot make claims about vitamin A content (e.g., ''vitamin A added''). The comment noted that consumers have become accustomed to seeing the presence of vitamin A highlighted in the labeling of lowfat and skim milk. The comment further noted that industry-wide promotional efforts focus on the high levels of essential nutrients in lower-fat milk products. Consequently, any change in fortification practices would disrupt marketing and partially undermine nutrition based promotional campaigns. Finally, according to the comment, the primary cost of vitamin A fortification is not the vitamin itself but the equipment needed to add the vitamin, as well as the analytical processes required to ensure quality control. The comment argued that it is, therefore, highly unlikely that a processor of lower-fat milks would choose to add only enough vitamin A to achieve the percent of the DV for the required nutritional equivalency and forego the obvious benefits of fortifying its products to 10 percent of the DV per RACC.

This comment also noted that almost all of the fluid milk sold in this country is vitamin D fortified, even though the addition of vitamin D is optional under the standards of identity for whole milk, lowfat milk, and skim milk. The comment concluded that any concerns that processors will cease to fortify lower-fat milk products, simply because such fortification is no longer technically required, are unjustified.

FDA disagrees with the comment that stated that lower-fat milk products made under the general standard may contain lower levels of vitamins A and D when compared to unfortified whole milk. As noted in the November 9, 1995, proposal (60 FR 56541 at 56545), and reiterated in this preamble, lower-fat dairy products made according to the general standard may not be nutritionally inferior to the full fat product that they resemble and for which they substitute. Therefore, FDA concludes that concerns that lower-fat milk products will contain lower levels of vitamins A and D when compared to whole milk are unfounded. The question, rather, is whether deleting the standards for lowfat and skim milk products would likely result in a change in the levels or frequency of addition of vitamins A and D to these foods.

FDA knows of no evidence that supports the contention that revoking the standards of identity, as proposed, will cause manufacturers of lower-fat milks to discontinue fortifying these products at the current levels. On the contrary, current industry practice of fortifying nearly all milk products with vitamin D, even though vitamin D addition is optional, evidences that fortification at the current level is likely to continue, even in the absence of an affirmative requirement. Furthermore, as noted by the latter comment, there is considerable incentive (e.g., the use of label statements and promotional programs) to continue the practice of adding vitamin A at the current levels. The agency concludes, therefore, that the provisions of §§ 130.10(b) and 101.3(e) are adequate, and that special provisions (beyond the nutritional equivalency requirements of § 130.10) are not necessary, to ensure that lower-fat milk products continue to serve as an important dietary source of vitamins A and D. However, if this action were to result in significant changes in the current industry practice of adding vitamins A and D to lower-fat milk products, and changes were to adversely affect the levels of these vitamins in the diet, FDA would consider amending its regulations to require fortification of lowfat, reduced fat, and nonfat milk products manufactured under § 130.10.

7. One comment expressed concern about difficulties that might be encountered in determining whether a food complies with the requirements of § 130.10. The comment noted, for example, that, under this provision, lower-fat milk products named by use of a nutrient content claim and a standardized term have to be compared to whole milk. The comment maintained that regulatory agencies would generally need to run comparison tests using a particular manufacturer's whole milk to determine whether the manufacturer's lower-fat product is nutritionally equivalent to the standardized food. The comment pointed out, however, that some manufacturers do not produce whole milk. Therefore, the comment urged FDA to provide for the use of an industry average as a reference food or to provide specific nutrient content requirements for lower-fat milk products made under § 130.10. The comment suggested that the nutrient requirements (i.e., for vitamin content) be similar to what is currently required in the standards for lower-fat milks.

FDA agrees that it will be necessary to compare the levels of essential nutrients in lower-fat milk products named by use of a nutrient content claim and a standardized term to the nutrient profile of the standardized food. However, the agency advises that it is not necessary for a manufacturer to process whole milk for FDA to ensure that a lower-fat milk is nutritionally equivalent to the food for which it substitutes. FDA set out principles for determining an appropriate reference food in § 101.13(j)(1)(ii). For example, the comparison product may be the manufacturer's regular product or that of another manufacturer, an average value determined from the top three national (or regional) brands, or a market basket norm. Though § 101.13(j)(1)(ii) specifically applies to reference foods used to make a relative nutrient content claim (e.g., ''reduced fat''), the options therein would be applicable to nutrient comparisons to determine nutritional equivalency. Furthermore, FDA noted in the general standard final rule (58 FR 2431 at 2435), that nutrient values in a current valid composite data base can be used for standardized products. In that final rule, the agency acknowledged that target levels for nutrients necessary to determine nutritional equivalency of a food will depend on the specific foods being compared (58 FR 2431 at 2436). However, FDA determined that it would not be appropriate, beyond the provisions of § 130.10(b), to mandate specific levels of nutrients that must be added to substitute foods.

Much of the concern raised in the comment apparently comes from the fact that there may be wide variations in vitamin A content of milk because of seasonal and other factors. As noted in the November 9, 1995, proposal (60 FR 56541 at 56545), vitamin A levels in milk in winter have been reported to range from 500 to 1,000 IU per quart, while in summer (pasture), these levels range from 2,000 to 3,000 IU per quart. However, FDA does not expect that processors will choose to recalibrate equipment for vitamin fortification of

lower-fat milk products to accommodate daily or seasonal fluctuations in the vitamin A content of the processor's whole milk. Rather, the agency expects that manufacturers will choose the simplest option available to them, such as fortifying products to be nutritionally equivalent to the level of vitamin A listed in a composite data base. This approach would also be the simplest option from a regulatory standpoint.

FDA concludes that the requirement in § 130.10(b) that the modified product must not be nutritionally inferior, as defined in § 101.3(e)(4), to the standardized product is adequate, and that, therefore, it is not necessary to specify further the required amounts of essential nutrients that must be added to lower-fat milk products.

G. Vitamin Addition—Dairy Products Other Than Milk

8. One comment supported the proposal to make nutrient content claims for the referenced dairy products consistent with nutrient content claims for fat in other foods. However, the comment suggested that, in its current form, FDA's proposal would unduly penalize manufacturers of lower-fat yogurt products without any corresponding benefit to either public health or consumer awareness. The comment stated that full fat yogurt, before fortification, contains between 0.2 and 0.8 percent of the reference daily intake (RDI) for vitamin D. This is less than a ''measurable amount,'' as defined in § 101.3(e)(4)(ii). Therefore, vitamin D fortification (currently optional for all standardized yogurt products) would not be required for lower-fat yogurt products made under § 130.10. However, the comment stated that full fat yogurt contains between 2 and 14 percent of the RDI for vitamin A. In contrast, lowfat and nonfat yogurt contain between 0.9 and 6 percent and between 0.2 and 1 percent, respectively, of the RDI for vitamin A. Therefore, some amount of vitamin A would need to be added to most lower-fat yogurt products for the food to be nutritionally equivalent to full fat yogurt. The comment hypothesized that, therefore, a processor of a lower-fat yogurt that contains 1 percent of the RDI of vitamin A may be forced to fortify its product with 3 percent of the RDI for vitamin A to reach the 4 percent level found in some full fat yogurt. The comment maintained that such fortification (i.e., adding 3 percent of the RDI for vitamin A) is not dietetically significant. The comment further argued that, although the vitamin A fortification requirement would add little in terms of dietary value, it would impose a significant financial burden on yogurt manufacturers.

Another comment noted that sour half-and-half contains 2 percent of the DV for vitamin A compared to 4 percent of the DV in full fat sour cream. The comment maintained that requiring fortification at such low levels would impose a significant cost on manufacturers with relatively little benefit for consumers.

Conversely, several comments expressed concern about maintaining requirements that will ensure that modified foods are not nutritionally inferior to the food for which they substitute. In fact, one comment urged FDA to make the addition of vitamin D mandatory in yogurt. The comment stated that many consumers use yogurt as a substitute for milk and assume that the two foods are nutritionally equivalent, when, in fact, yogurt products generally do not contain vitamin D.

In response to the latter comment, FDA notes that vitamin D is currently optional in all standardized yogurt products. Therefore, it would also be optional in yogurt products made under § 130.10. To amend the standard for yogurt to make addition of vitamin D mandatory is outside the scope of this rulemaking. However, as mentioned below in comment 12 of this document, FDA is in the process of evaluating all of its regulations pertaining to standards of identity. The comment's suggestion may have relevance in a future rulemaking as a part of that initiative.

The agency is not persuaded by the comments that maintained that the nutritional equivalency requirements for lower-fat dairy products made under § 130.10 (e.g., lowfat yogurt or sour cream) will be of little benefit to consumers. As noted in comments, full fat yogurt may contain as much as 14 percent of the RDI for vitamin A, making the food a good source of vitamin A. Furthermore, the diet is made up of a variety of foods, not all of which are a ''good source'' (i.e., contain 10 percent or more of the DV) of a particular nutrient. Even when nutrients are present in lesser amounts, the nutritive value of a food may make a significant contribution to meeting dietary goals. However, as noted in the December 28, 1995, final rule entitled ''Food Labeling; Reference Daily Intakes'' (60 FR 67164 at 67170), adequacy of intake of a particular nutrient or public health concerns are not criteria for determining whether a substitute food is nutritionally inferior to the food for which it substitutes. Rather, § 101.3(e)(4)(i) defines nutritional inferiority as any reduction in the content of an essential nutrient that is present in a measurable amount (excluding fat or calories). Section 101.3(e)(4)(ii) defines a measurable amount of an essential nutrient in a food as 2 percent or more of the daily reference value (DRV) of protein listed under § 101.9(c)(7)(iii), of potassium listed under § 101.9(c)(9), and of the RDI of any vitamin or mineral listed under § 101.9(c)(8)(iv). The agency considers, per § 101.9(a)(4), a measurable amount to be a significant amount for this purpose. Therefore, consistent with the agency's longstanding definition of nutritional inferiority in § 101.3(e)(4), FDA concludes that a 2 percent or greater reduction in the RDI for vitamin A in lower-fat sour cream or lower-fat yogurt products is significant, and that such a reduction will make these foods nutritionally inferior to the foods for which they substitute.

9. One comment maintained that application of §§ 130.10 and 101.3(e) to lower-fat dairy products will impose, for the first time, a requirement that well established, standardized products (e.g., lowfat and nonfat yogurt and sour half-and-half) be nutritionally equivalent to their full fat counterparts. The comment argued that even the final rule revoking the standard of identity for ice milk (hereinafter referred to as the 1994 final regulation) (59 FR 47072, September 14, 1994) did not have this overall effect. According to the comment, the lower-fat ice cream products created by that action were not established, standardized products bearing a new name but were essentially ''new'' products created by the revisions.

The agency disagrees with the comment's contention that this rulemaking will, for the first time, require fortification of traditional lower-fat dairy products to achieve nutritional equivalency to their full fat counterparts. A number of the standards of identity for lower-fat dairy products contain provisions to ensure that the foods are at least nutritionally equivalent to the full fat version of the food (e.g., lowfat and skim milk must contain not less than 2,000 IU vitamin A (§§ 131.135 and 131.143)). Furthermore, before establishing the general standard, FDA issued more than 150 temporary marketing permits (TMP's) for the market testing of lower-fat dairy products such as ''light eggnog,'' ''light sour cream,'' ''nonfat sour cream,'' and ''nonfat cottage cheese.'' One of the criteria used in evaluating the acceptability of these test products was that they be nutritionally equivalent to the full fat standardized food.

Since the agency adopted § 130.10, there has been a proliferation of lower-fat dairy products labeled by use of a standardized term in conjunction with a nutrient content claim (e.g., ''light sour cream'') that are nutritionally equivalent to the full fat foods. Therefore, FDA disagrees with the comment and notes that there are several examples of lower-fat dairy products that resemble and substitute for full fat standardized foods and that are fortified to be nutritionally equivalent to the foods for which they substitute.

The nutritional equivalence requirement in § 130.10 follows, in large measure, the approach embodied in § 101.3(e) with respect to substitute foods. The authority for § 101.3 is section 403(c) of the act. When this section of the act was adopted in 1938, Congress was seeking to protect the consumer from the uninformed purchase of an inferior substitute product that could be mistaken for the traditional food product (38 FR 2138, January 19, 1973). In 1973, in a proposal pertaining to ''imitation foods,'' the agency noted that vast strides in food technology had taken place since section 403(c) had been enacted, and that since 1938 many new wholesome and nutritious food products had entered the marketplace, some of which resembled and substituted for traditional foods (38 FR 2138). The agency stated that it was no longer the case that such products were necessarily inferior to the traditional foods for which they substituted. However, FDA still believed that the consumer must be protected from unwittingly purchasing a product that is different from what he or she may reasonably expect (38 FR 2138).

FDA continues to believe that, as substitute products proliferate, it is important to ensure that these products contain essential nutrients in amounts consistent with the reference food, so that consumers can continue to have confidence that a varied diet will supply adequate nutrition. This principle, that substitute foods must not be nutritionally inferior to the foods for which they substitute, was incorporated into the general standard final rule, in which FDA stated that foods having significantly less essential nutrients than the standardized food for which they are named are not modified versions of the standardized food, do not comply with the requirements of the general standard, and must be labeled as ''imitation'' (58 FR 2431 at 2435).

Finally, FDA is not convinced by the comment that revoking the standards of identity for lower-fat dairy products in parts 131 and 133 differs from the rulemaking to revoke the standard of identity for ice milk so that such products could be labeled as nutritionally modified versions of ice cream under § 130.10 in the 1994 final regulation. Specifically, FDA disagrees with the comment's contention that the final rule revoking the standard for ice milk did not affect a standardized product because ice milk was not being sold under that name. FDA notes that a number of companies were marketing the standardized product ''ice milk'' before the 1994 final regulation made it possible to market this product either as ''reduced fat'' or ''low fat'' ice cream (Ref. 1) depending on the level of fat in the product. The effect of the 1994 final regulation was to provide for the labeling of lower-fat ice cream products, such that the product names are consistent with the requirements for nutrient content claims, the food for which the product substitutes is clearly identified, and the substitute food is nutritionally equivalent to the standardized food (ice cream).

10. One comment argued that, because standardized lower-fat yogurt and sour cream products have never been nutritionally equivalent to the full fat standardized foods, continued consumption of unfortified versions of these products will not result in any unanticipated diminution of vitamin A intake by consumers, nor would it deprive consumers of nutrients that they were previously obtaining.

FDA disagrees with the comment's contention that, because nutritional equivalency with the full fat food has not been required heretofore in some standardized lower-fat dairy products, failure to add this requirement now will not diminish the nutrient value of the food or its contribution to the diet. This view would only be true if dietary patterns were static. However, consumers' tastes, dietary needs, and knowledge about nutritional content of foods change. There are numerous ongoing educational programs designed to encourage consumers to eat a healthier diet (e.g., a diet lower in fat) and to encourage increased calcium consumption (from such sources as dairy products) by that part of the population at risk for osteoporosis. The nutrient intake of consumers who are now switching from full fat to lower-fat dairy products, and of those who are increasing their consumption of dairy products by eating lowfat or nonfat foods, may indeed be decreased. FDA notes, for example, that the consumption of yogurt products increased more than fivefold between 1970 and 1993 (Ref. 1). As the population ages, dietary recommendations will take on even greater significance. Therefore, FDA cannot agree that exempting lower-fat dairy products from the requirement that they be nutritionally equivalent to the full fat foods for which they substitute would not have an adverse effect on the diet of consumers.

Furthermore, FDA has promised consumers since 1973 that substitute foods will be nutritionally equivalent to the foods for which they substitute, or that if they are not, this fact is to be revealed on the label. In the general standard final rule (58 FR 2431 at 2435), FDA stated that all nutrients that are considered in determining the status of a food under § 101.9(c)(7)(iv) are important. FDA also stated that any measurable reduction in an essential nutrient is significant, and that if a food is nutritionally inferior to the standardized food, it cannot be labeled as a modified version of the food but, rather, as an ''imitation.'' The comments have not provided any reason to establish an exemption from the agency's general approach for lower-fat yogurt or sour cream products.

11. One comment stated that vitamin A fortification frequently has a negative impact on the taste of dairy products. The comment maintained that vitamin A fortification could, therefore, drive some consumers away from the lower-fat products to which they were accustomed in favor of higher fat products in which the naturally occurring vitamin A does not cause a taste problem. The comment did not, however, provide any data in support of its contention.

FDA is not persuaded by the comment that there exist sufficient technical difficulties (e.g., taste considerations) that would warrant exempting lower-fat dairy products made under § 130.10 from the requirement that they be nutritionally equivalent to the standardized food. The agency notes that that requirement did not prevent manufacturers from submitting scores of applications for TMP's. Furthermore, the agency does not have any information that vitamin A fortification has been a significant impediment to the manufacture or marketing of lower-fat dairy products as part of the market tests conducted before or after the enactment of the 1990 amendments or under § 130.10.

12. One comment that objected to requiring lower-fat dairy products to be nutritionally equivalent to the full fat version of the foods supported the basic proposition that foods bearing names that include a defined nutrient content claim should conform to the requirements for that claim as defined by FDA. However, it disagreed with the

agency's proposed approach of revoking standards of identity for lower-fat dairy products and subjecting them to the general standard and with the requirement that they not be nutritionally inferior, as defined in § 101.3(e)(4), to the standardized food in parts 131 and 133. As an alternative, the comment suggested that FDA consider amending either § 101.3(e) or § 130.10 such that fortification would not be required at low levels. A second alternative suggested by the comment would be to combine into one standard the existing standards of identity for each group of dairy products, specifying the particular fat levels applicable to reduced fat, lowfat, and nonfat versions of the food. Finally, the comment suggested that FDA could leave the standards of identity for lower-fat dairy products in place but amend them by reducing the maximum milkfat percentages to levels that correspond with the nutrient content claims requirements. For example, the maximum milkfat content requirement for lowfat yogurt in § 131.203 could be reduced from 2 percent to 1.3 percent so that the food would contain no more than 3 g fat per reference amount as required for a ''low fat'' claim.

FDA notes that it published an advance notice of proposed rulemaking (ANPRM) in the Federal Register of December 29, 1995 (60 FR 67492), announcing that it intends to review its regulations pertaining to standards of identity, quality, and fill of container and asking for comment on the utility of these regulations. Among the regulations on which the agency requested comment were those pertaining to the labeling of imitation and substitute foods in § 101.3(e) (60 FR 67492 at 67502). Further, in another ANPRM that FDA published in the Federal Register of June 12, 1996 (61 FR 29701 at 29702), the agency requested comments on certain regulations pertaining to food labeling, including the provisions for labeling imitation and substitute foods set out in § 101.3(e).

In the June 12, 1996, ANPRM, FDA noted that, in 1973, the agency proposed that ''imitation'' only be applied to substitute foods that are nutritionally inferior to the foods for which they substitute (38 FR 2143 at 2148), and that, in its final regulation (38 FR 20702, August 2, 1973), FDA confirmed this view and defined ''nutritional inferiority'' as the reduction in the content of an essential nutrient that is present in a measurable amount (§ 101.3(e)(4)). In the June 12, 1996, ANPRM, FDA requested comment on the appropriateness of the current definition of nutritional inferiority for the purpose of determining whether a food is an imitation. FDA noted that it had not reevaluated its definition of nutritional inferiority for purposes of imitation labeling when it recently revised these regulations to accommodate new RDI's for several nutrients (60 FR 67164), but that it had raised the question in the December 29, 1995, ANPRM on standards of identity. The agency further noted that it would evaluate any proposed changes in its policy on labeling of imitation foods in light of any changes that it ultimately decides to make in its approach to standards of identity and common or usual name regulations.

Therefore, FDA is not proposing to amend its requirements in the general standard (§ 130.10(b)) or in § 101.3(e) that require fortification of a modified food to restore nutrient levels so that the product is not nutritionally inferior as defined in § 101.3(e)(4), as requested by the comment. However, if FDA receives comments to the December 29, 1995, or June 12, 1996, ANPRM's suggesting changes in its treatment of imitation and substitute foods, it will consider such changes as part of those rulemakings.

Additionally, while modifying the existing standards as suggested by the comment could achieve consistency between milkfat content requirements in the standards of identity and the definitions for nutrient content claims for fat, this change would not address fat from sources other than milkfat (e.g., bulky flavors containing fat can increase total fat content such that the food would not comply with the requirements for the claim). Furthermore, the claims requirements contain provisions in addition to nutrient content requirements (e.g., explanatory label statements). However, foods covered by a standard of identity are exempt from the claims requirements (section 403(r)(5)(C) of the act), while most other nutritionally modified foods are covered. Thus, the comment's suggestion would neither promote uniformity in food labeling nor minimize consumer confusion. It makes more sense to choose an approach that will, as much as possible, provide for uniform treatment of all nutritionally modified foods.

As noted above in comments 9 and 10 of this document, some nutritionally modified versions of standardized dairy products are already being made under § 130.10. Many of the products that resemble or purport to be (i.e., have similar functional, physical, and sensory properties as) the standardized, lower-fat food, but that do not comply with the standard of identity for the food because their fat content falls outside of the ranges provided for in the current standards (e.g., nonfat sour cream), would not be covered by any of the approaches suggested by the comment. Therefore, formulation and labeling requirements for similar foods within a product class would continue to be different. Such a situation could lead to consumer confusion and to inefficient enforcement of the act.

In contrast, taking the approach suggested in the petitions and proposed by the agency, i.e., deleting the standards for lower-fat dairy products and providing for their composition and labeling in accordance with the general standard, will provide maximum flexibility for manufacturers in using new ingredients and technologies and increased product choices for consumers. Therefore, the agency concludes that this approach most closely fulfills the goals of the President's reinventing government initiative of simplifying regulations and easing the burden on the regulated industry.

13. Two comments objected that the proposed rule that would require lower-fat yogurt to be fortified with vitamin A to the level in full fat yogurt. The comments argued that such a requirement would make little sense because full fat yogurt is not widely marketed in this country. (One comment maintained that full fat yogurt constitutes less than 1 percent of the yogurt market in the United States.) These comments argued that, because full fat yogurt is not widely marketed, the purpose for the nutritional equivalence requirement in § 130.10, i.e., to ensure that foods that substitute for traditional products contain essential nutrients in amounts consistent with the reference food, does not apply. These comments argued that, because consumers are not replacing full fat yogurt with lower-fat yogurt products but rather are consuming lower-fat yogurt as their primary product, it is not only inappropriate but also unnecessary to require that lower-fat yogurt products be nutritionally equivalent to full fat yogurt. Conversely, several comments noted that full fat yogurt is a significant source of vitamin A, containing up to 14 percent of the RDI.

FDA disagrees with comments that argued that requiring a substitute food to be nutritionally equivalent to a product that is rarely marketed (i.e., full fat yogurt) is inappropriate. Market share is not a criterion for deciding the traditional food for which the new food named in accordance with § 130.10 substitutes. Foods named in accordance with § 130.10 use the name of the

traditional standardized food and a nutrient content claim that describes how the new food deviates from the traditional food. Thus, in the case of ''lowfat'' or ''nonfat yogurt'' that is named in accordance with § 130.10, the traditional standardized food is ''yogurt'' as defined in § 131.200.

Further, as FDA noted in the general standard final rule (58 FR 2431 at 2436), a food may resemble or substitute for more than one food (e.g., nonfat cottage cheese may substitute for cottage cheese (§ 133.128) or for dry curd cottage cheese (§ 133.129)). However, the food may not be nutritionally inferior to the standardized food whose name is used in the identity statement for the substitute food. If the agency were to revoke the standards for both lowfat and nonfat yogurt, lower-fat yogurt products made under § 130.10 would have to be nutritionally equivalent to the standardized food (i.e., yogurt) whose name is used in the identity statement of the foods.

FDA advises that such a result is fully consistent with the regulatory approach that FDA has taken since 1973. As FDA stated above in comments 9 and 10 of this document, since that time, consumers have had the assurance that substitute foods are nutritionally equivalent to the foods for which they substitute, or that, if they are not, this fact is disclosed on the label, i.e., by the use of the term ''imitation.'' Furthermore, it would be inconsistent to use the fat level of full fat yogurt for claims purposes (the name ''lowfat yogurt'' implies that there is a yogurt that is not lowfat, or else the food would have to be called ''yogurt, a lowfat food''), but not for purposes of establishing a nutrient baseline (i.e., the vitamin A level). Therefore, the agency rejects this argument.

At the same time, the agency recognizes that, for some dairy product manufacturers, this final rule will result in relabeling, reformulation, and equipment costs. Whether, and to what extent, a manufacturer incurs costs as a result of this final rule will depend, in part, on the types of products that the manufacturer produces and whether those products are in compliance with the nutrient content claim requirements.

FDA notes, however, that yogurt is unique among the products listed in the proposal in that both of the following conditions apply. First, the existing standards of identity for yogurt products do not require vitamin addition. Secondly, these standards cover nearly the full range of possible fat contents (i.e., full fat yogurt, lowfat yogurt, and nonfat yogurt). In contrast, the standards of identity for cottage cheese, for example, are limited to full fat and lowfat foods. Thus, historically, the yogurt industry has not had the same need to produce modified versions of the standardized food under TMP's or under the general standard as manufacturers of other standardized dairy products have had to do to make lowfat and nonfat products. To cite another example, although the standards for fluid milk products in part 131 cover a wide range of fat levels, vitamin A addition is mandatory in the lower fat foods, and the industry voluntarily adds vitamin D to almost all milk products. Thus, although fluid milk products have generally not been produced under TMP's or the general standard, the milk industry has the experience and equipment necessary for adding vitamins to lower-fat milk products to meet the nutritional equivalency requirements of § 130.10(b). In contrast, yogurt manufacturers have significantly less experience in producing products that are fortified with vitamin A.

Therefore, although FDA concludes that vitamin A addition will not result in insurmountable technical difficulties, the agency acknowledges that it may take some time for the yogurt industry to overcome any problems it may encounter in fortifying lower-fat yogurt products. Furthermore, because the yogurt industry has generally not heretofore produced vitamin fortified lower-fat yogurt products, manufacturers who produce only yogurt may well not possess the equipment necessary for vitamin fortification. One comment maintained that 69 percent of the yogurt industry produces only yogurt. In the analysis of impacts section of this preamble, using data from the same comment, FDA estimates that the cost of vitamin metering equipment for the yogurt industry could be as high as $52 million. In contrast, FDA estimates that the total cost of this regulation to the rest of the dairy industry will be approximately $2.7 million. Therefore, FDA believes that revoking the lower-fat dairy standards as proposed would likely impose a disproportionately larger financial burden on yogurt manufacturers compared to the rest of the dairy industry.

Taking into consideration the technical difficulties and economic considerations associated with the agency's proposal to revoke the standards for lowfat and nonfat yogurt, the agency finds that fairness suggests that it should delay final action on its proposal to revoke these standards. Therefore, FDA is deferring action on its proposal to revoke the standards of identity for lowfat yogurt and nonfat yogurt for 120 days. During that period, the yogurt industry will have an opportunity to meet with the agency and to discuss its progress in addressing the vitamin A problems. FDA believes that a 120-day deferral will provide an appropriate balance between the problems the industry faces and consumers' interest in consistently and fairly labeled foods.

FDA advises that, at the end of the 120-day period, the agency intends to move to resolve the inconsistencies between use of the terms ''lowfat'' and ''nonfat'' in the names of standardized yogurt and the definitions for these terms established under the nutrient content claims regulations. FDA further advises that deferring action on the proposal to revoke the standards of identity for lowfat and nonfat yogurt does not change the agency's conclusions with regard to deleting the other standards of identity for lower-fat dairy products.

The agency does not believe that its decision to defer, for a limited time, action on the standards of identity for yogurt products will pose a serious problem for consumers because essentially all nonfat yogurt, and the majority of lowfat yogurt, already complies with the nutrient content claims requirements with respect to fat in that they contain less than 0.5 and 3.0 g fat per RACC, respectively. In contrast, approximately two-thirds of the lowfat milk products are 2 percent milk and, therefore, contain up to 60 percent more fat than is permitted under the definition for ''lowfat'' (Ref. 1).

H. Effective Date

14. One comment objected to the proposed effective date of January 1, 1998. The comment stated that an effective date of January 1, 1998, is overly generous. It maintained that this final rule could have a significant impact on American's health and should be implemented as quickly as possible. The comment urged the agency to move up the effective date of the final rule to January 1, 1997.

FDA agrees that this final rule should be implemented as quickly as possible. However, FDA disagrees that the proposed effective date, January 1, 1998, would represent an unduly long compliance period. To minimize the economic impact of required label changes, FDA periodically announces uniform effective dates for new food labeling requirements. On April 15, 1996, FDA published a proposed rule (61 FR 16422) to establish January 1, 1998, as its new uniform effective date for all food labeling regulations that

issue before January 1, 1997. Thus, FDA has placed this change on the same schedule as virtually all other regulatory changes made before December 31, 1996. Given the exemption in the act for claims on standardized foods (section 403(r)(5)(C)), FDA sees no basis for an earlier date.

I. Other Actions—Unresolved Hearing Issue on the Lowfat Milk and Skim Milk Standards

As noted in the November 9, 1995, proposal (60 FR 56541 at 56546), FDA published a notice of hearing on objections in the Federal Register of October 6, 1983 (48 FR 45545), to a final rule (45 FR 81734, December 12, 1980) concerning the standards of identity for lowfat milk and skim milk (Docket Nos. 81N–204F and 76N–0175). The hearing was granted on four issues, three of which were resolved. The remaining issue, dealing with labeling requirements of the standardized foods, i.e, the reasonableness of the decision to prohibit use of the terms ''protein fortified'' and ''fortified with protein'' on labels of lowfat milk and skim milk products containing not less than 10 percent milk-derived nonfat milk solids), has been rendered moot by this final rule which removes the standards of identity for lowfat milk and skim milk in §§131.135 and 131.143. No further rulemaking procedures regarding the stayed provisions are necessary.

III. Conclusions Regarding Comments

After review and consideration of the comments it received in response to the November 9, 1995, proposal, FDA concludes that no evidence or information has been presented that would provide a basis for altering the agency's tentative conclusion that it should remove the standards of identity for sweetened condensed skimmed milk (§ 131.122), lowfat dry milk (§ 131.123), evaporated skimmed milk (§ 131.132), lowfat milk (§ 131.135), acidified lowfat milk (§ 131.136), cultured lowfat milk (§ 131.138), skim (nonfat) milk (§ 131.143), acidified skim (nonfat) milk (§ 131.144), cultured skim (nonfat) milk (§ 131.146), sour half-and-half (§ 131.185), acidified sour half-and-half (§ 131.187), and lowfat cottage cheese (§ 133.131); that it should amend the standard of identity for dry cream (§ 131.149) by removing the reference to the lowfat milk standard; and that it should amend the nutrient content claims regulations for fat, fatty acids, and cholesterol content (§ 101.62) to provide for ''skim'' as a synonym for ''nonfat'' when used in labeling milk products.

Therefore, in this final rule, FDA is removing these standards of identity and amending the standard of identity for dry cream, as proposed. In addition, FDA is amending the nutrient content claims regulations for fat, fatty acids, and cholesterol content to provide for ''skim'' as a synonym for ''nonfat'' when used in labeling milk products. FDA is not revoking the standards of identity for lowfat and nonfat yogurt at this time.

Because this rulemaking involves the removal and amendment of standards of identity for dairy products, it is subject to the formal rulemaking procedures of section 701(e) of the act. Section 701(e) of the act requires that the agency provide an opportunity for objections to the final rule. If any objections raise issues of material fact, the agency is to hold a formal evidentiary hearing on those issues.

IV. Analysis of Impacts

Although this rule is issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556 and 557, and is, therefore, exempted from the economic analysis requirements of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), FDA has examined the economic implications of this rulemaking.

A. Label Changes

There are approximately 1,600 lowfat milk and 770 skim (nonfat) milk stock keeping units (SKU's) currently on the market. As a result of this rule, all milks currently using the terms ''lowfat'' and ''nonfat'' (or ''skim'') in their names must comply with the nutrient content claim requirements for those terms. Some of these products are already in compliance with the claim requirements. Any milk not in compliance with the nutrient content claim requirements for ''lowfat'' or ''nonfat'' must be relabeled. According to the petitioners, most products currently labeled as ''nonfat milk'' would be eligible to retain that name. However, many products currently labeled as ''lowfat milk'' (i.e., products containing more than 1 percent milkfat) would not be eligible to retain that name and must be relabeled. Approximately 1,000 lowfat milk SKU's will need to be relabeled.

This regulation will also require changes in the labels of sour half-and-half, acidified sour half-and-half, and, potentially, in labels of lowfat cottage cheese products. There are approximately 16 sour half-and-half SKU's and approximately 420 lowfat cottage cheese SKU's. There are no acidified sour half-and-half products in FDA's data base. FDA estimates that approximately 192 lowfat cottage cheese product SKU's do not comply with FDA's nutrient content claims definitions and will, therefore, require relabeling. However, all sour half-and-half products (16 SKU's) will need to be relabeled under the general standard to be named using a nutrient content claim and the name of the standardized food (e.g., ''reduced fat sour cream'').

There are approximately 570 firms manufacturing products affected by this regulation. Of these firms, approximately 440 are small firms with fewer than 500 employees.

The costs of the relabeling associated with this final rule include administrative, redesign, and inventory disposal costs. The administrative costs are estimated to be $850 per small firm and $6,300 per large firm. The total administrative costs associated with this proposed regulation are approximately $1 million.

The agency estimates that the changes required by this final regulation will result in a simple two-color label redesign. Also, because firms will have a minimum of 1 year to comply, redesign costs will be reduced by the fact that they can incorporate mandated changes with previously planned label changes. Redesign costs of this regulation are estimated at $1,200 per label or a total of $1.5 million.

An additional cost category is the label inventory loss associated with the transition from old to new labels. The cost of label inventory loss depends on average label inventory and the length of the compliance period. FDA is establishing an effective date for this final regulation that will provide approximately 1 year for firms to make any necessary changes. A 1-year compliance period is sufficient to allow producers of milk, sour half-and-half, and cottage cheese to use up existing stocks of labels. Therefore, label inventory disposal costs will be zero.

B. Vitamin Addition

Two comments to the November 9, 1995, proposal objected to the absence of a discussion in the economic analysis section of the costs of fortification for lower-fat yogurt and sour half-and-half. One comment suggested that the cost to obtain and install vitamin metering equipment would be $250,000 per plant. Additionally, using information provided in the same comment, FDA estimates the cost of obtaining and adding vitamin A to be $100 per item per year.

FDA acknowledges that it neglected to consider these costs when analyzing the impact of the proposed rule. FDA notes

that the recurring cost of obtaining and adding vitamin A will apply to nearly all lower-fat dairy products because the removal of fat also unavoidably removes some vitamin A. However, the cost of obtaining equipment necessary to add vitamins to lower-fat dairy products will only be incurred by those plants that do not already possess such equipment (i.e., those firms that do not currently manufacture other standardized or nonstandardized products to which they routinely add vitamins).

As previously stated in this preamble, FDA has issued over 150 TMP's for the market testing of lower-fat dairy products such as ''light eggnog,'' ''light sour cream,'' ''nonfat sour cream,'' and ''nonfat cottage cheese.'' FDA required that these test products be nutritionally equivalent to the full fat, standardized food. The proliferation of requests for TMP's indicates that, in spite of the costs of fortification, many dairy product manufacturers considered the ability to market modified foods named by use of a nutrient content claim and a standardized term to be of benefit to them and to consumers.

As noted earlier, most fluid milk products (approximately 95 percent) are currently fortified. FDA does not expect this rule to have a significant impact on the fortification practices for milk products. Therefore, this final rule will not impose significant costs of vitamin fortification of lower-fat milk products. Furthermore, lower-fat yogurt and sour cream products were the only products noted by comments to the November 9, 1995, proposal for which comments claimed the fortification requirements would be burdensome.

According to FDA data, the 16 sour half-and-half products currently on the market represent 12 brands. Products made under the general standard, e.g., ''light sour cream'' or ''nonfat sour cream'' are sold under 11 of those 12 brands. Because these products are currently being made under § 130.10, the firms producing these products should already possess the necessary equipment for vitamin fortification and will only bear the cost of obtaining and adding vitamin A. The one firm producing only sour half-and-half may need to purchase equipment for vitamin addition. Therefore, the cost of requiring fortification of sour half-and-half products may be approximately $0.25 million in the first year and $1,600 in each subsequent year.

One comment stated that 69 percent of the yogurt industry produces only standardized yogurt and, therefore, will have to purchase vitamin metering equipment. Thus, it is possible that the cost to the yogurt industry to meet the fortification requirement could be as high as $52 million (300 plants X 0.69 (percent of plants that need to purchase equipment) X $250,000 (for equipment) plus a total of $240,000 per year to obtain and add vitamin A). The agency notes it has not fully evaluated these figures.

C. Conclusion of Analysis

The agency estimates that the total costs of this regulation will be approximately $2.7 million. Because FDA is deferring action on the standards of identity for lower-fat yogurt products, this assessment does not include costs to the yogurt industry in the costs of this final rule. The agency believes that consumers will benefit from this regulation because it will provide consistency in the nomenclature of both standardized and nonstandardized foods that bear nutrient content claims. The agency also believes that firms will benefit from this regulation in that it provides for greater flexibility than current standards of identity allow.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 20, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Summary of market and consumption data for lower-fat dairy products, Laina Bush, Center for Food Safety and Applied Nutrition, FDA, 1996.

List of Subjects

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 131

Cream, Food grades and standards, Milk, Yogurt.

21 CFR Part 133

Cheese, Food grades and standards, Food labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, parts 101, 131, and 133 are amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.62 is amended by revising the introductory text of paragraph (b)(1) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

* * * * *

(b) * * * (1) The terms ''fat free,'' ''free of fat,'' ''no fat,'' ''zero fat,'' ''without fat,'' ''negligible source of fat,'' or ''dietarily insignificant source of fat'' or, in the case of milk products, ''skim'' may be used on the label or in labeling of foods, provided that:

* * * * *

PART 131—MILK AND CREAM

3. The authority citation for 21 CFR part 131 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

§ 131.122 [Removed]

4. Section 131.122 *Sweetened condensed skimmed milk* is removed from subpart B.

§ 131.123 [Removed]

5. Section 131.123 *Lowfat dry milk* is removed from subpart B.

§ 131.132 [Removed]

6. Section 131.132 *Evaporated skimmed milk* is removed from subpart B.

§ 131.135 [Removed]

7. Section 131.135 *Lowfat milk* is removed from subpart B.

§ 131.136 [Removed]

8. Section 131.136 *Acidified lowfat milk* is removed from subpart B.

§ 131.138 [Removed]

9. Section 131.138 *Cultured lowfat milk* is removed from subpart B.

§ 131.143 [Removed]

10. Section 131.143 *Skim milk* is removed from subpart B.

§ 131.144 [Removed]

11. Section 131.144 *Acidified skim milk* is removed from subpart B.

§ 131.146 [Removed]

12. Section 131.146 *Cultured skim milk* is removed from subpart B.

13. Section 131.149 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 131.149 Dry cream.

(a) * * * Alternatively, dry cream may be obtained by blending dry milks as defined in §§ 131.125(a) and 131.147(a) with dry cream as appropriate: *Provided*, That the resulting product is equivalent in composition to that obtained by the method described in the first sentence of this paragraph. * * *

* * * * *

§ 131.185 [Removed]

14. Section 131.185 *Sour half-and-half* is removed from subpart B.

§ 131.187 [Removed]

15. Section 131.187 *Acidified sour half-and-half* is removed from subpart B.

PART 133—CHEESE AND RELATED CHEESE PRODUCTS

16. The authority citation for 21 CFR part 133 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

§ 133.131 [Removed]

17. Section 133.131 *Lowfat cottage cheese* is removed from subpart B.

Dated: November 12, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–29485 Filed 11–19–96; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 510, 520, and 522

Animal Drugs, Feeds, and Related Products; Clindamycin Hydrochloride Liquid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The supplemental NADA provides for expanding the use of clindamycin hydrochloride liquid by adding indications for the treatment of soft tissue infections (wounds and abscesses) and dental infections caused by or associated with certain, susceptible stains of bacteria in cats.

EFFECTIVE DATE: November 20, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, is sponsor of NADA 135–940, which provides for use of Antirobe® Aquadrops Liquid (clindamycin hydrochloride) in dogs for treatment of soft tissue infections (wounds and abscesses), dental infections, and osteomyelitis caused by or associated with certain, susceptible strains of aerobic or anaerobic bacteria in accordance with § 520.447 (21 CFR 520.447). The firm has filed a supplemental NADA that expands use of the drug product to cats by providing for treatment of: (1) Soft tissue infections (wounds and abscesses) and dental infections caused by or associated with susceptible strains of the aerobic bacteria *Staphylococcus aureus, S. intermedius,* and *Streptococcus spp.*, and (2) soft tissue infections (deep wounds and abscesses) and dental infections caused by or associated with susceptible strains of the anaerobic bacteria *Clostridium perfringens* and *Bacteroides fragilis*. The supplemental NADA is approved as of October 7, 1996, and the regulations are amended in § 520.447 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, the existing ''Limitations'' paragraph for use of the drug in dogs (§ 520.447(c)(3)) is being revised to add chinchillas and ruminating animals to the list of animals for which the drug product is contraindicated.

Also, the regulations are amended in 21 CFR 510.600(c)(1) and (c)(2) and § 522.1145(a) (21 CFR 522.1145(a)) to reflect a change of sponsor resulting from the merger of The Upjohn Co. and Pharmacia, Inc. The new sponsor, Pharmacia & Upjohn Co., informed FDA of the change and subsequently requested that the agency amend the regulation in § 522.1145(a) that provides for use of Pharmacia's Hylartin V Injection (hyaluronate sodium, NADA 112–048) to indicate the new sponsor.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), approval for use in cats qualifies for 3 years of marketing exclusivity beginning October 7, 1996, because the application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entries for ''Pharmacia, Inc.,'' and ''The Upjohn Co.'' and by alphabetically adding a new entry for ''Pharmacia & Upjohn Co.'' and in the table in paragraph (c)(2) by removing the entry for ''000016'' and by revising the entry for ''000009'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	* *
Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199	000009
* * * * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * * * *
000009	Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199
* *	* * * * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. Section 520.447 is amended by revising the third sentence in paragraph (c)(3) and by adding new paragraph (d) to read as follows:

§ 520.447 Clindamycin hydrochloride liquid.

* * * * *

(c) * * *

(3) * * * Because of potential adverse gastrointestinal effects, do not administer to rabbits, hamsters, guinea pigs, horses, chinchillas, or ruminating animals. * * *

(d) *Conditions of use in cats*—(1) *Amount.* 5.0 to 10.0 milligrams per pound of body weight every 24 hours for a maximum of 14 days (11 to 22 milligrams per kilogram of body weight per day).

(2) *Indications for use.* Aerobic bacteria: Treatment of soft tissue infections (wounds and abscesses) and dental infections caused by or associated with susceptible strains of *Staphylococcus aureus, S. intermedius, and Streptococcus spp.* Anaerobic bacteria: Treatment of soft tissue infections (deep wounds and abscesses) and dental infections caused by or associated with susceptible strains of *Clostridium perfringens and Bacteroides fragilis.*

(3) *Limitations.* Wound infections, abscesses, and dental infections: Do not use for more than 4 days if no improvement of acute infection is observed. Because of potential adverse gastrointestinal effects, do not administer to rabbits, hamsters, guinea pigs, horses, chinchillas, or ruminating animals. Use with caution in animals receiving neuromuscular blocking agents, because clindamycin may potentiate their action. Prescribe with caution in atopic animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

5. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1145 [Amended]

6. Section 522.1145 *Hyaluronate sodium injection* is amended in paragraph (a)(2) by removing ''000016'' and adding in its place ''000009''.

Dated: November 6, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–29696 Filed 11–19–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin With Pyrantel Pamoate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merck Research Laboratories, Division of Merck & Co., Inc., for chewable tablets containing ivermectin with pyrantel pamoate. The product is used to prevent canine heartworm disease and to treat and control ascarid and hookworm

infections. The supplemental NADA provides for expanding the use for the treatment and control of an additional adult hookworm infection.

EFFECTIVE DATE: November 20, 1996.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, filed supplemental NADA 140–971, which provides for the use of Heartgard™ Plus (ivermectin with pyrantel pamoate) in dogs for the treatment and control of adult hookworm *Ancylostoma braziliense* infections. The product is used to prevent canine heartworm disease by eliminating the tissue stage of heartworm larvae *Dirofilaria immitis* for 1 month (30 days) after infection, and for the treatment and control of adult ascarids *Toxocara canis* and *Toxascaris leonina*, and adult hookworms *A. caninum*, *Uncinaria stenocephala*, and *A. braziliense*. The product is limited to use by or on the order of a licensed veterinarian. The supplement is approved as of October 3, 1996, and the regulations are amended in 21 CFR 520.1196(c)(1)(ii) to add treatment and control of adult hookworm *A. braziliense*. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act, this supplemental NADA qualifies for a 3-year marketing exclusivity period beginning October 3, 1996, because it contains reports of new clinical or field investigations essential to the approval and conducted or sponsored by the applicant. The exclusivity period applies only to the added claim for treatment and control of adult hookworm *A. braziliense*.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1196 [Amended]

2. Section 520.1196 *Ivermectin and pyrantel pamoate chewable tablet* is amended in paragraph (c)(1)(ii) by adding the name ''*, A. braziliense,*'' after ''*Ancylostoma caninum*''.

Dated: October 29, 1996.

Andrew J. Beaulieau,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–29631 Filed 11–19–96; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 810

[Docket No. 93N–0260]

Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing procedures for implementing the medical device recall authority provided in the Safe Medical Devices Act of 1990 (the SMDA). This statutory authority protects the public health by permitting FDA to remove dangerous devices from the market promptly. This authority complements other provisions of the device law, including tracking and notification.

DATES: The regulation is effective May 19, 1997.

Written comments on the information collection requirements should be submitted by January 21, 1997.

ADDRESSES: Submit written comments on the collection of information requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Samalik, Center for Devices and Radiological Health (HFZ–323), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4703.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of June 14, 1994 (59 FR 30656), FDA published a proposed rule to establish the procedures it will follow in exercising its medical device recall authority provided in the SMDA. Interested persons were given until September 12, 1994, to comment on the proposed regulation. FDA received a total of nine comments from an infant ventilator manufacturer, a regulatory consulting corporation, an electrical manufacturers association, a medical device manufacturers association, a manufacturer of in vitro diagnostic products, and four other medical device companies.

II. Summary of the Final Rule

Section 8 of the SMDA (Pub. L. 101–629) amends section 518 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360h) by adding a new subsection (e) entitled ''Recall Authority.'' Section 518(e)(1) of the act provides that, if FDA finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA shall issue an order requiring the appropriate person to immediately cease distribution of the device, immediately notify health professionals and device user facilities of the order, and instruct such professionals and facilities to cease use of the device. Section 518(e)(2) of the act states that, after providing an opportunity for an informal hearing, FDA may amend the cease distribution and notification order to require a recall of the device.

Section 502(t) of the act (21 U.S.C. 352(t)) provides that a device is misbranded if there is a failure or refusal to comply with any requirement prescribed under section 518 of the act respecting the device. Section 301(q)(1) of the act (21 U.S.C. 331(q)(1)) makes the failure or refusal to comply with any requirement prescribed under section 518 of the act, or the causing thereof, a prohibited act. A person subject to a cease distribution and notification order or a mandatory recall order issued

under section 518(e) of the act under these regulations, and who fails or refuses to comply, may therefore be subject to regulatory actions by FDA.

Prior to issuing a cease distribution and notification order, FDA will conduct a Health Hazard Evaluation which will take into account the following factors: (1) Whether any disease or injuries have already occurred from the use of the product; (2) whether any existing conditions could contribute to a clinical situation that could expose humans or animals to a health hazard; (3) the hazard to various segments of the population who are expected to be exposed to the product being considered; (4) the degree of seriousness of the health hazard to which the populations at risk would be exposed; (5) the likelihood of occurrence of the hazard; (6) the consequences of occurrence of the hazard; as well as (7) the risk of ceasing distribution of the device as compared with the risk of not ceasing distribution of the device by considering, for example, the availability of alternate medical devices.

Under new § 810.11(a), the person named in a cease distribution and notification order may submit a written request to FDA for a regulatory hearing within the timeframe specified in the order, which, generally, will not be less than 3 working days after receipt of the order. (Throughout the preamble and the regulation the term ''regulatory hearing'' references the ''informal hearing'' under section 518(e) of the act.) According to § 810.11(b), if a request for a regulatory hearing is granted, the regulatory hearing is limited to reviewing the actions which prompted issuance of the cease distribution and notification order and determining if FDA should affirm, modify, or vacate the order or amend the cease distribution and notification order to require a recall of the device that was the subject of the order. The hearing may also address the actions that might be required by a recall order, including an appropriate recall strategy, if FDA later orders a recall.

Under § 810.11(c), if a request for a regulatory hearing is granted, the regulatory hearing will be conducted in accordance with the procedures set out in section 201(x) of the act (21 U.S.C. 321(x)) and part 16 (21 CFR part 16). After a regulatory hearing commences, the presiding officer may issue a summary decision on any issue if he or she determines that there is no genuine and substantial issue of fact respecting that issue. Under § 810.11(e), the presiding officer will ordinarily hold any regulatory hearing under § 810.11(a) no fewer than 2 working days after receipt of the request for a hearing and no later than 10 working days after the date of issuance of the cease distribution and notification order. However, FDA and the person named in the order may agree to a later date or the presiding officer may determine that the hearing should be held in fewer than 2 days. The presiding officer shall provide the requestor written notification of the agency's decision to affirm, modify, or vacate the order or amend the cease distribution and notification order to require a recall of the device within 15 working days after conducting a regulatory hearing.

Under § 810.12(a), in lieu of requesting a regulatory hearing under § 810.11, the person named in the cease distribution and notification order may submit a written request to FDA asking that the order be modified or vacated. Such request must be submitted within the timeframe specified in the cease distribution and notification order, unless FDA and the person named in the order agree to a later date. In most cases, FDA will specify that a written request for review of a cease distribution and notification order must be submitted to the agency within 10 working days of issuance of the cease distribution and notification order, but generally not less than 3 working days after receipt of the order. According to § 810.12(c), the agency official who issued the cease distribution and notification order shall provide the requestor written notification of the decision of the agency to affirm, modify, or vacate the order or amend the cease distribution and notification order to require a recall of the device within 15 working days of receipt of the written request.

According to § 810.13(a), if the person named in a cease distribution and notification order does not request a regulatory hearing or submit a request for agency review of the order, or, if after conducting a regulatory hearing or completing agency review of a cease distribution and notification order under § 810.11 or § 810.12, FDA determines that the order should be amended to require a recall of the device with respect to which the order was issued, FDA shall amend the order to require such a recall. FDA shall amend the order to require such a recall within 15 working days of issuance of a cease distribution and notification order if a regulatory hearing or agency review of the order is not requested or within 15 working days of conducting a regulatory hearing under § 810.11 or completing agency review of a cease distribution and notification order under § 810.12.

According to § 810.14(a), the person named in a cease distribution and notification order shall comply with the order, which FDA will fashion as appropriate for the individual circumstances of the case. The person named in a cease distribution and notification order modified under § 810.11(e) or § 810.12(c) or a mandatory recall order issued under § 810.13 shall develop a strategy for complying with the order that is appropriate for the individual circumstances. Under § 810.14(b)(1), the person named in the cease distribution and notification order modified under § 810.11(e) or § 810.12(c) or a mandatory recall order shall submit a copy of the proposed strategy to the agency within the timeframe specified in the order. Under § 810.14(b)(2), the agency will review the proposed strategy and make any changes to the strategy that it deems necessary within 7 working days of receipt of the proposed strategy. The person named in the cease distribution and notification order or mandatory recall order shall act in accordance with a strategy determined by FDA to be appropriate.

Under § 810.15(a), the person named in a cease distribution and notification order or a mandatory recall order is responsible for promptly notifying each health professional, user facility, consignee, or individual, as appropriate, of the order.

Under § 810.16(a), the person named in a cease distribution and notification order or a mandatory recall order shall submit periodic status reports to FDA to enable the agency to assess the person's progress in complying with the order.

Under § 810.17, the person named in a cease distribution and notification order or a mandatory recall order may request termination of the order by submitting a written request to FDA. FDA may terminate a cease distribution and notification order or a mandatory recall order when the agency determines that the person named in the order has taken all reasonable steps to ensure that all health professionals, device user facilities, consignees, and, where appropriate, individuals have been notified of the cease distribution and notification order and have complied with the instructions to cease use of the device; and that the person named in the order has removed the device from the market or has corrected the device so that use of the device would not cause serious, adverse health consequences or death. FDA will respond to a written request for termination of a cease distribution and

notification or recall order within 30 working days of its receipt.

Under § 810.18, the agency will make available to the public in the weekly FDA Enforcement Report a descriptive listing of each new mandatory recall issued under § 810.13.

III. Relationship Between Temporary Suspension of Approval of a Premarket Approval Application (PMA) or PMA Supplement and Medical Device Recall Authority

The SMDA provided FDA with, among other things, the authority to issue orders to temporarily suspend the approval of a PMA or a PMA supplement and to recall medical devices.

Section 9 of the SMDA amends section 515(e) of the act (21 U.S.C. 360e(e)) by adding section 515(e)(3) of the act which provides the agency with the authority to temporarily suspend approval of a PMA. This authority applies to the original PMA, as well as to any PMA supplement(s), for a medical device. Section 515(e)(3) of the act and 21 CFR 814.47, the implementing regulation, provide the agency with a quick method of removing dangerous devices from the market pending resolution of permanent PMA or PMA supplement withdrawal proceedings.

The agency's authority to temporarily suspend approval of a PMA and/or its PMA supplements may be invoked when FDA wants a manufacturer to remove from the market the class III device that was approved under the subject PMA or PMA supplement, pending permanent withdrawal of approval of the PMA and/or PMA supplements. On the other hand, FDA's medical device recall authority may be invoked, for example, when FDA wants an individual to cease distribution and/or recall certain lots, batches, models, or complete product lines of class I, class II, or class III devices that have been introduced into commerce until such devices are brought into compliance.

The threshold criteria are identical for invoking the medical device recall authority and the authority to temporarily suspend approval of a PMA or PMA supplement. FDA may issue an order under either one of these authorities only when FDA has invoked that authority and has determined under that authority that there is a reasonable probability that continued distribution of a device would cause serious, adverse health consequences or death. Furthermore, under both authorities, FDA must provide the person subject to the order and the holder of the approved PMA or PMA supplement for the device with an opportunity for a regulatory hearing. In both situations, if a request for a regulatory hearing is granted, the regulatory hearing is to be conducted by FDA under part 16.

The agency may invoke either its medical device recall authority or its authority to temporarily suspend approval of the PMA and/or PMA supplements for a class III device or both at once. If both authorities are invoked, and if regulatory hearings are requested and granted with respect to each one, the medical device recall regulatory hearing will be combined with the temporary suspension of approval of a PMA and/or PMA supplements regulatory hearing. This combined regulatory hearing will occur after FDA makes the requisite finding, issues a cease distribution and notification order, and issues a letter of intent to temporarily suspend approval of a PMA and/or PMA supplements. This combined regulatory hearing will not eliminate the PMA and/or PMA supplements holder's opportunity for a regulatory hearing prior to permanently withdrawing approval of a PMA and/or PMA supplements. (See section 515(e)(1) of the act.)

IV. Summary and Analysis of Comments and FDA's Responses

A. General Comments

1. Various comments noted the absence of formal deadlines for the following: Issuance of a cease distribution and notification order (proposed § 810.10(a)); completion of a regulatory hearing (proposed § 810.11(e)); receipt of a written request for review of a cease distribution and notification order (proposed § 810.12(c)); issuance of a mandatory recall order (proposed § 810.13(a)); amending a cease distribution and notification order to include a mandatory recall order after an initial determination that a recall is not necessary (proposed § 810.13(e) deleted in the final regulation); review and acceptance of a cease distribution and notification of mandatory recall strategy prior to initiating the strategy (proposed § 810.14(a)(7), renumbered as § 810.14(b)(2) in the final regulation); and receipt of a request for termination of a cease distribution and notification order or a recall order (proposed § 810.17(c)).

The comments requested deadlines for these actions. Moreover, the comments requested that FDA automatically vacate cease distribution and notification orders, mandatory recall orders, and/or strategies in the absence of FDA action within a fixed number of days. According to these comments, the absence of deadlines creates the possibility that such orders will become a preliminary or permanent injunction in those situations where FDA is slow in completing its deliberations.

Two other comments stated that the absence of such deadlines is inconsistent with the congressional intent that ''the hearing be analogous to a hearing on a temporary restraining order'' (TRO). According to these comments, hearings commenced under a TRO occur prior to the issuance of a TRO, and TRO's remain in effect for a limited time period not to exceed 10 days while the court decides whether or not to issue a preliminary injunction.

FDA agrees that timeframes for certain agency actions in the recall context would be useful.

FDA will be given 15 working days to complete its deliberative process following the completion of a regulatory hearing (§ 810.11(e)) or receipt of a written request for review of a cease distribution and notification order (§ 810.12(c)). Accordingly, under § 810.13(a), FDA will amend a cease distribution and notification order to include a mandatory recall within 15 working days of issuance of the cease distribution and notification order if a regulatory hearing or agency review of the order is not requested, within 15 working days of denying a request for a hearing, or within 15 working days after conducting a regulatory hearing under § 810.11 or receiving a written request for review of a cease distribution and notification order under § 810.12.

FDA has omitted proposed § 810.13(e) from the final rule. Therefore, there is no need to consider establishment of a deadline for this section.

Under § 810.14(b)(2), the agency will review and amend, reject, or accept a proposed strategy for a cease distribution and notification order modified under § 810.11(e) or § 810.12(c) or a mandatory recall within 7 working days of receipt of such a strategy.

As suggested by the legislative history, under § 810.17(c), FDA will respond to a written request for termination of a cease distribution and notification or recall order within 30 working days of its receipt. (See S. Rept. 513, 101st Cong., 2d. sess. 37 (1990).)

FDA believes it is unnecessary to establish a deadline under § 810.10(a) because until FDA issues a cease distribution and notification order the firm may continue to distribute medical devices. Therefore, under this section, FDA's failure to act within a specified

timeframe would not affect a company's ability to distribute products.

In the interest of public health, FDA disagrees that it should automatically vacate cease distribution and notification orders, mandatory recall orders, and/or strategies if FDA fails to act within the number of days specified for the various actions above. Moreover, the agency disagrees with the comments that stated that formal deadlines are needed because Congress analogized the regulatory hearing to a judicial hearing on a TRO. The point of Congress' analogy to TRO's is that the agency should be able, when needed, to provide notice, hold the regulatory hearing, and issue its decision in a single day. (See H. Rept. 808, 101st Cong., 2d sess. 29 (1990).) That is, Congress intended to permit the agency to act quickly, but it did not intend to require the agency to do so.

2. A comment requested that the rule be modified to include examples and/or more specific standards or factors to be met before a cease distribution and notification or mandatory recall occurs, which would ensure consistency among such decisions.

In drafting the SMDA, both the House of Representatives and the Senate focused on the implementation and enforcement of section 518 of the act since its enactment in the Medical Device Amendments of 1976 (Pub. L. 94–295) (the amendments). (See 59 FR 30656, June 14, 1994.) Section 518 of the act authorizes FDA to require notification of a risk to health presented by a medical device, or to require repair, replacement, or refund of the purchase price of a device. The House of Representatives noted that under section 518(b) of the act:

> [E]ven when the FDA has discovered a serious health hazard associated with a medical device, the Agency faces a unique barrier to enforcing important administrative remedies. Unlike other health and safety agencies, FDA may not take administrative action to order a defective device recalled unless it can show that the device did not meet the state-of-the-art at the time it was designed and manufactured.

(H. Rept. 808, 101st Cong., 2d sess. 14 (1990))

Furthermore, the Senate found that ''[T]he 'repair, replacement, or refund' provisions of section 518(b) of the Act have never been used. Section 518(b)'s intricate findings and procedures have served as an inappropriate deterrent to its use.'' (See S. Rept. 513, 101st Cong., 2d sess. 19 (1990).) Based on these findings, Congress determined that a more simplified and strengthened recall authority was needed. Thus, Congress explicitly stated that, under the new recall authority, FDA ''will have considerable discretion in determining whether it is more likely than not that the continued distribution of a device would cause serious, adverse health consequences or death.'' (See S. Rept. 513, 101st Cong., 2d sess. 19 (1990).)

As the agency explained in the proposed rule:

> The mandatory recall authority in section 518(e) of the act complements existing provisions in sections 518(a), (b), and (c) of the act. Section 518(e) provides that, if FDA finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may order the appropriate person(s) to immediately cease distribution of the device, to immediately notify health professionals and device user facilities of the order, and to instruct such professionals and facilities to cease use of the device. Section 518(e) of the act also states that, after providing an opportunity for an informal hearing, FDA may amend the cease distribution and notification order to require a recall of the device. This new authority protects the public health by permitting FDA to ensure the prompt removal of dangerous and defective devices from the market.

59 FR 30656. Under this provision, therefore, the agency has the discretion both to invoke the provision and, once the provision is invoked and appropriate findings are made, to exercise discretion regarding issuance of any orders under this provision.

While having necessary discretion under this provision, FDA also recognizes that it is important to exercise that discretion judiciously. Accordingly, under 21 CFR 5.56, the Directors and Deputy Directors of the Center for Devices and Radiological Health (CDRH), the Center for Drug Evaluation and Research (CDER), the Center for Biologics Evaluation and Research (CBER), and the Directors and Deputy Directors of the Offices of Compliance of CDRH, CDER, and CBER are the FDA officials within these centers authorized to invoke section 518(e) of the act for medical devices assigned to their respective organizations. Limiting decisionmaking authority to these FDA headquarters officials will help to ensure consistent determinations regarding whether to issue such orders.

Moreover, for cease distribution and notification orders and recall orders, FDA interprets the standard in §§ 810.10(a) and 810.13 to match very closely the elements of a class I voluntary recall under part 7, subpart C (21 CFR part 7, subpart C), for which the agency has a long record of experience. Because FDA expects that most device manufacturers will voluntarily initiate a recall, it also expects that most serious health hazards associated with use of devices warranting a recall will continue to be handled under the voluntary recall guideline found in part 7, subpart C.

3. Several comments stated that the proposed rule fails to provide the individual named in the cease distribution and notification order with the following opportunities to be heard prior to issuance of the order: (a) To petition for a hearing prior to notification of customers of a cease distribution order; (b) to provide data and/or comments from their firm regarding the safety and effectiveness of the firm's device before a cease distribution and notification order is issued; (c) to provide for review by outside, experienced medical experts and/or clinicians who use the device; (d) to provide for open, informal communications between FDA and expert consultants prior to or in lieu of a cease distribution and notification order; (e) to discuss with FDA the basis for the cease distribution and notification order before taking action; or (f) to hold a hearing prior to the time when the individual subject to the order must take the specified actions, including notifying affected users.

Another comment noted that FDA's requirement that device user facilities must still be notified if a hearing is requested defeats the intent of section 518(e) of the act. According to the comment, it is meaningless to hold a hearing on the actions required by the order or for the Secretary to vacate the order if the person subject to the order already has taken the specified actions, including notification of affected users.

FDA agrees with the value of consulting with the device manufacturer prior to issuance of a cease distribution and notification order. Accordingly, FDA has amended § 810.10(a) to provide that before FDA makes the requisite finding that there is a reasonable probability that a device would cause serious, adverse health consequences or death, FDA will informally notify the appropriate individual of its tentative findings and provide the appropriate individual with an opportunity to consult with the agency. Because it may be necessary for the agency to act quickly to protect the public health, the extent of this consultation may be limited. The agency nevertheless expects that, typically, during this informal notification stage the individual may provide FDA with data and/or comments regarding the safety and effectiveness of the device, may provide review by outside, experienced medical experts, may solicit communications from expert consultants, and/or may discuss the basis of the order with FDA. During this

stage, FDA will provide the appropriate individual with an opportunity to convince FDA that there is no basis for the agency to make the requisite finding, or, alternatively, for that appropriate individual to conclude that the device should be voluntarily recalled.

If the appropriate person convinces FDA that there is no basis for making the finding that there is a reasonable probability that a device would cause serious, adverse health consequences or death or that the appropriate person has acted responsibly in conducting an adequate voluntary recall, FDA will not likely make such a finding. However, if the appropriate person fails to convince FDA that there is no basis for such a finding or fails to act responsibly in conducting an adequate voluntary recall, the agency will make the requisite finding. In either case, the individual is provided with an opportunity to challenge FDA's tentative findings before the agency adopts them.

Moreover, under the legislative history of the medical device recall authority, individuals must immediately notify customers and cease distribution under an order, after which the opportunity for a hearing follows:

> The conference agreement requires the Secretary, after making an appropriate finding, to issue an initial order providing for the immediate cessation and use of the device, with an informal hearing to follow within 10 days to determine whether to vacate the order or whether to amend the order to require a recall.

(H. Conf. Rept. 959, 101st Cong., 2d sess. 25 (1990))

FDA has interpreted this statement to mean that if a hearing is requested, the device still may not be distributed and health professionals and device user facilities must still be notified. (See 59 FR 30656 at 30657.)

4. Several comments implied that the medical device recall regulation needs to clarify the criteria for issuing mandatory recall orders.

A recall may occur only after FDA has done the following: (a) Made the requisite finding, (b) issued a cease distribution and notification order, (c) provided the person named in the cease distribution and notification order with an opportunity for a regulatory hearing, and (d) determined that a recall of a device from a device user facility will not present a greater health risk than the health risk of not recalling the device from use. Under the medical device recall regulation, FDA may amend a cease distribution and notification order to include a mandatory recall in three circumstances.

Under the first circumstance, FDA may amend a cease distribution and notification order to include a recall if the individual named in the cease distribution and notification order complies with the order and requests a regulatory hearing, but is unable to demonstrate that all devices subject to the order do not pose a reasonable probability of causing serious, adverse health consequences or death. If the individual named in the order is able to demonstrate that devices do not pose a reasonable probability of causing serious, adverse health consequences or death, then FDA will allow those devices to be distributed and used. Simultaneously, in accordance with section 518(e)(1) of the act, FDA will vacate the cease distribution and notification order for these devices because inadequate grounds exist to support the actions required by the cease distribution and notification order.

Under the second circumstance, FDA may amend a cease distribution and notification order to include a recall order if the individual named in the order does not comply with the order and does not request a regulatory hearing. FDA will issue a recall order to retrieve the devices that were shipped to wholesalers, retailers, or users contrary to the cease distribution and notification order when these devices continue to pose a reasonable probability of causing serious, adverse health consequences or death.

Under the third circumstance, FDA may amend a cease distribution and notification order to include a mandatory recall if the individual named in the order complies with the order and initiates a voluntary recall which is found to be ineffective, i.e., the devices subject to voluntary recall actions continue to pose a reasonable probability of causing serious, adverse health consequences or death. In this situation, FDA may amend the order to include a mandatory recall because the devices continue to pose a reasonable probability of causing serious, adverse health consequences or death.

In all the circumstances described above, FDA retains the authority to amend the cease distribution and notification order to include a recall order because the devices subject to the cease distribution and notification order continue to pose a reasonable probability of causing serious, adverse health consequences or death.

5. A comment stated that some FDA personnel would use proposed § 810.11(a) to establish unreasonable deadlines for requesting a regulatory hearing. The comment emphasized that FDA's regulations relating to regulatory hearings (§ 16.22(b)) specify that the manufacturer is to have a minimum of 3 working days to request a hearing. Thus, the comment recommended that the section be revised as follows: ''Any request for a regulatory hearing shall be submitted in writing to the agency employee identified in the order within the timeframe specified by FDA, which shall not be less than three working days.''

According to two comments, proposed § 810.11(e), which allows FDA to hold a regulatory hearing in less than 3 days from the date of notice of the order, provides inadequate notice and opportunity to prepare for an informal hearing, e.g., to prepare expert witnesses. Therefore, one of the comments suggested that special findings be required when FDA seeks to require a respondent to participate in a regulatory hearing in less than 10 days. Another comment suggested that the phrase ''no less than 5 days and no later than 10 days after receipt of the distribution and notification order'' be incorporated in this section. Another comment stated that proposed § 810.11(e) needs to be more clearly defined as to implementation, threshold for its use, level of approval needed for this action, and parameters within which it can be used given FDA's broad authority to require an immediate hearing under this section.

FDA agrees that § 810.11(a) and (e) should be revised to reference the regulatory hearing procedures set out in part 16. Thus, the agency has changed § 810.11(a) so that the person offered an opportunity for a hearing has the amount of time specified in the notice, which, in accordance with § 16.22(b), ordinarily will not be less than 3 working days after receipt of the notice, within which to request a hearing. Furthermore, under § 16.24(e), the agency has changed § 810.11(e) to require that a hearing ordinarily will not be held less than 2 working days after receipt of the request for hearing, if the request is granted. In accordance with § 16.60(h), the Commissioner of Food and Drugs or the presiding officer has the power under § 10.19 to suspend, modify, or waive any provision of this part. This possibility is reflected in the preamble to the proposed rule, which, based on the legislative history, states: ''Where warranted, * * * FDA may require that the hearing request be submitted in less than 3 days, possibly even on the same day on which the person receives the order.'' (See 59 FR 30656 at 30657 and 30658 (citing H. Rept. 808, 101st Cong., 2d sess. 29 (1990)).)

Given the revisions stated above, FDA disagrees that proposed § 810.11(e)

needs to be more clearly defined as to implementation, threshold for its use, level of approval needed for this action, or parameters within which it can be used. In all but the most extreme circumstances, FDA does not intend to exercise its authority to hold an immediate hearing under § 810.11(e).

6. Several comments requested rephrasing proposed § 810.3, which relates to computation of time. One comment suggested that it be rephrased using the term calendar days. Another comment suggested that this section be revised as follows:

> In computing any period of time prescribed or allowed by this part, the day of the act or event from which the designated period of time begins to run shall not be included. All other calendar days, including Saturday and Sunday shall be included. Federal legal holidays shall be excluded.

According to this comment, there is no need to build a ''weekend and weather'' allowance into the regulation because FDA has in the past exercised its judgment when manufacturers have made good faith efforts.

A comment noted that under proposed § 810.11(a), the requirement that a request for a hearing be submitted to FDA within 3 days of receipt of FDA's cease distribution and notification order could collapse into 1 working day if the order is received on a Friday and the computation of time defined in proposed § 810.3 is used. To remedy this problem, the comment requested that FDA either: (a) Change the computation of time method to working days and retain the 3-day period or (b) change the period to 5 days and retain the computation of time as calendar days.

FDA agrees that the computation of time needs to be revised and has changed the computation of time method to working days. Accordingly, FDA has omitted the ''weekend and weather allowance'' in § 810.3.

7. Two comments recommended that proposed § 810.10(d)(9) be eliminated because it is both inappropriate and outside FDA authority to delegate to manufacturers the enforcement responsibility of providing to the agency information respecting the names and addresses of health professionals or device user facilities that are not in compliance with the notification instructions. Another comment stated that this section will result in FDA intruding into the practice of medicine.

FDA believes that it is not necessary to include proposed § 810.10(d)(9) in the regulation and has deleted that provision from the final regulation.

8. A comment stated that in the preamble of the proposed rule, FDA notes that the informal hearing is analogous to a TRO. According to this comment, although FDA makes this analogy, FDA fails to note that generally persons subject to a TRO are not required to act before the hearing. Rule 65(b) of the Federal Rules of Civil Procedure states that a TRO may be granted before the adverse party or his attorney can be heard in opposition only if ''immediate and irreparable injury, loss, or damage will result'' if the restraining order is not granted. Accordingly, the comment maintained that in order for FDA to support a claim that action is required prior to the informal hearing, FDA must demonstrate such immediate and irreparable injury, loss, or damage. Moreover, this comment noted that the object of a TRO is to ''preserve the status quo.'' Requiring the person subject to a cease distribution and notification order to proceed with the actions required by the order, before he or she has an opportunity to present the case as to why the order is inappropriate, defeats, rather than preserves, the status quo.

FDA disagrees with this comment because it misinterprets the legislative history, which does not include an analogy between a cease distribution and notification order and a TRO. Rather, it includes an analogy between the recall order and a TRO, and the act and the regulation both provide for a regulatory hearing before FDA issues a recall order. Moreover, the analogy is directed at the quick judicial process for TRO's, which ''can result in notice, a hearing and a judicial decision in a single day.'' (See H. Rept. 808, 101st Cong., 2d sess. 29 (1990).)

9. Two comments contended that, in a number of instances, the language set forth in the preamble is inconsistent with the statutory language set forth in the SMDA. Specifically, the comments noted the following:

(a) The preamble to the proposed rule states that: ''The SMDA includes provisions designed to expand and strengthen FDA's authority to * * * remove dangerous *and defective* devices from the market promptly.'' (See 59 FR 30656 (emphasis added).) According to this comment, the phrase ''and defective'' does not appear in section 8 of the SMDA, which establishes the agency's mandatory recall authority. Thus, the comment recommended eliminating the qualifying phrase ''and defective'' from the discussion involving mandatory recalls.

FDA notes that the term ''dangerous and defective devices'' referred to by the comment was used in the preamble to the proposed rule with regard to FDA's new authority under the SMDA in general, not just FDA's new authority under section 8 of the SMDA for mandatory recalls. More importantly, under section 8 of the SMDA, the standard for issuance of a cease distribution and notification order applies to device hazards generally, whether the devices are dangerous and/or defective, provided that they present a reasonable probability of causing serious, adverse health consequences or death.

(b) The preamble also states that section 518 of the act ''authorizes FDA to require notification of a risk to health presented by a medical device.'' (See 59 FR 30656 (emphasis added).) According to this comment, the language set forth in section 518 of the act refers to an ''unreasonable risk of substantial harm,'' and not a ''risk to health'' presented by a medical device. Therefore, the comment recommended that FDA adopt the language ''unreasonable risk of substantial harm,'' in order to be consistent with section 518 of the act.

FDA notes that the preamble to the proposed rule clearly stated that the remedies provided in section 518(a), (b), and (c) of the act are available when the agency has determined that the device presents an unreasonable risk of substantial harm to the public health.

(c) In the preamble to the proposed rule, FDA reserved the right to amend a cease distribution and notification order to the status of mandatory recall order following a finding of inadequate compliance with the cease distribution and notification order or a finding that the voluntary recall actions are inadequate to eliminate the risk without providing the manufacturer an opportunity for an informal hearing. Several comments contended that it is inappropriate and contrary to Congressional intent to provide the agency with such broad discretion relative to amending a cease distribution and notification order.

In response to these comments, FDA has omitted § 810.13(e) from the final rule.

(d) One comment requested that the preamble to the final rule make clear that the purpose of the regulatory hearing is not merely to determine if a cease distribution order should be revised to require a recall, but also to determine if the cease distribution order should be otherwise amended or vacated. This revision would make the language set forth in the preamble consistent with the language set forth in section 518(e) of the act, as well as the language set forth in § 810.11(b)(1) of the proposed rule.

The final regulation has been revised to state that the purpose of the

regulatory hearing is to determine whether the order should be affirmed, modified, or vacated, or amended to require a mandatory recall of the device. (See § 810.11(b).)

10. A comment alleged that the regulation would limit the ability of responsible and well-meaning companies to act independently to protect the public health in the face of an ill conceived recall action.

FDA disagrees. In addition to the informal consultation prior to the issuance of a cease distribution and notification order, the regulatory hearing provided for in § 810.11(a) is the forum in which the individual named in the cease distribution and notification order can show that the cease distribution and notification order was ill conceived. After the hearing the presiding officer can recommend that the order be affirmed, modified, or vacated, or amended to require a recall. If there is a reasonable probability that death would occur if distribution of the device were to cease, the presiding officer may recommend to the agency at the conclusion of the hearing that the individual named in the order be permitted to distribute the device. The agency will base its final decision on the presiding officer's report. This process will ensure that individuals will have ample opportunity to advise the agency that they believe that a recall under consideration is ill conceived.

11. A comment stated that the rule leaves the following questions unanswered:

(a) What will customers do if they are in the midst of recall efforts and then they are informed that a recall has been modified or canceled altogether?

FDA believes that the comment is concerned with what customers should do when FDA has issued a cease distribution and notification order, the individual named in the order has complied with such order, a regulatory hearing has been held, and FDA has vacated the cease distribution and notification order. In this circumstance, the customers affected by the order may resume using the device as they did prior to the issuance of the cease distribution and notification order.

(b) Is it intended that manufacturers notify their customers twice—once about a cease distribution order and later about a recall order?

Yes. According to section 518(e)(1)(B) of the act, under a cease distribution and notification order, the individual named in the order must, among other things, notify health professionals and device user facilities of the order. If FDA subsequently amends the cease distribution and notification order to include a recall order, the individual named in the order must notify health professionals and device user facilities, as well as individuals subject to the risks associated with use of the device. (See section 518(e)(2)(B)(ii) of the act.)

12. Several comments recommended that all references to notifying or communicating with health professionals, device user facilities, and or individuals be replaced with references to notifying or communicating with consignees only.

FDA disagrees. The mandatory recall regulations are being established in accordance with the authority granted to FDA under section 518(e) of the act. Section 518(e)(1)(B) of the act requires the person named in a cease distribution and notification order to immediately notify health professionals and device user facilities of the order when FDA has determined that the standard for issuance of a cease distribution and notification order has been met. Under section 518(e)(2)(B)(ii) of the act, if the cease distribution and notification order is subsequently amended to include a recall order, the person named in the order must notify individuals subject to the risks associated with the use of the device, including, where appropriate, the patients themselves. Thus, under section 518(e) of the act (21 U.S.C. 360h(e)) FDA may not by regulation limit notification and communications to consignees only.

B. Specific Comments

1. Section 810.1

One comment stated that this section needs to clarify whether manufacturers ought to follow the regulation in the event of a voluntary recall. In such a case, will FDA impose these regulations in addition to voluntary efforts undertaken by manufacturers?

The answer is no, FDA will not routinely order a mandatory recall if a voluntary recall has been effective in addressing the problems. Under § 7.3(g), a firm may initiate a voluntary recall of a product that is in violation of the laws FDA administers and against which FDA would initiate legal action. FDA initiates a mandatory recall under section 518(e) of the act when FDA finds that there is a reasonable probability that a device would cause serious, adverse health consequences or death. Voluntary recalls therefore apply to violative devices that may also be subject to mandatory recall because they have a reasonable probability of causing serious, adverse health consequences or death. A firm may initiate a voluntary recall of a violative device without FDA intervention; however, if FDA determines that such a voluntary recall is not effective in remedying a violation and there remains a reasonable probability that the violative device would cause serious, adverse health consequences, FDA will invoke the medical device recall authority in addition to the voluntary efforts that the manufacturer has already undertaken.

2. Section 810.2(d)

Two comments stated that including all users within the definition of ''consignee'' is too broad. According to one comment, a manufacturer or distributor transfers the finished device to the consignee, and cannot control, record, or report user identity unless the user is also the consignee.

FDA disagrees. As stated in the preamble to the proposed rule, the definition of consignee was based on the definition of consignee found in § 7.3. FDA intended the definition of consignee found in § 7.3 to indicate that a recall may extend not only to customers to whom the firm directly shipped the product, but also to those commercial establishments that in turn received shipment of the product from the first customer. (See 43 FR 26202 at 26210, June 16, 1978.) With the exception of those devices that have been identified as tracked devices, the agency did not intend to imply that a recalling firm is expected or required to know to whom its products are ultimately sold. Nor does the agency intend to imply that the person named in the cease distribution and notification order is expected or required to know to whom its products are ultimately sold. Nevertheless, although the manufacturer or distributor may not be able to identify the user, the commercial establishment that received the device from the manufacturer or distributor and who in turn shipped the device to the user will be able to identify the user.

The definition of ''consignee'' intentionally includes the term ''used a device'' in the event that a cease distribution and notification order or mandatory recall extends to the user level as authorized under section 518(e)(2) of the act and §§ 810.13(b)(1) and 810.14(c)(1)(i)(A) of the regulations. Moreover, FDA is clarifying that the term ''consignee'' does include health professionals, but does not include lay individuals or patients, i.e., nonhealth professionals.

3. Section 810.2(e) and (k)

A comment requested that the word ''inspection'' be removed from the definitions of ''correction'' and ''removal'' because an inspection is not

an intervention making a change to the device as are all the other terms included in the definitions.

FDA disagrees. The term ''inspection'' is properly linked to the definitions of ''correction'' and ''removal.'' Although an ''inspection'' is not an intervention making a change to the device, it is a mechanism for ensuring that proper changes to a device have been completed in accordance with a cease distribution and notification or recall order. Furthermore, in § 7.3(h) of the voluntary recall regulations, FDA included the term ''inspection'' in the definition of ''correction'' to cover those situations in which a device may still be used because circumstances would prevent repair or removal of a device, e.g., an implanted device, but would nevertheless require positive action to ensure the device in use is being properly monitored by a physician. (See 43 FR 26202 at 26208, June 16, 1978.) Under the medical device recall regulations, an inspection is considered a correction under the same circumstances. Finally, FDA has amended the term ''correction'' to include ''destruction.''

4. Section 810.2(h)

Two comments noted that the proposed definition of ''reasonable probability'' was written in the future tense. As proposed, these comments contended, the definition would allow FDA to impose a mandatory recall on mere suspicion. Accordingly, these comments requested that the definition be written in the past tense.

FDA disagrees. The main purpose of a cease distribution and notification or recall order is to avoid a serious, adverse health consequence or death. Accordingly, the likelihood that such harm will result from the continued distribution and use of the device, and not only the actual occurrence of such a harm, is the appropriate definition. The agency therefore adopted the definition of the term ''reasonable probability'' that is found in the legislative history (S. Rept. 513, 101st Cong., 2d sess. 19 (1990)), which is written in the future tense. However, FDA does not interpret this to mean that the agency can act on ''mere suspicion.'' The agency needs a firm basis for issuing an order under part 810, and that basis must be communicated in writing to the firm.

5. Section 810.2(i)

(a) One comment stated that the definition of ''serious, adverse health consequences'' is vague. Because the term is the key element that determines whether it is appropriate to order a notification or recall, it is imperative that the definition be focused and clearly stated. In addition, this comment stated that in order to provide some consistency among regulatory programs, FDA should make this definition relate to the definition of ''serious injury'' in the medical device reporting regulations found in 21 CFR part 803.

FDA disagrees. The definition of ''serious, adverse health consequences'' is clearly stated and consistent with congressional use of the term in the legislative history. (See S. Rept. 513, 101st Cong., 2d sess. 19 (1990)). Moreover, this definition is a crucial concept, not only for recall authority, but also for two other SMDA provisions: Suspension of approval of a premarket approval application and postmarket surveillance. Therefore, this definition provides uniformity among other SMDA regulatory programs.

(b) Another comment requested that the term ''serious, adverse health consequence'' be redefined as an injury that is not treatable by standard medical techniques. The second sentence of the proposed definition, ''Injuries attributable to a device that are treatable and reversible by standard medical techniques, proximate in time to the injury, are not included within the term's definition,'' raises unnecessary questions as to the timeframe that must elapse for an injury to be deemed irreversible.

FDA disagrees. However, including the last sentence of the definition of ''serious, adverse health consequences'' is superfluous. The comparable sentence in the legislative history was intended only to further explain the type of injury excluded from the definition of serious, adverse health consequences. (See S. Rept. 513, 101st Cong., 2d sess. 19 (1990).) Accordingly, FDA has revised § 810.2(i) by deleting the second sentence.

6. Section 810.2(j)

(a) One comment recommended that the definition of ''recall'' be revised to comply with the current definition of ''voluntary recall,'' which restricts recalls to those actions relative to device defects ''against which the agency would initiate legal action.'' Another comment noted that the concept of a recall found in § 7.40 *et. seq.* is much broader than that embodied in this section. According to the comment, the proposed rule sets up a confusing inconsistency because it does not revise the existing regulation.

FDA disagrees with these comments. The voluntary recall provisions apply not only to medical devices but to all products subject to FDA jurisdiction (except electronic products subject only to subchapter C of the act). The medical device recall regulations apply only to medical devices that have a reasonable probability of causing serious, adverse health consequences or death. Thus, the applicability of the voluntary recall provisions is necessarily broader than, and the criteria for requesting a voluntary recall is purposefully different from, that of the medical device recall regulation. Moreover, a recall order issued under section 518(e) of the act will include a reference to the relevant statute and regulations which should preclude confusion between the two recall provisions.

(b) Another comment stated that it is confusing to include in this definition the connection to serious, adverse health consequences, or death. Because the term ''recall'' is used in other contexts, a reader unfamiliar with the context of the action in question would not be able to determine whether the recall was being conducted under this authority, under other sections of the act or regulations, or voluntarily by the manufacturer. Thus, the comment suggested revising the definition as follows: ''Recall means a firm's removal or correction of a marketed product.'' This comment also suggested that FDA consider modifying § 7.3(g) to read the same as the definition suggested above. Additionally, the comment recommended adding the following definition: ''Mandatory recall means a recall undertaken solely pursuant to an order from FDA which contains a finding that there is a reasonable probability that the product(s) involved in the recall would cause serious, adverse health consequences or death.'' In addition, it was recommended that FDA add a definition of the term ''voluntary recall'' to § 7.3 to read as follows: ''Voluntary recall means a recall of a marketed product undertaken voluntarily by a manufacturer when the manufacturer believes that FDA would consider the product to be in violation of the laws it administers.''

FDA disagrees. As stated above, the criteria for initiating a voluntary recall are different from the criteria for initiating a mandatory recall. FDA included both the criteria for, and the definition of, a recall in § 810.2(j) so that individuals would be able to determine the type of recall being initiated and to eliminate the need to add or amend any recall definitions. Moreover, a recall order issued under section 518(e) of the act will include a reference to the relevant statute and regulations, thereby eliminating any confusion.

7. Section 810.4

According to a comment, the magnitude of a mandatory recall or cease distribution and notification order is of such significance that FDA should not serve such orders by registered mail.

Overall, FDA agrees with this comment. In most cases, such orders will be served in person by a designated FDA employee. However, if FDA determines that personal service of the orders will delay section 518(e) actions, FDA will serve such orders by certified or registered mail or similar mail delivery service with a return receipt record reflecting receipt.

8. Section 810.10(c)

(a) According to one comment, it is not appropriate for FDA to specify beginning and completion dates for notifying health professionals and device user facilities. Depending on how those terms are interpreted, a number of factors could affect when an action can begin. As a result, this comment suggested deleting this provision.

FDA disagrees in part. Because cease distribution and notification actions are required to begin immediately upon issuance of such an order, FDA has determined that it is not appropriate for FDA to specify beginning dates for notifying health professionals and device user facilities. However, FDA has determined that, under § 810.10(c), FDA may include a model letter requiring that notification be completed within a specified timeframe. Thus, depending on the circumstances surrounding the issuance of such an order, FDA may find it essential that the cease distribution and notification order be completed within a specified timeframe.

(b) Another comment suggested that proposed § 810.10(c) be revised to include in the order a ''model'' letter that would only provide the key elements of information required to inform the customer of the situation.

As suggested by the comment, FDA has amended new § 810.10(c) by adding the following sentence: ''The model letter will include the key elements of information that the agency in its discretion has determined, based on the circumstances surrounding the issuance of each order, are necessary to inform health professionals and device user facilities about the order.''

9. Sections 810.10(c) and 810.13(b)(4)

A comment suggested that these sections be revised to indicate that the model letter is to ensure compliance with the terms and conditions of the cease distribution and notification order or recall order; it is not to provide suggested verbiage for the notification of consignees, and it is not binding upon medical device manufacturers.

FDA disagrees. The model letter will be binding on device manufacturers. Based on the circumstances of each case, FDA in its discretion will determine that the information contained in a model letter is necessary to notify health professionals and device user facilities of the cease distribution and notification or mandatory recall situation. If this information is not included in a manufacturer's letter, the manufacturer is not providing adequate information to health professionals and device user facilities, and, as a result, the person named in the order would not be in compliance with the cease distribution and notification order or mandatory recall order.

10. Section 810.10(d)

A comment stated that, under certain circumstances, a manufacturer may not be able to provide all of the information specified in proposed § 810.10(d). Thus, the comment recommended the following revision: ''FDA may * * * require the person named in the * * * order to submit any or all of the following information by a time specified in the order, to the extent it is available or readily ascertainable within the time specified by FDA.''

FDA disagrees. Under § 810.10(d), FDA has the discretion to require that the person named in the order submit any or all of the specified information. If, in exercising that discretion, FDA determines that any or all of the information listed in this section is necessary to monitor compliance with the cease distribution and notification order, or to determine whether additional action is necessary, the person named in the order must submit such information. If a particular manufacturer cannot locate certain required information because of an uncooperative consignee or other reasons, the manufacturer may contact FDA to find out whether there is information that it may submit in lieu of the required information. In addition, section 518(e) of the act specifically authorizes FDA to issue cease distribution and notification orders to appropriate persons, including manufacturers, importers, distributors, or retailers. FDA will therefore also consider issuing a cease distribution and notification order to a manufacturer, importer, distributor, or retailer who does not cooperate with a person to whom FDA has issued a cease distribution and notification order.

11. Section 810.10(d)(1) and (d)(2)

A comment noted that proposed § 810.10(d)(1) and (d)(2) seem to require the same information. Thus, it was suggested that these paragraphs be combined into one information request.

FDA agrees. However, instead of combining these two paragraphs, FDA has revised new § 810.10(d)(1) to read: ''The total number of units of the device produced and the timespan of the production.'' This change makes this paragraph correspond with § 7.46(a)(4).

12. Section 810.10(d)(3) and (d)(4)

It was requested that the term ''estimated'' be added to § 810.10(d)(3) and (d)(4) to reflect the fact that the numbers submitted to FDA can only be estimated by the company. This addition would be similar to the use of the term ''estimated'' in § 810.10(d)(2).

FDA agrees and has revised the sections accordingly.

13. Section 810.10(d)(5)

Section 810.10(d)(5) uses the term ''direct'' consignee. Section 810.2(d), which defines consignee, does not refer to a distinction between a direct consignee and a consignee. Accordingly, it was suggested that FDA either: (1) Add a definition for direct consignees or (2) modify the term consignee to include only direct consignees and delete the word direct from this section.

FDA has removed the term ''direct'' from this section. Thus, this section applies to all consignees as defined in § 810.2(d). As stated previously in section IV.B.2. of this document, FDA did not intend to imply that the person named in the cease distribution and notification order or recall order is expected or required to know to whom its products are ultimately sold. However, although the manufacturer or distributor may not be able to identify all consignees, the commercial establishment that received the device from the manufacturer or distributor and who in turn shipped the device to a subsequent consignee will be able to identify the subsequent consignee.

14. Section 810.10(d)(8)

A comment stated that it is unnecessary to require the times individuals were contacted under the cease distribution and notification order. Accordingly, the comment suggested striking the phrase ''and times'' from this section. Moreover, it was suggested that the phrase ''names of specific individuals contacted within user facilities'' be eliminated in its entirety.

FDA agrees that requiring the person named in the cease distribution and

notification order to document the ''times'' that specific individuals within device user facilities were contacted is unnecessary. Providing FDA with the dates of such contacts is sufficient. FDA has amended this section accordingly. FDA disagrees, however, that the phrase ''names of specific individuals contacted within user facilities'' should be eliminated. Requiring such information will ensure against allegations of failure to notify device user facilities. If a question concerning notification of a user facility arises, FDA can simply contact the person listed as the ''specific individual contacted within the user facility'' to determine if he/she received notification.

15. Section 810.10(e)

A comment stated that a definition of the term ''opportunity'' should be added because there is a very short time from issuance of the order to the hearing and because there is only one hearing.

FDA disagrees. The agency believes that § 810.11 as amended, which establishes the procedures to be followed in requesting a regulatory hearing, implicitly explains the term ''opportunity.''

16. Section 810.11(b)(2)

A comment noted that this section omits language set forth in the statute that indicates that FDA may vacate the cease distribution and notification order should the agency determine that inadequate grounds exist to support the actions required by the order. Thus, the comment would append the following language to § 810.11: ''§ 810.11(g)—If, after providing an opportunity for such a hearing, whether acted upon or not, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.''

FDA disagrees. Appending the recommended language is unnecessary because § 810.11(b)(1) already addresses this issue.

17. Section 810.11(c)

(a) According to § 810.11(c), §§ 16.60(h) and 10.19 apply to the regulatory hearings provided under the medical device recall authority. These sections permit the waiver, suspension, or modification of any otherwise applicable procedure in part 16. A comment requested that it be explicitly stated in the regulation that this flexibility does not permit the waiver of the opportunity for a regulatory hearing itself, since that right is guaranteed by section 518(e) of the act.

Another comment stated that the intent expressed in proposed § 810.11(c) seems to be beyond the scope of § 10.19, which states that a provision of part 16 may be waived, suspended, or modified only if ''no participant will be prejudiced.'' According to the comment, under part 810, it is difficult to see how a manufacturer would not be prejudiced by any action that reduces or eliminates its procedural and substantive rights.

FDA disagrees with these comments. Under § 810.11(c), a part 16 procedure may be waived, suspended, or modified in accordance with § 10.19. Under § 10.19, a part 16 procedure may be waived, suspended, or modified if a participant will not be prejudiced, the ends of justice will be served, and the action is in accordance with the law. Moreover, section 518(e)(1) of the act requires FDA to provide the person subject to a cease distribution and notification order with an opportunity for a regulatory hearing. Under 21 CFR 16.26, the Commissioner of Food and Drugs or the presiding officer may deny, in whole or in part, a request for a hearing if he or she determines that the material submitted in support of the request raises no genuine and substantial issue of fact. Therefore, no person subject to a cease distribution and notification order will be denied the opportunity for a regulatory hearing. If such person fails to raise a genuine and substantial issue of fact in requesting a hearing, however, he or she may be denied a hearing. In addition, once a regulatory hearing commences, the presiding officer may issue a summary decision on any issue if he or she determines that there is no genuine and substantial issue of fact respecting that issue.

Congress intended that FDA be able to give notice, hold an informal hearing, and render a decision on a recall in a single day, if ''circumstances require expedited action,'' i.e., when FDA believes that immediate action is necessary to protect the public health. (See H. Rept. 808, 101st Cong., 2d sess. 29 (1990).) (See also 61 FR 15186, April 5, 1996.) Although § 810.11 provides that recall hearings will not generally be conducted fewer than 5 days after notice is given by the cease distribution and notification order, the person named in a cease distribution and notification order has no procedural right under the statute to 5 days notice of the hearing. Section 810.11(c) therefore properly reserves discretion for the Commissioner or presiding officer to suspend, waive, or modify the procedural provisions of part 16, including those pertaining to the timing of the hearing.

(b) Another comment stated that FDA seems to be overstating the scope of its authority under §§ 16.60(h) and 10.19. As proposed, § 810.11(c) stated that ''the agency may waive, suspend, or modify,'' whereas § 16.60(h) states that only the ''Commissioner or the presiding officer has the power to suspend, modify, or waive any provision'' in part 16. In addition, as proposed, § 810.11(c) stated that any ''procedure'' may be waived, suspended, or modified, while § 16.60(h) refers only to ''any provision of this part.''

FDA agrees and has amended § 810.11(c) to conform to §§ 16.60(h) and 10.19.

18. Section 810.11(e)

A comment maintained that due process concerns dictate that the 10-day period before a hearing will be held beginning on the date of receipt, rather than the date of issuance of the order.

FDA disagrees. Given the exigent circumstances surrounding the issuance of cease distribution and notification orders, it is appropriate that the holding of a regulatory hearing be calculated based on the date of issuance of such orders. Moreover, section 518(e)(1) of the act requires that regulatory hearings be held no later that 10 days after issuance of such orders. However, as set forth in § 810.3, the day of issuance will not be included in the 10-day time period.

19. Sections 810.13, 810.14, and 810.15

According to one comment, proposed §§ 810.13, 810.14, and 810.15 should be revised to emphasize that the provisions are intended as guidance and are not mandatory. Orders should be tailored to specific circumstances and should be as flexible as possible both in their formulation by FDA and in their implementation by the respondent.

FDA believes that these sections are already tailored to address the specific circumstances surrounding the issuance of each order. Although some aspects of a recall order, a cease distribution and notification or mandatory recall strategy, and communications concerning a cease distribution and notification or mandatory recall order are mandatory, some aspects vary depending on the order. Instead of having specific and rigid instructions to cover all orders, FDA believes these sections include only the basic elements of each. For instance, according to § 810.13(b), FDA has discretion in determining what is appropriate for a recall order based on the individual circumstances. Moreover, § 810.14(a) states that ''[t]he person named in a cease distribution and notification order * * * or a mandatory recall order * * * shall develop a strategy * * * that is

appropriate for the individual circumstances * * *.'' Finally, § 810.15(a) states that ''[t]he person named in a cease distribution and notification order * * * or a mandatory recall order * * * is responsible for promptly notifying each health professional, device user facility, consignee, or individual, as appropriate, of the order.'' Thus, a recall order, a cease distribution and notification or mandatory recall strategy, and the communications concerning the cease distribution and notification order or mandatory recall order will vary depending on the circumstances surrounding the issuance of each order.

20. Section 810.13(b)(2)

Two comments stated that it is virtually impossible for a manufacturer or FDA to predict with any degree of accuracy when a recall will be completed. Under the current voluntary recall provision, a manufacturer may request termination of a recall by demonstrating that the recall has been effective (§ 7.55). Thus, the comments suggested that proposed § 810.13(b)(2) be revised to read that FDA may specify a timetable in accordance with which the recall is to occur and to reference the recall termination procedures from § 810.17, instead of specifying a timetable in which the recall is to be completed.

FDA disagrees. Section 810.13(b) states: ''In a mandatory recall order, FDA may * * * (2) Specify a timetable in accordance with which the recall is to begin and be completed.'' This section is in accordance with the recall authority legislative history, which states: ''The bill does not have specific timetables under which recalls must occur * * *; the Committee believes that it is more appropriate to allow the Secretary, dependent on the circumstances of each case, to establish the time-frames for completion of the recall.'' (See S. Rept. 513, 101st Cong., 2d sess. 20 (1990)). FDA believes that this section, as drafted, vests with the agency the discretion to establish recall completion dates that depend on the facts surrounding the issuance of each order, in conformance with legislative intent. It is therefore unnecessary for this section to reference the termination procedures set out in § 810.17.

21. Section 810.13(c)(2)

A comment suggested that all references to a competitor's product be eliminated from this subsection. The decision to replace a defective device with a competitor's product poses conflict of interest concerns for both the agency and manufacturer.

In response to this comment, FDA has deleted any reference to ''competitor's product'' from § 810.13(c)(2). FDA will not explicitly reference a competitor's product in mandatory recall orders. However, the agency may consider availability of alternate products, including those produced by competitors, when determining whether to amend a cease distribution and notification order to require a recall. Clearly, the availability of alternate products is an important and relevant factor that FDA may consider in comparing the risk of recalling the device with the risk of not recalling it.

22. Section 810.13(e)

(a) A comment noted that if FDA can issue a mandatory recall, after initially deciding not to issue one, based on noncompliance with the cease distribution and notification order, then the findings of the regulatory hearing become moot. Another comment stated that ''noncompliance with the cease distribution and notification order'' should be determined on a case-by-case basis. Another comment requested that this section be deleted because, according to this comment, it is clear that Congress did not intend for FDA to have the unilateral authority to issue a mandatory recall order without notice and participation of the affected party through appropriate due process protections such as a regulatory hearing.

As stated in section IV.A. of this document, FDA has omitted § 810.13(e) from the final rule in response to comments.

23. Sections 810.14(a)(5) and 810.17(b)(1)

According to two comments, proposed § 810.14(a)(5) should state clearly that the information sought only concerns the effectiveness of the level of the manufacturer's notification, rather than the intrusion into the practice of medicine by the manufacturer to determine the extent to which the health professionals and device user facilities are complying with instructions. Thus, these comments suggested revising this section to read as follows: ''The extent to which notification and instruction of health professionals and user facilities has been achieved.''

Proposed § 810.14(a)(5) required that the firm consider information about the success of efforts to inform users to cease use of the device, and FDA has determined that this information will not generally be available to the firm by the time it must submit its strategy to FDA. Therefore, FDA has deleted this section from the general provision part of the final regulation.

Two comments stated that § 810.17(b)(1) needs to omit any suggestion that the manufacturer has the legal requirement to ensure that all health professionals, device user facilities, consignees, and applicable individuals have complied with instructions to cease the use of the device because manufacturers are not required to monitor compliance with the order.

FDA agrees in part with the comment. In proposing § 810.17(b)(1), FDA did not intend to suggest that the manufacturer is legally required to ensure that all health professionals, device user facilities, consignees, and, where appropriate, individuals have complied with the cease distribution and notification order. FDA did intend, however, to require the manufacturer to verify that health professionals, device user facilities, consignees, and, where appropriate, individuals have been notified of the cease distribution and notification order and have been instructed to take appropriate action, and FDA has amended § 810.17(b)(1) to clarify it. FDA considers such verification the responsibility of the person named in the order. Requiring such verification under § 810.17(b)(1) assures the public that FDA has determined that all reasonable efforts have been made to implement the cease distribution and notification order.

24. Section 810.14(a)(7) (renumbered § 810.14(b)(2) in the final regulation)

(a) According to a comment, this section grants FDA undue discretion to review the elements of a proposed recall strategy. This comment stated that FDA's authority to review and modify a manufacturer's recall strategy must be limited to the power to require modifications that ensure that the recall is effective in addressing serious, adverse health consequences or death.

FDA believes that § 810.14 provides the agency with the discretion necessary to effect the statutory purpose. Each cease distribution and notification order modified under § 810.11(e) or § 810.12(c) or recall order requires devising a specific course of action to implement the order. In developing a strategy for either a cease distribution and notification order modified under § 810.11(e) or § 810.12(c) or a recall order, the person named in the order must take into account the factors listed in § 810.14(a) and meet the requirements listed in § 810.14(c) of the final regulation. FDA will review the adequacy of the strategy proposed by the person named in the order. (See

§ 810.14(b)(2).) If the person named in the order has appropriately considered all the factors listed in § 810.14(a) and included the requirements listed in § 810.14(c), FDA will find the strategy acceptable. When the agency in its discretion finds that the person named in the order has not given appropriate consideration to relevant factors (§ 810.14(a)) and requirements (§ 810.14(c)), FDA will mandate changes in the strategy. FDA's authority to review and modify a manufacturer's strategy therefore allows it to require modifications that ensure that the cease distribution and notification strategy or mandatory recall strategy will be effective in addressing serious, adverse health consequences or death.

(b) The comment also stated that, to the extent that § 810.14(b)(2) allows FDA to impose a strategy on the manufacturer, it is unreasonable. At a minimum, FDA should consult with the individuals responsible for the strategy prior to making any changes to the strategy or should provide the manufacturer with an opportunity to have a hearing on the reasonableness and appropriateness of a proposed strategy. Moreover, it is unreasonable for FDA to require the manufacturer to begin to implement the submitted strategy before FDA has reviewed it.

FDA agrees in part with the comment and has amended proposed § 810.14(b)(2) accordingly. Section 810.14(b)(2) now states that the agency will complete review of a proposed strategy for a cease distribution and notification order modified under § 810.11(e) or § 810.12(c) within 7 days of receipt. The person named in the order shall act in accordance with a strategy only after FDA has determined that the strategy is appropriate.

FDA disagrees, however, that the agency should provide the manufacturer with an opportunity to have a hearing on the reasonableness and appropriateness of a proposed strategy. An additional hearing to address the appropriateness of the firm's proposed strategy cannot be granted because of the exigent circumstances surrounding the issuance of such orders. However, under §§ 810.11(b)(1) and 810.12(b), the regulatory hearing and written request for review may address the actions required by the cease distribution and notification order, including an appropriate cease distribution and notification strategy if the cease distribution and notification order is modified. Furthermore, under §§ 810.11(b)(2) and 810.12(b), the regulatory hearing and written request for review may also address whether FDA should amend the order to require a recall, including an appropriate recall strategy if FDA should determine that a recall is warranted.

(c) According to the comment, proposed § 810.14(a)(6) and (a)(7) are not appropriate factors to be considered in developing a cease distribution and notification or recall strategy. Thus, the comment suggested that proposed § 810.14(a)(6) and (a)(7) be removed from the list of factors to be considered and be included in another paragraph, i.e., paragraph (b).

The agency agrees. FDA has therefore renumbered paragraph (a)(6) and (a)(7) as (b)(1) and (b)(2), respectively, under a new paragraph (b) heading ''Submission and review.'' Accordingly, current paragraph (b) has been renumbered as paragraph (c).

25. Section 810.14(b)(3) (renumbered § 810.14(c)(3))

One comment stated that a manufacturer's responsibility to conduct effectiveness checks should be limited to direct consignees. Another comment recommended that the word ''all'' be deleted from the first sentence because it would be virtually impossible for a recall strategy to verify that ''all'' of the target audience was actually reached. Instead, it was suggested that the regulation require that an appropriate level of effectiveness checks be established in advance of the strategy.

FDA disagrees that a manufacturer's responsibility to conduct effectiveness checks should be limited to direct consignees. The purpose of effectiveness checks is to verify that all known, affected consignees have received notification about a particular recall order. Thus, if a recall extends to the user level, as authorized by § 810.13(b)(1), it is imperative that all known affected consignees, direct and indirect, receive notification of the order. For these same reasons, FDA disagrees with deleting the word ''all'' from the first sentence.

FDA recognizes, however, that in some instances the person named in the recall order may not be able to check the effectiveness of its recall; for example, manufacturers, importers, distributors, or retailers may not cooperate. In such cases, FDA will directly assist in the effectiveness check activity and, where necessary, seek assistance from cooperating State and local agencies. In addition, as stated previously, section 518(e) of the act specifically authorizes FDA to issue cease distribution and notification orders to appropriate persons, including manufacturers, importers, distributors, or retailers. FDA will therefore also consider issuing a cease distribution and notification order to a manufacturer, importer, distributor, or retailer who does not cooperate with a person to whom FDA has issued a cease distribution and notification order.

26. Section 810.15(b)

According to a comment, limiting the communications to written notices is unduly restrictive. Therefore, this comment suggested revising this section to specify that telephonic or other electronic means of communication may be used when appropriate.

FDA disagrees. Requiring communication by verified written notice ensures that the person named in the order will have written proof of notification if a question of noncompliance is raised. However, the person named in an order may utilize telephonic or electronic means in addition to verified written notices.

27. Section 810.15(e)

According to one comment, under section 518(e) of the act only those persons who have been provided with notice and an opportunity for a hearing on a cease distribution and notification or mandatory recall order are legally bound by such an order. Thus, this section should be modified to state that recipients of a communication concerning a cease distribution and notification or a mandatory recall order are instructed to take appropriate actions, rather than create the impression that they are legally obligated to do so.

FDA has used the term ''should'' instead of ''shall'' throughout this section in order to encourage recipients of such communications who are not otherwise legally obligated by a cease distribution and notification or mandatory recall order to take appropriate actions under the order. Furthermore, FDA considers such orders strong advisories for health professionals. FDA anticipates that health professionals will exercise their best clinical judgment in deciding whether ceasing use of the medical device is in the best interest of their patients based on the information available to them as well as the availability of alternate devices.

28. Section 810.16(b)(1) through (b)(4)

One comment finds that the references to ''individuals'' contacted about the order in these sections is confusing given the fact that section 518(e) of the act and § 810.13(c)(1) provide that no mandatory recall order will be issued to individuals. Thus, the comment recommended deleting the term ''individuals'' from this section.

FDA disagrees. Section 518(e)(2)(B)(i)(I) of the act and § 810.13(c)(1) provide that a mandatory recall order will not require recall of a device from an individual. However, section 518(e)(2)(B)(ii) of the act and § 810.13(d) state that a mandatory recall order will provide notice to individuals subject to the risks associated with use of the recalled device. Therefore, the reference to ''individuals'' in these sections is appropriate because it applies to notification of risk, not to product recall.

29. Section 810.16(b)(6)

A comment suggested that the timeframes be arrived at as the result of a collaborative dialogue between the agency and the person named in the cease distribution and notification or mandatory recall order, rather than be imposed by FDA. Another comment stated that because it is not possible to predict the completion of a recall, the section should be revised to read: ''Estimated time-frame for completion of the requirements of the cease distribution and notification order.''

FDA does not believe that collaborative dialogue between FDA and industry is foreclosed by § 810.16(b)(6), which merely requires that status reports on cease distribution and notification orders and recall orders, which the person subject to the order submits to FDA, contain estimated timeframes for completion of the requirements of cease distribution and notification orders, if warranted, and mandatory recall orders as required under section 518(e)(2)(A) of the act. (See §§ 810.10(c) and 810.13(b)(2).) Moreover, the hearing under § 810.11 will provide an opportunity to review actions required by both orders, including the timeframes for completion of those actions. FDA does expect all recall-related activity to be completed and final status reports submitted for termination within 6 months of issuance of recall orders. FDA therefore disagrees with the comment that suggests revision of this section to eliminate reference to mandatory recall orders.

30. Section 810.18

A comment stated that FDA should be required to publish any mandatory recall in the FDA Enforcement Report within 30 days of the recall order or cease distribution and notification order. If the recall is listed in the FDA Enforcement Report within 30 days of the recall notification letter to consignees, then the relationship between the two notifications will be apparent to all interested parties.

Although FDA agrees it is desirable to list mandatory recall information in the weekly Enforcement Report as soon as possible, there are a number of factors, some of which the agency may not control, that determine when the agency has sufficient information to list a recall on the weekly FDA Enforcement Report. These factors will vary from one case to another. Because of this variation, it is not always possible to predict and schedule the exact time the agency will be able to list publicly a particular recall. Moreover, in limited circumstances, FDA may intentionally delay public notification of recalls of certain devices when the agency determines that public notification may cause unnecessary harm and anxiety to patients and that initial consultation between patients and their doctors is essential.

V. Summary of Changes from the Proposed Rule

Although the agency maintained the basic framework of the proposed rule, FDA modified the proposed rule to address concerns raised in the comments.

In response to concerns raised in the comments, FDA made the following changes:

(1) If, after providing the appropriate person with an opportunity to consult with the agency, FDA finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, the agency may issue a cease distribution and notification order (§ 810.10(a)).

(2) FDA will be given 15 working days to complete its deliberative process following the completion of a regulatory hearing (§ 810.11(e)) or receipt of a written request for review of a cease distribution and notification order (§ 810.12(c)). Accordingly, under § 810.13(a), FDA will amend a cease distribution and notification order to include a mandatory recall within 15 working days of issuance of the cease distribution and notification order if a regulatory hearing or agency review of the order is not requested, or within 15 working days of denying a request for a hearing, or within 15 working days after completing a regulatory hearing, or within 15 working days of receipt of a written request for review of a cease distribution and notification order.

(3) Amended § 810.12(a) provides that the individual submitting a written request for review of a cease distribution and notification order must submit such a request within the timeframe specified in the order which will be, in most cases, within 10 working days of issuance of such an order, but not generally less than 3 working days after receipt of the cease distribution and notification order. This amendment is consistent with: (a) Section 810.11(a) which requires that a request for a regulatory hearing be submitted in writing within the timeframe specified by FDA (which under § 16.22(b), will not ordinarily be less than 3 working days after receipt of the cease distribution and notification order); and (b) § 810.11(e) which requires a regulatory hearing to be held within 10 working days of issuance of a cease distribution and notification order.

(4) Under § 810.14(b)(2), the agency will review and amend, reject, or accept a proposed strategy for a cease distribution and notification order modified under § 810.11(e) or § 810.12(c) or a mandatory recall within 7 working days of receipt of such a strategy.

(5) According to § 810.17(c), FDA will respond to a written request for termination of a cease distribution and notification or recall order within 30 working days of its receipt.

(6) FDA clarified that the opportunity for a regulatory hearing provided for in § 810.11 will be subject to the provisions set out in part 16 by making the following amendments:

(a) The agency has changed § 810.11(a) to provide that the person offered an opportunity for a hearing has the amount of time specified in the cease distribution and notification order to request a hearing. In accordance with § 16.22(b), FDA will ordinarily not require that such request be made in fewer than 3 working days after receipt of the order.

(b) Under § 16.24(e), the agency has changed § 810.11(e) to provide that a hearing will ordinarily not be held fewer than 2 working days after receipt of the request for hearing. Thus, the person named in the cease distribution and notification order will generally have at least 5 working days following receipt of the order before a regulatory hearing is held, unless FDA and the person named in the order agree to a later date or the presiding officer determines otherwise. Moreover, in accordance with § 16.60(h), the Commissioner of Food and Drugs or the presiding officer has the power under § 10.19 to suspend, modify, or waive any provision of part 16.

(c) The agency has referenced § 16.26(a) and (b) in § 810.11(a) and (c) to clarify that a request for a regulatory hearing may be denied in whole or in part and that a summary decision on an issue may be issued once a regulatory hearing commences if there is no

genuine and substantial issue of fact raised in the request for a hearing or about an issue once a hearing commences. The agency has amended § 810.11(b) and (c) to clarify that they apply if the agency grants a request for a regulatory hearing.

(7) FDA revised the definition of serious, adverse health consequences in § 810.2(i) by deleting the second sentence in the proposed definition.

(8) FDA clarified the definition of consignee in § 810.2(d).

(9) In § 810.3, FDA changed the computation of time method to working days.

(10) FDA revised § 810.4 so that a cease distribution and notification order or recall order will be served in person by a designated FDA employee in most cases.

(11) FDA deleted proposed § 810.10(d)(9) from the final regulation and has redesignated proposed § 810.10(d)(10) as § 810.10(d)(9) in the final regulation.

(12) FDA amended § 810.11(a), (c), and (e) to conform to §§ 16.60(h) and 10.19.

(13) FDA deleted § 810.14(a)(5) from the final regulation because the information sought under this section will not generally be available to the firm by the time it must submit its strategy to FDA.

(14) FDA renumbered proposed § 810.14(a)(6) and (a)(7) as § 810.14(b)(1) and (b)(2), respectively, under a new paragraph (b) heading entitled ''Submission and review'' in the final regulation. As a result of this modification, FDA has renumbered proposed § 810.14(b) as § 810.14(c) under the same paragraph (c) heading ''Elements of the strategy.''

(15) FDA amended various paragraphs of § 810.10. First, FDA revised § 810.10(d)(1) to read: ''The total number of units of the device produced and the timespan of the production.'' Second, FDA added the term ''estimated'' to § 810.10(d)(3) and (d)(4).

(16) FDA removed the term ''direct'' from § 810.10(d)(5).

(17) FDA omitted from the final rule § 810.13(e) which provided FDA with the authority to initially determine that a cease distribution and notification order need not be amended to require a mandatory recall, but subsequently amend the order to require a recall of the device if the agency made specific findings. Under the final rule, if FDA initially determines that a device does not pose a reasonable probability of causing serious, adverse health consequences or death, the agency will vacate the order. If, however, FDA subsequently finds that the device, which was subject to the original cease distribution and notification order which was vacated, poses a reasonable probability of causing serious, adverse health consequences or death, the agency will issue a new cease distribution and notification order. If a new cease distribution and notification order is issued, the person subject to the order will be provided with the opportunity for a regulatory hearing as required by section 518(e)(1) of the act and § 810.11 of the regulation or with the opportunity to submit a written request for review of a cease distribution and notification order under § 810.12 of the regulation.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (Pub. L. 96–354), as amended by Subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. A comment stated that this rule will have a significant impact on small entities. Thus, the comment stated that further analysis under both Executive Order 12866 and the Regulatory Flexibility Act is warranted.

FDA disagrees with this comment. FDA has examined the rule under the Regulatory Flexibility Act and Executive Order 12866. The rule merely establishes the procedures by which FDA will implement its authority for the cessation of distribution and use and recall of a device. FDA cannot predict the cost of any action that would be ordered under this rule. However, FDA believes that it has provided sufficient flexibility in the rule so as to minimize the burden on those required to take action consistent with the determination that the device presents a risk of serious adverse health consequences or death. For example, § 810.10(a) provides entities with an opportunity to consult with FDA before FDA issues a cease distribution and notification order. In addition, § 810.11 provides an opportunity for a regulatory hearing and § 810.12 provides an opportunity for written review of an order. Lastly, § 810.14 provides that the person required to carry out the recall order may develop a strategy for carrying out a recall subject to FDA review. These provisions will provide entities with the opportunity to advise the agency about cost effective means to protect the public health.

The agency believes that only a small number of firms will be affected by this rule. Under this rule, the agency would invoke section 518(e) of the act in those instances that match very closely the definition of class I recall, where there is a strong likelihood that the use of or exposure to a device would cause serious, adverse health consequences or death (compare § 7.3(m)(1) and section 518(e)). The greatest number of class I recalls in 1 year to date has been 36, and the average over the last 5 fiscal years has been 19 per year. FDA expects that almost all of the recalls will continue to be carried out under the voluntary recall, part 7 procedures. The agency expects that at most one or two recalls per year would be ordered that would not have occurred without this regulation. Thus, the agency believes that this new authority will not be used frequently. The agency is unable to estimate the cost of this rule because it is unable to predict the nature or size of recalls that may be ordered. FDA believes, however, that the costs will not be excessive for the recall of a device that presents a risk of serious adverse health consequences or death, given the limited number of recalls that will be ordered and the flexibility that is allowed to implement them. For these reasons, the Commissioner certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. In addition, this rule will not impose expenditures of $100 million or more on either State,

local, and tribal governments in aggregate or the private sector, and therefore a written statement under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VIII. Congressional Review

This rule is not a major rule under the congressional review provisions of Subtitle E of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121).

IX. Paperwork Reduction Act of 1995

This final rule contains information collections which are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collections and an estimate of the annual reporting burden are shown below. Included in the estimate is the time for searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Title: Reporting requirements for individuals named in cease distribution and notification orders and mandatory recall orders under the SMDA.

Description: This regulation establishes the procedures for implementing the medical device recall authority provided in the SMDA. The purpose of this regulation is to protect the public health by permitting FDA to promptly cease distribution of and recall dangerous devices from the market.

Description of Respondents: Businesses or other for profit organizations.

Although the June 14, 1994, proposed rule provided a 90-day comment period, and this final rule is based on the comments received, the proposed rule has not been previously available to OMB for review. Therefore, as required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA will submit a copy of this final rule to OMB for review and approval of these information collection requirements. Organizations and individuals may submit comments on the information collection requirements by January 21, 1997. FDA particularly invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the 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 respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology. Comments should be directed to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, make revisions as necessary to the information collection requirements, and submit the requirements to OMB for review and approval. Additional time will be allotted for public comment to OMB on the requirements and OMB review. Prior to the effective date of this final rule, FDA will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the information collection requirements. 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.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
810.10(d)	2	1	2	8	16
810.11(a)	1	1	1	8	8
810.12(b)	1	1	1	8	8
810.14	2	1	2	16	32
810.15	2	1	2	16	32
810.16	2	12	24	40	960
810.17	2	1	2	8	16
Total					1,072

There are no capital costs or operating and maintenance costs associated with this collection.

List of Subjects in 21 CFR Part 810

Administrative practice and procedure, Cease distribution and notification orders, Mandatory recall orders, Medical devices, Recordkeeping and reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, new part 810 is added to read as follows:

PART 810—MEDICAL DEVICE RECALL AUTHORITY

Subpart A—General Provisions

Sec.

810.1 Scope.
810.2 Definitions.
810.3 Computation of time.
810.4 Service of orders.

Subpart B—Mandatory Medical Device Recall Procedures

810.10 Cease distribution and notification order.
810.11 Regulatory hearing.
810.12 Written request for review of cease distribution and notification order.
810.13 Mandatory recall order.
810.14 Cease distribution and notification or mandatory recall strategy.
810.15 Communications concerning a cease distribution and notification or mandatory recall order.
810.16 Cease distribution and notification or mandatory recall order status reports.
810.17 Termination of a cease distribution and notification or mandatory recall order.
810.18 Public notice.

Authority: Secs. 201, 301, 302, 303, 304, 501, 502, 518, 701, 704, 705 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 332, 333, 334, 351, 352, 360h, 371, 374, 375).

Subpart A—General Provisions

§ 810.1 Scope.

Part 810 describes the procedures that the Food and Drug Administration will follow in exercising its medical device recall authority under section 518(e) of the Federal Food, Drug, and Cosmetic Act.

§ 810.2 Definitions.

As used in this part:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act.

(b) *Agency* or *FDA* means the Food and Drug Administration.

(c) *Cease distribution and notification strategy* or *mandatory recall strategy* means a planned, specific course of action to be taken by the person named in a cease distribution and notification order or in a mandatory recall order, which addresses the extent of the notification or recall, the need for public warnings, and the extent of effectiveness checks to be conducted.

(d) *Consignee* means any person or firm that has received, purchased, or used a device that is subject to a cease distribution and notification order or a mandatory recall order. Consignee does not mean lay individuals or patients, i.e., nonhealth professionals.

(e) *Correction* means repair, modification, adjustment, relabeling, destruction, or inspection (including patient monitoring) of a device, without its physical removal from its point of use to some other location.

(f) *Device user facility* means a hospital, ambulatory surgical facility, nursing home, or outpatient treatment or diagnostic facility that is not a physician's office.

(g) *Health professionals* means practitioners, including physicians, nurses, pharmacists, dentists, respiratory therapists, physical therapists, technologists, or any other practitioners or allied health professionals that have a role in using a device for human use.

(h) *Reasonable probability* means that it is more likely than not that an event will occur.

(i) *Serious, adverse health consequence* means any significant adverse experience, including those that may be either life-threatening or involve permanent or long-term injuries, but excluding injuries that are nonlife-threatening and that are temporary and reasonably reversible.

(j) *Recall* means the correction or removal of a device for human use where FDA finds that there is a reasonable probability that the device would cause serious, adverse health consequences or death.

(k) *Removal* means the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

§ 810.3 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act or event from which the designated period of time begins to run shall not be included. The computation of time is based only on working days.

§ 810.4 Service of orders.

Orders issued under this part will be served in person by a designated employee of FDA, or by certified or registered mail or similar mail delivery service with a return receipt record reflecting receipt, to the named person or designated agent at the named person's or designated agent's last known address in FDA's records.

Subpart B—Mandatory Medical Device Recall Procedures

§ 810.10 Cease distribution and notification order.

(a) If, after providing the appropriate person with an opportunity to consult with the agency, FDA finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, the agency may issue a cease distribution and notification order requiring the person named in the order to immediately:

(1) Cease distribution of the device;

(2) Notify health professionals and device user facilities of the order; and

(3) Instruct these professionals and device user facilities to cease use of the device.

(b) FDA will include the following information in the order:

(1) The requirements of the order relating to cessation of distribution and notification of health professionals and device user facilities;

(2) Pertinent descriptive information to enable accurate and immediate identification of the device subject to the order, including, where known:

(i) The brand name of the device;

(ii) The common name, classification name, or usual name of the device;

(iii) The model, catalog, or product code numbers of the device; and

(iv) The manufacturing lot numbers or serial numbers of the device or other identification numbers; and

(3) A statement of the grounds for FDA's finding that there is a reasonable probability that the device would cause serious, adverse health consequences or death.

(c) FDA may also include in the order a model letter for notifying health professionals and device user facilities of the order and a requirement that notification of health professionals and device user facilities be completed within a specified timeframe. The model letter will include the key elements of information that the agency in its discretion has determined, based on the circumstances surrounding the issuance of each order, are necessary to inform health professionals and device user facilities about the order.

(d) FDA may also require that the person named in the cease distribution and notification order submit any or all of the following information to the agency by a time specified in the order:

(1) The total number of units of the device produced and the timespan of the production;

(2) The total number of units of the device estimated to be in distribution channels;

(3) The total number of units of the device estimated to be distributed to health professionals and device user facilities;

(4) The total number of units of the device estimated to be in the hands of home users;

(5) Distribution information, including the names and addresses of all consignees;

(6) A copy of any written communication used by the person named in the order to notify health professionals and device user facilities;

(7) A proposed strategy for complying with the cease distribution and notification order;

(8) Progress reports to be made at specified intervals, showing the names and addresses of health professionals and device user facilities that have been notified, names of specific individuals contacted within device user facilities, and the dates of such contacts; and

(9) The name, address, and telephone number of the person who should be contacted concerning implementation of the order.

(e) FDA will provide the person named in a cease distribution and notification order with an opportunity for a regulatory hearing on the actions required by the cease distribution and notification order and on whether the order should be modified, or vacated, or amended to require a mandatory recall of the device.

(f) FDA will also provide the person named in the cease distribution and notification order with an opportunity, in lieu of a regulatory hearing, to submit a written request to FDA asking that the order be modified, or vacated, or amended.

(g) FDA will include in the cease distribution and notification order the name, address, and telephone number of an agency employee to whom any request for a regulatory hearing or agency review is to be addressed.

§ 810.11 Regulatory hearing.

(a) Any request for a regulatory hearing shall be submitted in writing to the agency employee identified in the

order within the timeframe specified by FDA. Under § 16.22(b) of this chapter, this timeframe ordinarily will not be fewer than 3 working days after receipt of the cease distribution and notification order. However, as provided in § 16.60(h) of this chapter, the Commissioner of Food and Drugs or presiding officer may waive, suspend, or modify any provision of part 16 under § 10.19 of this chapter, including those pertaining to the timing of the hearing. As provided in § 16.26(a), the Commissioner or presiding officer may deny a request for a hearing, in whole or in part, if he or she determines that no genuine and substantial issue of fact is raised by the material submitted in the request.

(b) If a request for a regulatory hearing is granted, the regulatory hearing shall be limited to:

(1) Reviewing the actions required by the cease distribution and notification order, determining if FDA should affirm, modify, or vacate the order, and addressing an appropriate cease distribution and notification strategy; and

(2) Determining whether FDA should amend the cease distribution and notification order to require a recall of the device that was the subject of the order. The hearing may also address the actions that might be required by a recall order, including an appropriate recall strategy, if FDA later orders a recall.

(c) If a request by the person named in a cease distribution and notification order for a regulatory hearing is granted, the regulatory hearing will be conducted in accordance with the procedures set out in section 201(x) of the act (21 U.S.C. 321(x)) and part 16 of this chapter, except that the order issued under § 810.10, rather than a notice under § 16.22(a) of this chapter, provides the notice of opportunity for a hearing and is part of the administrative record of the regulatory hearing under § 16.80(a) of this chapter. As provided in § 16.60(h) of this chapter, the Commissioner of Food and Drugs or presiding officer may waive, suspend, or modify any provision of part 16 under § 10.19 of this chapter. As provided in § 16.26(b), after the hearing commences, the presiding officer may issue a summary decision on any issue if the presiding officer determines that there is no genuine and substantial issue of fact respecting that issue.

(d) If the person named in the cease distribution and notification order does not request a regulatory hearing within the timeframe specified by FDA in the cease distribution and notification order, that person will be deemed to have waived his or her right to request a hearing.

(e) The presiding officer will ordinarily hold any regulatory hearing requested under paragraph (a) of this section no fewer than 2 working days after receipt of the request for a hearing, under § 16.24(e) of this chapter, and no later than 10 working days after the date of issuance of the cease distribution and notification order. However, FDA and the person named in the order may agree to a later date or the presiding officer may determine that the hearing should be held in fewer than 2 days. Moreover, as provided for in § 16.60(h) of this chapter, the Commissioner of Food and Drugs or presiding officer may waive, suspend, or modify any provision of part 16 under § 10.19 of this chapter, including those pertaining to the timing of the hearing. After the presiding officer prepares a written report of the hearing and the agency issues a final decision based on the report, the presiding officer shall provide the requestor written notification of the final decision to affirm, modify, or vacate the order or to amend the order to require a recall of the device within 15 working days of conducting a regulatory hearing.

§ 810.12 Written request for review of cease distribution and notification order.

(a) In lieu of requesting a regulatory hearing under § 810.11, the person named in a cease distribution and notification order may submit a written request to FDA asking that the order be modified or vacated. Such person shall address the written request to the agency employee identified in the order and shall submit the request within the timeframe specified in the order, unless FDA and the person named in the order agree to a later date.

(b) A written request for review of a cease distribution and notification order shall identify each ground upon which the requestor relies in asking that the order be modified or vacated, as well as addressing an appropriate cease distribution and notification strategy, and shall address whether the order should be amended to require a recall of the device that was the subject of the order and the actions required by such a recall order, including an appropriate recall strategy.

(c) The agency official who issued the cease distribution and notification order shall provide the requestor written notification of the agency's decision to affirm, modify, or vacate the order or amend the order to require a recall of the device within 15 working days of receipt of the written request. The agency official shall include in this written notification:

(1) A statement of the grounds for the decision to affirm, modify, vacate, or amend the order; and

(2) The requirements of any modified or amended order.

§ 810.13 Mandatory recall order.

(a) If the person named in a cease distribution and notification order does not request a regulatory hearing or submit a request for agency review of the order, or, if the Commissioner of Food and Drugs or the presiding officer denies a request for a hearing, or, if after conducting a regulatory hearing under § 810.11 or completing agency review of a cease distribution and notification order under § 810.12, FDA determines that the order should be amended to require a recall of the device with respect to which the order was issued, FDA shall amend the order to require such a recall. FDA shall amend the order to require such a recall within 15 working days of issuance of a cease distribution and notification order if a regulatory hearing or agency review of the order is not requested, or within 15 working days of denying a request for a hearing, or within 15 working days of completing a regulatory hearing under § 810.11, or within 15 working days of receipt of a written request for review of a cease distribution and notification order under § 810.12.

(b) In a mandatory recall order, FDA may:

(1) Specify that the recall is to extend to the wholesale, retail, or user level;

(2) Specify a timetable in accordance with which the recall is to begin and be completed;

(3) Require the person named in the order to submit to the agency a proposed recall strategy, as described in § 810.14, and periodic reports describing the progress of the mandatory recall, as described in § 810.16; and

(4) Provide the person named in the order with a model recall notification letter that includes the key elements of information that FDA has determined are necessary to inform health professionals and device user facilities.

(c) FDA will not include in a mandatory recall order a requirement for:

(1) Recall of a device from individuals; or

(2) Recall of a device from device user facilities, if FDA determines that the risk of recalling the device from the facilities presents a greater health risk than the health risk of not recalling the device from use, unless the device can

be replaced immediately with an equivalent device.

(d) FDA will include in a mandatory recall order provisions for notification to individuals subject to the risks associated with use of the device. If a significant number of such individuals cannot be identified, FDA may notify such individuals under section 705(b) of the act.

§ 810.14 Cease distribution and notification or mandatory recall strategy.

(a) *General*. The person named in a cease distribution and notification order issued under § 810.10 shall comply with the order, which FDA will fashion as appropriate for the individual circumstances of the case. The person named in a cease distribution and notification order modified under § 810.11(e) or § 810.12(c) or a mandatory recall order issued under § 810.13 shall develop a strategy for complying with the order that is appropriate for the individual circumstances and that takes into account the following factors:

(1) The nature of the serious, adverse health consequences related to the device;

(2) The ease of identifying the device;

(3) The extent to which the risk presented by the device is obvious to a health professional or device user facility; and

(4) The extent to which the device is used by health professionals and device user facilities.

(b) *Submission and review*. (1) The person named in the cease distribution and notification order modified under § 810.11(e) or § 810.12(c) or mandatory recall order shall submit a copy of the proposed strategy to the agency within the timeframe specified in the order.

(2) The agency will review the proposed strategy and make any changes to the strategy that it deems necessary within 7 working days of receipt of the proposed strategy. The person named in the order shall act in accordance with a strategy determined by FDA to be appropriate.

(c) *Elements of the strategy*. A proposed strategy shall meet all of the following requirements:

(1)(i) The person named in the order shall specify the level in the chain of distribution to which the cease distribution and notification order or mandatory recall order is to extend as follows:

(A) Consumer or user level, e.g., health professionals, consignee, or device user facility level, including any intermediate wholesale or retail level; or

(B) Retail level, to the level immediately preceding the consumer or user level, and including any intermediate level; or

(C) Wholesale level.

(ii) The person named in the order shall not recall a device from individuals; and

(iii) The person named in the order shall not recall a device from device user facilities if FDA notifies the person not to do so because of a risk determination under § 810.13(c)(2).

(2) The person named in a recall order shall ensure that the strategy provides for notice to individuals subject to the risks associated with use of the recalled device. The notice may be provided through the individuals' health professionals if FDA determines that such consultation is appropriate and would be the most effective method of notifying patients.

(3) Effectiveness checks by the person named in the order are required to verify that all health professionals, device user facilities, consignees, and individuals, as appropriate, have been notified of the cease distribution and notification order or mandatory recall order and of the need to take appropriate action. The person named in the cease distribution and notification order or the mandatory recall order shall specify in the strategy the method(s) to be used in addition to written communications as required by § 810.15, i.e., personal visits, telephone calls, or a combination thereof to contact all health professionals, device user facilities, consignees, and individuals, as appropriate. The agency may conduct additional audit checks where appropriate.

§ 810.15 Communications concerning a cease distribution and notification or mandatory recall order.

(a) *General*. The person named in a cease distribution and notification order issued under § 810.10 or a mandatory recall order issued under § 810.13 is responsible for promptly notifying each health professional, device user facility, consignee, or individual, as appropriate, of the order. In accordance with § 810.10(c) or § 810.13(b)(4), FDA may provide the person named in the cease distribution and notification or mandatory recall order with a model letter for notifying each health professional, device user facility, consignee, or individual, as appropriate, of the order. However, if FDA does not provide the person named in the cease distribution and notification or mandatory recall order with a model letter, the person named in a cease distribution and notification order issued under § 810.10, or a mandatory recall order issued under § 810.13, is responsible for providing such notification. The purpose of the communication is to convey:

(1) That FDA has found that there is a reasonable probability that use of the device would cause a serious, adverse health consequence or death;

(2) That the person named in the order has ceased distribution of the device;

(3) That health professionals and device user facilities should cease use of the device immediately;

(4) Where appropriate, that the device is subject to a mandatory recall order; and

(5) Specific instructions on what should be done with the device.

(b) *Implementation*. The person named in a cease distribution and notification order, or a mandatory recall order, shall notify the appropriate person(s) of the order by verified written communication, e.g., telegram, mailgram, or fax. The written communication and any envelope in which it is sent or enclosed shall be conspicuously marked, preferably in bold red ink: ''URGENT—[DEVICE CEASE DISTRIBUTION AND NOTIFICATION ORDER] or [MANDATORY DEVICE RECALL ORDER].'' Telephone calls or other personal contacts may be made in addition to, but not as a substitute for, the verified written communication, and shall be documented in an appropriate manner.

(c) *Contents*. The person named in the order shall ensure that the notice of a cease distribution and notification order or mandatory recall order:

(1) Is brief and to the point;

(2) Identifies clearly the device, size, lot number(s), code(s), or serial number(s), and any other pertinent descriptive information to facilitate accurate and immediate identification of the device;

(3) Explains concisely the serious, adverse health consequences that may occur if use of the device were continued;

(4) Provides specific instructions on what should be done with the device;

(5) Provides a ready means for the recipient of the communication to confirm receipt of the communication and to notify the person named in the order of the actions taken in response to the communication. Such means may include, but are not limited to, the return of a postage-paid, self-addressed post card or a toll-free call to the person named in the order; and

(6) Does not contain irrelevant qualifications, promotional materials, or any other statement that may detract from the message.

(d) *Followup communications.* The person named in the cease distribution and notification order or mandatory recall order shall ensure that followup communications are sent to all who fail to respond to the initial communication.

(e) *Responsibility of the recipient.* Health professionals, device user facilities, and consignees who receive a communication concerning a cease distribution and notification order or a mandatory recall order should immediately follow the instructions set forth in the communication. Where appropriate, these recipients should immediately notify their consignees of the order in accordance with paragraphs (b) and (c) of this section.

§ 810.16 Cease distribution and notification or mandatory recall order status reports.

(a) The person named in a cease distribution and notification order issued under § 810.10 or a mandatory recall order issued under § 810.13 shall submit periodic status reports to FDA to enable the agency to assess the person's progress in complying with the order. The frequency of such reports and the agency official to whom such reports shall be submitted will be specified in the order.

(b) Unless otherwise specified in the order, each status report shall contain the following information:

(1) The number and type of health professionals, device user facilities, consignees, or individuals notified about the order and the date and method of notification;

(2) The number and type of health professionals, device user facilities, consignees, or individuals who have responded to the communication and the quantity of the device on hand at these locations at the time they received the communication;

(3) The number and type of health professionals, device user facilities, consignees, or individuals who have not responded to the communication;

(4) The number of devices returned or corrected by each health professional, device user facility, consignee, or individual contacted, and the quantity of products accounted for;

(5) The number and results of effectiveness checks that have been made; and

(6) Estimated timeframes for completion of the requirements of the cease distribution and notification order or mandatory recall order.

(c) The person named in the cease distribution and notification order or recall order may discontinue the submission of status reports when the agency terminates the order in accordance with § 810.17.

§ 810.17 Termination of a cease distribution and notification or mandatory recall order.

(a) The person named in a cease distribution and notification order issued under § 810.10 or a mandatory recall order issued under § 810.13 may request termination of the order by submitting a written request to FDA. The person submitting a request shall certify that he or she has complied in full with all of the requirements of the order and shall include a copy of the most current status report submitted to the agency under § 810.16. A request for termination of a recall order shall include a description of the disposition of the recalled device.

(b) FDA may terminate a cease distribution and notification order issued under § 810.10 or a mandatory recall order issued under § 810.13 when the agency determines that the person named in the order:

(1) Has taken all reasonable efforts to ensure and to verify that all health professionals, device user facilities, consignees, and, where appropriate, individuals have been notified of the cease distribution and notification order, and to verify that they have been instructed to cease use of the device and to take other appropriate action; or

(2) Has removed the device from the market or has corrected the device so that use of the device would not cause serious, adverse health consequences or death.

(c) FDA will provide written notification to the person named in the order when a request for termination of a cease distribution and notification order or a mandatory recall order has been granted or denied. FDA will respond to a written request for termination of a cease distribution and notification or recall order within 30 working days of its receipt.

§ 810.18 Public notice.

The agency will make available to the public in the weekly FDA Enforcement Report a descriptive listing of each new mandatory recall issued under § 810.13. The agency will delay public notification of orders when the agency determines that such notification may cause unnecessary and harmful anxiety in individuals and that initial consultation between individuals and their health professionals is essential.

Dated: November 8, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–29695 Filed 11–19–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–048]

RIN 2115–AE46

Special Local Regulations; Christmas Parade of Boats, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Charleston Christmas Parade of Boats. This one-day event will be held on December 7, 1996, December 13, 1997, December 12, 1998, December 4, 1999, and December 9, 2000, on the Ashley, Wando and Cooper Rivers in Charleston, South Carolina, between 4:30 and 8:30 p.m. Eastern Standard Time (EST). The customary presence of commercial and recreational traffic, and the nature of the event create an extra or unusual hazard on the navigable waters during the event. These regulations are necessary for the safety of life on the navigable waters during the event.

EFFECTIVE DATE: November 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ensign Mike Daponte, Project Officer, Coast Guard Group Charleston, at (803) 724–7621.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. § 553, the final rule will be made effective in less than 30 days from the date of publication in the Federal Register. Following normal rulemaking procedures will be impracticable, unnecessary, and contrary to the public interest. A notice of proposed rulemaking for this rule was published in the Federal Register (61 FR 188) with a thirty day comment period. The final rule will be made effective in less than thirty days from the date of publication in order to hold the event. During this comment period, no comments were received about this rulemaking.

Regulatory History

On September 26, 1996, the Coast Guard published a notice of proposed rulemaking entitled Charleston Christmas Parade of Boats, Charleston, SC [CGD07–96–048] in the Federal Register (61 FR 188). The comment period ended on October 28, 1996. The Coast Guard received no comments during the notice of proposed rulemaking comment period. A public hearing was not requested and no hearing was held.

Background and Purpose

These regulations are needed to provide for the safety of life during the Christmas Parade of Boats. This one-day event will be held on December 7, 1996, December 13, 1997, December 12, 1998, December 4, 1999, and December 9, 2000, on the Ashley, Wando and Cooper Rivers in Charleston, South Carolina, between 4:30 and 8:30 p.m. (EST). These regulations are intended to promote safe navigation on the waters of the Ashley, Wando and Cooper Rivers in Charleston Harbor during the boat parade by controlling the traffic entering, exiting, and traveling within the parade formation. The anticipated concentration of non-participating vessels within the area poses a safety concern, which is addressed in these regulations.

These regulations will not permit the entry or movement of spectator vessels and other non-participating vessel traffic within an area 500 yards ahead of the lead vessel, 100 yards astern of the last vessel, and 50 yards to either side of all vessels participating in the parade of boats between Wando River Terminal buoy 4 (LLNR 2720) at approximate position 32°49.20′N, 079°54.3′W, and City Marina on the Ashley River, from 4:30 to 8:30 p.m. EST, on December 7, 1996, December 13, 1997, December 12, 1998, December 4, 1999, and December 9, 2000. All coordinates referenced use datum: NAD 1983. However, the regulations will permit the movement of non-participating vessels after the termination of parade.

Regulatory Evaluation

This rule is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 5 (a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulated area encompasses less than six miles of Ashley, Wando and Cooper Rivers, and will be in effect for only 4 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. The regulated area encompasses a limited area of the Ashley, Wando and Cooper Rivers, and will be in effect for only 4 hours on the day of the event.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B.2. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994). In accordance with that instruction section 2.B.4.g., this action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and a finding of no significant impact have been prepared and are available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For reasons set out in the preamble, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.721 is added to read as follows:

§ 100.721 Charleston Christmas Parade of Boats, Charleston Harbor, SC.

(a) *Definitions. (1) Regulated Area.* A regulated area includes the area 500 yards ahead of the lead parade vessel, 100 yards astern of the last parade vessel, and 50 yards to either side of all parade vessels along the parade route described in paragraph (a)(2) of this section.

(2) *Parade Route.* The parade route begins from that portion of Charleston Harbor commencing at Wando River Terminal buoy 4 (Light List Number 2720) at approximate position 32°49.2′N, 079°54.3′W, thence to the upper end of Hog Island Reach at approximate position 32°48.7′N, 079°54.85′W, thence to approximate position 32°48,15′N, 079°54.95′W, below the Cooper River Bridges, thence southeast to approximately two-tenths of a nautical mile north of USS Yorktown at position 32°47.7′N, 079°54.7′W, thence south past the USS Yorktown to approximate position 32°47.2′N, 079°54.7′W, thence west to Custom House Reach at approximate position 32°47.2′N, 079°55.3′W, thence south to 32°45.7′N, 079°55.3′W (approximately one half nautical mile southeast of Battery Point), thence up the Ashley River, and continuing to the finishing point at City Marina (32°46.6′N, 079°57.2′W). All coordinates referenced use datum: NAD 1983.

(3) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant or petty officer of the Coast Guard who has been designated in writing by the Commander, Coast Guard Group Charleston, South Carolina.

(b) *Special local regulations.* (1) Entry into the regulated area by other than authorized parade participants or official patrol vessels is prohibited, unless otherwise authorized by the Patrol Commander.

(2) After termination of the Christmas Parade of Boats and departure of parade participants from the regulated area, all vessels may resume normal operations.

(c) *Effective Date:* These regulations are effective from 4:30 p.m. to 8:30 p.m., EST, on December 7, 1996, December 13, 1997, December 12, 1998, December 4, 1999, and December 9, 2000.

Dated: November 4, 1996.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 96–29687 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD01–96–022]

RIN 2115–AE46

Special Local Regulation: Searsport Lobster Boat Races, Searsport, ME

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent special local regulation for the Searsport Lobster Boat Races. The event will be held from 8 a.m. to 2 p.m. on August 24, 1996, and each year thereafter on the fourth Saturday in August. This regulation is needed to protect the boating public from the hazards associated with high speed powerboat racing in confined waters.

EFFECTIVE DATE: This regulation is effective on August 24, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James B. Donovan, Assistant Search and Rescue Section, First Coast Guard District, (617) 223–8278.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rulemaking (NPRM) was published on May 13, 1996, (61 FR 22001) proposing the establishment of a permanent special local regulation for the Searsport Lobster Boat Races. The NPRM proposed to establish a regulated area surrounding the race course. No comments were received and no hearing was requested. The Coast Guard is publishing the final rule as proposed.

Background and Purpose

The Searsport Lobster Boat Races is a local, traditional event that has been held for many years in Searsport Harbor, ME. In the past, the Coast Guard has promulgated individual regulations for each year's race. Given the recurring nature of the event, the Coast Guard is establishing a permanent regulation. The regulation establishes a regulated area on Searsport Harbor and provides specific guidance to control vessel movement during the race.

The event includes 50 or more participants with 4 to 8 boats per class racing in heats around a ¾ mile marked course. The event typically attracts approximately 100 spectator craft. The Coast Guard will assign a patrol to the event, but due to the speed, large wakes, and proximity of the participating vessels, it is necessary to establish a special local regulation to control spectator and commercial vessel movement within this confined area. Spectator craft are authorized to watch the race from any area as long as they remain outside the designated regulated area. In emergency situations, provisions may be made to establish safe escort by a Coast Guard or Coast Guard designated vessel for vessels requiring transit through the regulated area.

Good cause exists for providing for this rule to become effective prior to publication in the Federal Register. Due to the need to provide the opportunity for notice and comment in the NPRM, there is insufficient time to publish this rule before the event is scheduled to begin. The Coast Guard believes delaying the event in order to publish the final rule or holding the event without an effective regulation would be contrary to the public interest given this event's local popularity and the need to control vessel movement during the event.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10(e) of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the race, the extensive advisories that will be made to the affected maritime community, and the minimal restrictions which the regulation places on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this rule and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, (as revised by 61 FR 13563, March 27, 1996) this rule is a special local regulation issued in conjunction with a regatta or marine parade and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 100 as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.118, is added to read as follows:

§ 100.118 Searsport Lobster Boat Races, Searsport Harbor, ME.

(a) *Regulated Area.* The regulated area includes all waters of Searsport Harbor, ME, within the following points (NAD 83):

Latitude	*Longitude*
44°26′51″ N	068°54′20″ W
44°27′03″ N	068°54′20″ W
44°27′03″ N	068°55′17″ W
44°26′51″ N	068°55′17″ W

(b) *Special Local Regulations.* (1) The Coast Guard patrol commander may delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the

regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel may include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period*. This section is in effect on August 24, 1996, and each year thereafter on the fourth Saturday in August. If the event is canceled due to weather, this section is effective the following day.

Dated: August 22, 1996.

James D. Garrison,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 96–29688 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–14–M

Coast Guard

33 CFR Part 117

[CGD11–90–03]

RIN–2115–A47

Drawbridge Operation Regulations; Cerritos Channel, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the Port of Los Angeles, the Coast Guard is temporarily changing the regulation for operation of the Henry Ford Avenue Railroad Bridge (Ford Bridge), across Cerritos Channel of Los Angeles/Long Beach Harbor, mile 4.8, Long Beach, California, to authorize it to remain in the closed to navigation position for 5 months, from February 1 to June 30, 1997. This action is necessary both to facilitate reconstruction of the bridge and to avoid disrupting essential rail service during reconstruction. If, due to the state of construction, passage through the draw becomes temporarily possible during the effective period, the Coast Guard will publish that fact in the Local Notice to Mariners.

EFFECTIVE DATE: This temporary final rule will be effective from February 1 through June 30, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of Commander (Pow), Eleventh Coast Guard District, Building 50–6, Coast Guard Island, Alameda, CA 94501–5100 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437–3514. Commander (Pow) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Susan Worden, Bridge Administrator, Eleventh Coast Guard District, at (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 28, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) in the Federal Register (55 FR 35154). The NPRM discussed a six and one-half month closure during efforts to rehabilitate the historic bridge. On July 8, 1996, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) in the Federal Register (61 FR 35702). The SNPRM responded to all comments submitted in response to the NPRM and discussed a five month closure during efforts to replace portions of the bridge and to reconstruct other portions. The comment period established in the SNPRM ended on August 7, 1996. The Coast Guard received no comments on the proposal discussed in the SNPRM. A public hearing was not requested and no hearing was held.

Drafting Information

The principal persons involved in drafting this regulation are Susan Worden, Project Manager, Eleventh Coast Guard District, and Lieutenant (junior grade) Martin Sarch, Project Attorney, Maintenance & Logistics Command Pacific Legal Division.

Background and Purpose

At the request of the Port of Los Angeles, the Coast Guard is temporarily changing the regulation for operation of the Ford Bridge at mile 4.8, Los Cerritos Channel, in the Los Angeles/Long Beach Harbor. The Ford Bridge, also known as the Badger Avenue Bridge, provides the only rail access to Terminal Island. It crosses a waterway used by oceangoing cargo ships, tugs and barges, tour boats, commercial fishing vessels, and recreational boats. Existing regulations require the bridge to remain fully open except for the passage of trains or for maintenance.

The bridge is over 70 years old and no longer meets California seismic standards or Federal Railroad Administration clearance standards. Interruption or delay of rail and water traffic is likely if the existing bridge were either to malfunction or to be damaged by seismic activity. In 1995, the Coast Guard issued a permit to replace the bridge. Replacement cannot be accomplished without closing the bridge span for a period of five months. Closure of the bridge will require maritime traffic to use an alternate route through the outer harbor. Detours of 5 miles are expected; maximum detours of 10 miles may be experienced. The short term costs attributable to these detours are outweighed by the long-term benefits to be gained by the installation of a new bridge likely to provide uninterrupted rail service and timely, reliable openings for waterborne traffic for many years.

This temporary rule authorizes a five month (150 day) closure of the bridge. This action is necessary both to facilitate replacement of the span and reconstruction of the bridge support towers, as well as to avoid disrupting essential rail service during reconstruction. The SNPRM advertised a closure beginning in November 1996, however, construction is behind schedule and the closure is now scheduled to begin February 1, 1997. In the event that passage through the draw becomes temporarily possible during the effective period notwithstanding construction efforts, the Coast Guard will publish that fact in the Local Notice to Mariners.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be approximately $1 million to waterway users (to detour around the work site) and $2.5 million to the bridge owner (to expedite work). These figures are below the threshold levels requiring a formal Regulatory Evaluation. The draft economic analysis published with the NPRM was superseded by a more detailed economic analysis in the Environmental Impact Statement, which is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard

must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The estimated cost to each recreational mariner affected by this regulation is less than $100. The estimated cost per ''small business'' towing company for personnel hours and fuel consumption during detours is less than $100,000. Because the impact of this proposal is expected to be limited and of relatively short duration, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule. The Coast Guard prepared an Environmental Impact Statement (EIS) for the replacement of this historic bridge. The EIS analyzed the environmental and economic impact of this 5 month bridge closure. The draft Environmental Assessment published with the NPRM has been superseded by the sore detailed environmental analysis in the EIS, which is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; AND 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. 102–587, 106 Stat. 5039.

§ 117.147 [Amended]

2. Effective February 1, 1997 through June 30, 1997, § 117.147 is amended by suspending paragraph (b) and adding a new paragraph (c) to read as follows:

§ 117.147 Cerritos Channel

* * * * *

(c) During the period February 1, 1997 through June 30, 1997, the bridge will be undergoing reconstruction and the draw need not open for the passage of vessels.

Dated: October 28, 1996.

R.T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 96–29690 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Morgan City, LA 96–002]

RIN 2115–AA97

Safety zone; Gulf Intracoastal Waterway, Houma, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the GIWW from Mile Marker 54 WHL to Mile Marker 59 WHL, at its intersection with Bayou Terrebonne In Houma, LA. The zone is needed to protect workers engaged in the dismantling of the East Park Avenue bridge from the hazard created by vessel traffic. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port. The East Park Avenue Bridge will be closed to vehicular traffic during the times specified below. However, the new twin bridges will remain open to vehicular traffic.

DATES: This regulation is effective at 6:00 a.m. on December 2, 1996 and terminates at 6:00 p.m. on December 6, 1996.

FOR FURTHER INFORMATION CONTACT: LTJG Carlos Gavilanes, Chief of Port Safety and Security, Coast Guard Captain of the Port Morgan City, 800 David Drive Rm 232, Morgan City, LA 70380, (054) 385–2936.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Shappert Engineering Company will begin to dismantle the East Park Bridge at 6:00 a.m. on December 2, 1996. In order to facilitate the removal of the lift span, a blockage of the GIWW for daylight hours will be required over a five day period. The operation will utilize a barge-mounted crane positioned in the Intracoastal Waterway adjacent to the bridge. The existing steel beams and girders will be removed and loaded on to a deck barge to be transported offsite.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to protect personnel engaged in the dismantling operation.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46.

2. A new temporary section § 165.T08–066 is added to read as follows:

§ 165.T08–066 Safety Zone; GIWW, Houma, LA.

(a) *Location.* The following area is a Safety Zone: GIWW from Mile Marker 54 WHL to Mile Marker 59 WHL.

(b) *Effective dates.* This section becomes effective at 6:00 a.m. on December 2, 1996 and terminates at 6:00 p.m. on December 6, 1996.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port.

Dated: October 28, 1996.

M. B. Slack,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 96–29689 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 672

Antarctica; Adjustment of Civil Monetary Penalties

AGENCY: National Science Foundation.

ACTION: Final rule with a request for comments.

SUMMARY: The National Science Foundation (NSF) is adding a new section to its regulation on enforcement of the Antarctic Conservation Act of 1978 to adjust the civil monetary penalties that may be imposed for inadvertent and deliberate violations of that law for inflation since the date of their enactment.

DATES: This rule is effective November 20, 1996. Comments, however, are welcome at any time and will be considered in making future revisions.

ADDRESSES: All comments should be addressed to: John Chester, Assistant General Counsel, Office of the General Counsel, Room 1265, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: John Chester on (703) 306–1060 (voice) and (703) 306–0149 (facsimile)—those are not toll-free numbers—or by electronic mail as jchester@nsf.gov through INTERNET.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (104 Stat. 890; 28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act of 1996 (section 31001(s)(1) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134, approved 4/26/96) directs each Federal agency to adjust, by regulation, each civil monetary penalty provided by law within the jurisdiction of that agency to compensate for the effects of inflation. The only civil monetary penalties within the jurisdiction of the National Science Foundation are those imposed for violations of the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 et seq.). This amendment to the rules governing enforcement of that law adds a new section setting out the penalties for inadvertent and deliberate violations and adjusting those penalties for inflation as provided in the Debt Collection Improvement Act.

Because section 31001(s)(2) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 provides that the first adjustment of a civil monetary penalty made pursuant to its amendment to the Debt Collection Improvement Act ''may not exceed 10 percent of such penalty'', the Foundation is adjusting these penalties in two steps: a 10 percent increase effective on January 1, 1997 and an increase to the full amount called for in the amended Debt Collection Improvement Act on January 1, 1998. Future adjustments will be made at least once every four years as called for in the amended Debt Collection Improvement Act.

Because this action merely makes adjustments required by statute, public comments are not being solicited prior to its effective date.

Determinations

I have determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. I also certify, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, that none of the clerical corrections and nomenclature and address changes made by this rule will have a significant economic impact on any small entities. Finally, I have reviewed this rule in light of section 2 of Executive Order 12778 and certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 672

Administrative practice and procedure, Antarctica.

For the reasons set out in the preamble, 45 CFR part 672 is amended as follows:

PART 672—ENFORCEMENT AND HEARING PROCEDURES; TOURISM GUIDELINES

1. The authority citation for part 672 is revised to read as follows:

Authority: 16 U.S.C. 2401 et seq., 28 U.S.C. 2461 note.

2. After § 672.23, add the following new section:

§ 672.24 Maximum civil monetary penalties for unintentional and intentional violations.

(a) For violations occurring before January 1, 1997, the maximum civil penalty that may be assessed under §§ 672.20(b) and 672.23(a) is set by the statute at $5,000 for unintentional violations and $10,000 for intentional violations.

(b) For violations occurring between January 1, 1997 and December 31, 1997, the maximum civil penalty is adjusted under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, approved 4/26/96) to $5,500 for unintentional violations and $11,000 for intentional violations.

(c) For violations occurring after December 31, 1997, the maximum civil penalty is adjusted under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, approved 4/26/96) to $12,000 for unintentional violations and $23,000 for intentional violations.

Dated: November 12, 1996.

National Science Foundation

Lawrence Rudolph,

General Counsel.

[FR Doc. 96–29603 Filed 11–19–96; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE05

Endangered and Threatened Wildlife and Plants; Listing of the Central California Coast Coho Salmon as Threatened in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) is adding the central California coast coho salmon (*Oncorhynchus kisutch*) to the List of Endangered and Threatened Wildlife. This measure, authorized by the Endangered Species Act of 1973 (Act), corresponds with a determination of endangered status for this species, as defined under the Act, by the National Marine Fisheries Service (NMFS) which has jurisdiction for this species.

EFFECTIVE DATE: November 30, 1996.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (703/358–2171).

SUPPLEMENTARY INFORMATION: In accordance with Reorganization Plan No. 4 of 1970, the NMFS, National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the decisions regarding the central California coast coho salmon under the Act. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The FWS is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

The NMFS published its determination of threatened status for the central California coast coho salmon on October 31, 1996 (61 FR 56138). Accordingly, the FWS is now adding it to the List of Endangered and Threatened Wildlife as an endangered species. This addition is effective as of November 30, 1996, as indicated in the NMFS's determination. Because this action of the FWS is nondiscretionary, and in view of the public comment period provided by NMFS on the proposed listing (July 25, 1995; 60 FR 38011), the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

National Environmental Policy Act

The FWS has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act, as amended. A notice outlining the FWS's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Fish, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Fish							
*	*	*	*	*	*		*
Salmon, central California coast coho.	(*Oncorhynchus kisutch*).	U.S.A. (CA)	(U.S.A.—CA). Naturally spawning pops. in streams between Punta Gorda, Humboldt Co, CA and the San Lorenzo River, Santa Cruz, County CA.	T	598	N/A	N/A
*	*	*	*	*	*		*

Dated: November 7, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–29694 Filed 11–19–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960815223–6315–02; I.D. 081296A]

RIN 0648–AI70

Fisheries of the Exclusive Economic Zone off Alaska; Allocations of Pacific Cod in the Bering Sea and Aleutian Islands Area

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 46 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The measures established under Amendment 46 and implemented by this final rule include: Allocation of the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod total allowable catch (TAC) among vessels using trawl gear, fixed gear (hook-and-line and pot), and jig gear; seasonal allowances of the fixed gear allocation of Pacific cod; and procedures for unused portions of one gear's allocation to be reallocated to other gear types. This action is necessary to respond to socioeconomic needs of the fishing industry that have been identified by the North Pacific Fishery Management Council (Council) and is intended to further the goals and objectives of the FMP.

EFFECTIVE DATE: January 1, 1997.

ADDRESSES: Copies of Amendment 46 and the environmental assessment/regulatory impact review (EA/RIR) prepared for Amendment 46 may be obtained from the North Pacific Fishery Management Council, 605 West Fourth Avenue, Suite 306, Anchorage, AK 99501; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Pacific cod fishery in the exclusive economic zone (EEZ) of the BSAI is managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations governing the groundfish fishery of the BSAI are set out at 50 CFR part 679. General regulations governing fisheries in the EEZ are set out at 50 CFR part 600.

Background

At its June 1996 meeting, the Council adopted Amendment 46 and recommended that NMFS prepare a rulemaking to implement the amendment. A notice of availability of Amendment 46 was published in the Federal Register on August 20, 1996 (61 FR 43035), and invited comment on the amendment through October 15, 1996. No written comments were received on the amendment. A proposed rule to implement Amendment 46 was published in the Federal Register on August 22, 1996 (61 FR 43325). Comments on the proposed rule were invited through October 3, 1996. One written comment on the proposed rule was received and is responded to in the Response to Comments section below.

Amendment 46 was approved by NMFS on November 7, 1996, under section 304(b) of the Magnuson Act. This amendment establishes FMP authority to: Allocate the BSAI Pacific cod TAC among vessels using trawl gear, fixed gear, and jig gear; divide the fixed gear allocation of Pacific cod into seasonal allowances; and reallocate unused portions of one gear's allocation to other gear types. Upon reviewing the reasons for Amendment 46, and the comments on the proposed rule to implement it, NMFS has determined that this action is necessary for the conservation and management of the BSAI Pacific cod fishery. Additional information on this action may be found in the preamble to the proposed rule and in the EA/RIR.

Management Measures

The following management measures are established by Amendment 46:

1. The BSAI Pacific cod TAC is allocated among gear types as follows: Fixed gear, 51 percent; trawl gear, 47 percent; and jig gear, 2 percent.
2. The BSAI Pacific cod TAC allocated to vessels using trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors.
3. The BSAI Pacific cod TAC allocated to vessels using fixed gear is divided into three seasons of 4 months each. The percentage of TAC apportioned to each season will be determined by NMFS in consultation with the Council according to the following criteria: The seasonal distribution of prohibited species, the seasonal distribution of Pacific cod relative to prohibited species distribution, the expected variations in Pacific halibut bycatch rates throughout the fishing year, and the economic effects of any seasonal allowance of Pacific cod on the fixed gear fisheries.
4. NMFS may reallocate Pacific cod from vessels using trawl gear to vessels using fixed gear and vice versa anytime during the fishing year that the Administrator, Alaska Region, NMFS (Regional Administrator), determines that one gear group or the other would not be able to harvest its allocation of Pacific cod.
5. Any portion of the Pacific cod TAC allocated to vessels using jig gear and projected by NMFS to be unused by the end of the fishing year will be reallocated to vessels using fixed gear on September 15 of each fishing year.
6. Any unused fixed gear seasonal allocation will be reallocated in a manner determined by NMFS in annual consultation with the Council to promote the goals and objectives of the FMP. This measure could, for example, allow NMFS to reallocate unused fixed gear allocation from the first season to the third season when halibut bycatch rates, product quality, and markets are most advantageous.

Response to Comments

One letter of comment was received on the proposed rule and is summarized and responded to in the comment below:

Comment: We participated in the industry allocation negotiations for Pacific cod and supported the allocation agreement arrived at by the Council's industry negotiating committee. We continue to support the industry agreement and have only one clarification to make regarding NMFS' interpretation of the agreement in the proposed rule.

The proposed rule states that NMFS can reallocate unused portions of the annual Pacific cod TAC that one gear group or the other would not be able to harvest. From our perspective, the industry agreement was based on an understanding that reallocations within the trawl sector could be made, should that become necessary, and that type of reallocation would have the highest priority. The factory trawler sector's acceptance of the new 50/50 split of trawl sector allocation between catcher vessels and factory trawlers, which represents a smaller than historic share for factory trawlers, was in part based on an expectation that NMFS would, as a matter of priority, first reallocate any

Pacific cod TAC unused by one trawl sector to the other trawl sector. This condition is important because the 50/50 trawl split is a new feature and little or no understanding exists of how it will affect the amount of Pacific cod available to the trawl sector as a whole.

Response: NMFS agrees. Language was added to the final rule to clarify that any portion of a trawl gear allocation that is unused by one sector of the trawl fleet will first be made available to the other sector of the trawl fleet before being reallocated to other gear types.

Changes from the Proposed Rule

The only change from the proposed rule is the addition of a paragraph at § 679.20(a)(7)(ii)(A) to clarify that any trawl gear allocation that is unused by one sector of the trawl fleet will first be made available to the other sector of the trawl fleet before being reallocated to other gear types.

Classification

The Regional Administrator determined that Amendment 46 is necessary for the conservation and management of the BSAI Pacific cod fishery and that it is consistent with the Magnuson Act and other applicable laws.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that it would not have a significant economic impact on a substantial number of small entities. The comment received and the change made to the rule in response thereto do not change the reason for that certification.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and Recordkeeping requirements.

Dated: November 13, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*

2. In § 679.20, paragraph (a)(7) is revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(7) *Pacific cod TAC, BSAI*—(i) *TAC by gear.* (A) The BSAI TAC of Pacific cod, after subtraction of reserves, will be allocated 2 percent to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear.

(B) The portion of Pacific cod TAC allocated to trawl gear under paragraph (a)(7)(i)(A) of this section will be further allocated 50 percent to catcher vessels and 50 percent to catcher/processors as defined for the purposes of recordkeeping and reporting at § 679.2.

(C) The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (d) of this section for vessels harvesting Pacific cod using jig gear, hook-and-line or pot gear, or trawl gear.

(ii) *Unused gear allocations*—(A) *Reallocation within the trawl sector.* If, during a fishing year, the Regional Director determines that either trawl catcher vessels or trawl catcher/processors will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraph (a)(7)(i) or (a)(7)(ii)(B) of this section, NMFS will first make the projected unused amount of Pacific cod available to the other trawl vessel sector before any reallocation to vessels using other gear types.

(B) *Reallocation between gear types.* If, during a fishing year, the Regional Director determines that vessels using trawl gear or hook-and-line or pot gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraphs (a)(7)(i) or (a)(7)(iii) of this section, NMFS may reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through notification in the Federal Register.

(iii) *Reallocation of TAC specified for jig gear.* On September 15 of each year, the Regional Director will reallocate any projected unused amount of Pacific cod in the BSAI allocated to vessels using jig gear to vessels using hook-and-line or pot gear through notification in the Federal Register.

(iv) *Seasonal allowances*—(A) *Time periods.* NMFS, after consultation with the Council, may divide the TAC allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i) of this section among the following three periods: January 1 through April 30, May 1 through August 31, and September 1 through December 31.

(B) *Factors to be considered.* NMFS will base any seasonal allowance of the Pacific cod allocation to vessels using hook-and-line and pot gear on the following information:

(*1*) Seasonal distribution of Pacific cod relative to prohibited species distribution.

(*2*) Variations in prohibited species bycatch rates in the Pacific cod fisheries throughout the fishing year.

(*3*) Economic effects of any seasonal allowance of Pacific cod on the hook-and-line and pot-gear fisheries.

(C) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod allocated to vessels using hook-and-line or pot gear will be reallocated to the remaining seasons during the current fishing year in a manner determined by NMFS, after consultation with the Council.

* * * * *

[FR Doc. 96–29677 Filed 11–19–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 225
Wednesday, November 20, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

LSSNet Communication Program; Licensing Support System Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: LSSNet Program: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of a computer-based communications program called ''LSSNet'' to maximize the interaction between the NRC, the LSS Advisory Review Panel, and the public on rulemaking issues related to the Licensing Support System (LSS). The LSS is an electronic information management system established in 10 CFR Part 2, Subpart J, of the Commission's regulations, designed to support the licensing proceeding for the national high-level waste repository. The LSS has not yet been developed. Many features of the rule first adopted in 1988 no longer provide optimal approaches to electronic information management. This topic was a primary discussion item at the May 3, 1996, meeting of the LSS Advisory Review Panel. LSSNet will allow the LSS Advisory Review Panel (LSSARP), other potential users of the LSS, and the public to communicate both with the NRC and among themselves, with a view toward defining LSS rulemaking issues, identifying alternatives to address those issues, and determining the extent of agreement on those alternatives.

DATES: The public can access the LSSNet site beginning November 1, 1996. LSSNet will run from November 20, 1996 through May 20, 1997.

ADDRESSES: The LSSNet World Wide Web site may be accessed with the Uniform Resource Locator http://lssnet.llnl.gov.

FOR FURTHER INFORMATION CONTACT: John C. Voglewede, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7415.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission is undertaking a project designed to use state-of-the-art computer technology to maximize interaction between the NRC, its LSS Advisory Review Panel (LSSARP), and the public on the issue of the integration of new computer technologies into the Licensing Support System (LSS). The LSS is an electronic information management system and was incorporated in the Commission's Rules of Practice at 10 CFR Part 2 Subpart J. The current project, called LSSNet, is intended to serve not only to provide the NRC and the public with valuable information, but also to maximize the usefulness of computer-based communications as a tool in the rulemaking process. LSSNet is intended to maximize the interaction between the NRC, the LSSARP, and the public on rulemaking issues related to the LSS. The LSSARP was chartered under the Federal Advisory Committee Act to advise the NRC on the design, development, and use of the LSS. LSSNet will allow the LSSARP, other potential users of the LSS, and the public to communicate both with the NRC and among themselves, with a view toward defining LSS rulemaking issues, identifying alternatives to address those issues, and determining the extent of agreement on those alternatives.

LSSNet builds on a pilot program, called RuleNet, which the Commission used to demonstrate the feasibility of increasing the interaction between the public and the NRC on the discussion of rulemaking issues through electronic communication technology (see SECY–96–188). Before the initiation of the RuleNet pilot program, the NRC had already introduced significant innovations in the area of rulemaking: through the concept of ''enhanced participatory rulemaking,'' designed to promote early public comment and interaction on rulemaking issues before a proposed rule is developed; through the use of Negotiated Rulemaking as provided in the Negotiated Rulemaking Act of 1988; and through electronic bulletin boards, which allow comments on a proposed rule to be submitted electronically. RuleNet represented a further step toward melding early public comment and interaction, as in the enhanced participatory rulemaking, together with communications technology, developed specially for this purpose, to permit participants to deal with one another and with the NRC by computer.

The potential for computer technology to improve the current rulemaking process can be readily illustrated. In a traditional rulemaking, if a particular matter raises questions in the minds of participants, they have no recourse other than to point out the issue in their written comments. If the rulemaking is on a proposed rule, the commenter may not learn the answer to the question until the final rule is issued. The computer, however, allows the agency staff to analyze the comments and questions received, ascertain which questions arise most often, and then post electronically a list of ''Frequently Asked Questions'' and their answers. In this way, doubtful points can be clarified before, not after, comments are filed.

The dialogue promoted through the LSSNet is not intended to supplant formal comments on any proposed rule that may eventually be developed from the LSSNet process. Rather, LSSNet is intended to provide additional opportunities for those interested in LSS rulemaking issues to provide input to agency personnel before the agency has developed text on which formal written comments are required to be filed. This can mean better informed, focused, and influential comments. Likewise, the ability of these commenters to interact among themselves before comments are filed means that misunderstandings and miscommunications can be corrected in a timely way. However, because the electronic communications will contribute to the information base used by the agency in the rulemaking process, a copy of these communications will be placed in the rulemaking record.

To facilitate the exchange of views, LSSNet provides discussion areas, designed to encourage dialogue among subgroups of participants. These discussion areas will allow participants of similar viewpoints to join together to discuss an issue to maximize their effectiveness. Discussion areas could also be used to allow a specific issue to be placed before all participants for

highly focused consideration. In this way, a particular topic can be considered in detail, the strengths and weaknesses of conflicting positions can be analyzed, and the possibilities of a compromise resolution can be explored. Dialogue may take place either separate from the discussion areas provided in LSSNet by the private interaction of participants, or through the LSSNet discussion areas .

Assistance to the participants will be provided by facilitators who will perform a variety of functions: helping to categorize comments on LSS issues; helping to maximize the usefulness of the electronic communications process; and providing assistance to facilitate on-line and offline discussions, including helping participants to articulate and refine their positions on issues. The facilitators' role will simply be to contribute to the smooth and productive functioning of the process.

Phases of the LSSNet Process

As a preliminary step, necessary to allow meaningful participation in the LSSNet process, the NRC is making relevant information on the LSS available to all who can use it: that is, both potential participants and those who want only to observe the process. Toward this end, the agency has made some basic documents pertaining to the LSS available through LSSNet in full text form.

In the first phase of the process, which will comprise approximately 10 days, the NRC will solicit comment on the challenges and issues identified by the staff and posted under the heading of ''Discussion Topics'' in the LSSNet FORUM. Participants will be permitted to suggest other ''Topics''. The NRC staff will review the comments/''Topics'' posted during the first phase and use them to fashion a number of alternative solutions to the LSS rulemaking issues. During the second phase, participants will have an opportunity to comment on these alternative approaches or to suggest other alternative solutions but no new ''Topics'' will be solicited. After the second phase, the NRC staff will consolidate and synthesize the challenges and the proposed solutions, using them to develop more concrete proposals to the rulemaking issues, including draft rulemaking text if practicable, which will be posted electronically. During the third phase, the participants will then respond to the proposals the staff identified. As before, there will be the opportunity for participants to discuss either within the electronic rulemaking or outside of it. The staff will use the results of the LSSNet interactions in Phase 3 to develop a draft proposed rule which will be submitted to the Commission for review and approval.

Terms of Participation

LSSNet is primarily intended as a forum through which the LSS Advisory Review Panel can advise the Commission on how best to integrate changes in technology into the framework of the LSS. Consequently, the electronic Forum will be reserved for the use of members of the LSSARP and their representatives. As would be the case with face to face meetings, the NRC will ensure compliance with the relevant provisions of the Federal Advisory Committee Act with respect to consensus documents. Thus, where consensus is requested, votes of FACA committee members will be cast and recorded. In keeping with the openness provisions of FACA, interested members of the public will be able to observe the dialogue between the LSSARP and the Commission, and will also be able to post comments on the public segment of LSSNet. The NRC staff will fully consider both LSSARP comments and public comments in refining the rulemaking issues for Commission consideration.

The NRC fully expects that all participants will recognize that certain norms of civility will be observed. (In the event that a participant's conduct was such as to warrant his or her severance from the electronic dialogue, the option of submitting paper comments would remain, but it seems unlikely that this issue would ever arise.)

LSS Rulemaking Issues

The LSS concept grew out of the Commission's concern regarding how best to review the DOE license application for a high-level radioactive waste (HLW) repository. A centralized, electronic database accessible by all parties appeared to offer the opportunity for significant time savings in conducting the licensing proceeding for the repository and, simultaneously, for the enhancement of any party's opportunity for effective participation. Plans for the LSS were first initiated in 1986 and were based on computer technology available in that time frame. It was intended to provide a central, shared, federally funded database of licensing information beginning in 1995. Budgetary shortfalls, however, and the unanticipated length of time that it has taken to develop the licensing application for the repository, not only delayed the development of the LSS, but also resulted in the accumulation of a tremendous amount of potential licensing information, much of which may no longer be relevant to a licensing proceeding which may not begin until about 2002. In addition, since document capture may now involve much larger backlogs than originally contemplated, the risk of failing to capture ALL relevant material in the LSS is substantially larger than originally assumed. While the development of the LSS remained stalled, the state of technology in document automation and retrieval overtook the technology of 1986 on which the original LSS was to be based. With the widespread and common place use of computers to generate and maintain the documents of a party to the HLW licensing proceeding, the universal availability of the Internet to tie disparate and geographically dispersed systems together, and the availability of commercially available software applications relevant to LSS functionalities, the centralized LSS envisioned at the time the LSS rule was developed may be obsolete. Consequently, the Commission intends to evaluate how these new technologies can be integrated into the LSS rule while still maintaining the primary functions of the LSS: (1) A mechanism for the discovery of documents before the license application is filed; (2) electronic transmission of filings by the parties during the proceeding; (3) electronic transmission of orders and decisions related to the proceeding; and (4) access to an electronic version of the docket. It is the intent of the NRC staff to focus this rulemaking on how best to address changes in technology in regard to the LSS. There is no intent to re-visit the basic functionalities of the LSS that are reflected in the current 10 CFR Part 2, Subpart J or the conditions of the negotiated rulemaking.

To attempt to address these issues, the NRC is posting the following ''topics'' to guide the discussion during the first phase of LSSNet:

- What are the costs and benefits of moving from a dedicated, centralized system to a distributed system based on the Internet?
- How should other improvements in computer technology be incorporated into the LSS?
- What provisions of the LSS rule will need to be changed to reflect the incorporation of new technologies?
- How should the backlog of ''uncaptured'', and possibly irrelevant, repository-related information be addressed?
- What would the role of the LSS Administrator be under a distributed system?

• How should advice from potential users of the LSS be provided for?

Dated at Rockville, Maryland, this 14th day of November, 1996.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–29673 Filed 11–19–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–27–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214ST helicopters. This proposal would require replacement of each emergency float inflation solenoid valve (valve). This proposal is prompted by two inadvertent inflations of emergency float systems that resulted from self-activations of the valves. The actions specified by the proposed AD are intended to prevent self-activation of the valves, and subsequent inadvertent inflation of the emergency float system, which could lead to loss of control of the helicopter.

DATES: Comments must be received by January 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–27–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Inc., P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5157; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–SW27–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–27–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD, applicable to BHTI Model 214ST helicopters, equipped with an emergency float kit, part number (P/N) 214–706–120, containing valves, P/N 214–073–929–103 or –105 in the solenoid valve assemblies, P/N 214–073–940–101 and –103. There have been two reported inadvertent inflations of emergency float systems that resulted from self-activations of the valves. An investigation of the two valves involved in the incidents revealed the actuating pins had not properly seated. Additionally, one pin showed evidence of an unauthorized field repair or modification. This condition, if not corrected, could result in self-activation of the valves, and subsequent inadvertent inflation of the emergency float system, which could lead to loss of control of the helicopter.

The FAA has reviewed Bell Helicopter Textron, Inc. Alert Service Bulletin No. 214ST–96–74, dated May 28, 1996, which describes procedures for replacement of all existing valves, P/N 214–073–929–103 and –105, in solenoid valve assemblies, P/N 214–073–940–101 and –103.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 214ST helicopters of the same type design, the proposed AD would require replacement of all existing valves, P/N 214–073–929–103 and –105, in valve assemblies, P/N 214–073–940–101 and –103.

The FAA estimates that 9 helicopters of U.S. registry would be affected by this proposed AD, that it would take 2 work hours per helicopter to replace the valves, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,100 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,980.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron, Inc.: Docket No. 96–SW–27–AD.

Applicability: Model 214ST helicopters, equipped with an emergency float kit, part number (P/N) 214–706–120, containing emergency float inflation solenoid valves, P/N 214–073–929–103 or –105, in solenoid valve assemblies, P/N 214–073–940–101 or –103, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent self-activation of the valves, and subsequent inadvertent inflation of the emergency float system, which could lead to loss of control of the helicopter, accomplish the following:

(a) At the next scheduled ''B'' (250 hour) inspection, or 180-day float inspection, or 3-year float system operational inspection, whichever occurs first, remove solenoid valves, P/N 214–073–929–103 or –105, from solenoid valve assemblies, P/N 214–073–940–101 or –103, and replace with solenoid valves, P/N 214–073–929–107.

Note 2: Solenoid valve assemblies, P/N 214–073–940, consist of a valve, P/N 214–073–929 and a decal, P/N 31–023–8B. Solenoid valve assembly, P/N 214–073–940–105, contains solenoid valve, P/N 214–073–929–107.

(b) Installation of solenoid valves, P/N 214–073–929–107, or solenoid valve assemblies, P/N 214–073–940–105, constitutes terminating action for the requirements of this AD.

Note 3: Bell Helicopter Textron Alert Service Bulletin 214ST–96–74, dated May 28, 1996, pertains to this AD.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

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

Issued in Fort Worth, Texas, on November 7, 1996.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–29610 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–SW–20–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 412 and 412EP Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 412 and 412EP helicopters. This proposal would require creation of a component history card using a Retirement Index Number (RIN) system; would establish a system for tracking increases to the accumulated RIN; and would establish a maximum accumulated RIN for certain main rotor masts (masts) and main rotor spline plates (spline plates). This proposal is prompted by fatigue analyses and tests that show certain masts and spline plates fail earlier than originally anticipated because of an unanticipated high number of takeoffs and external load lifts utilizing high power settings, in addition to the time-in-service (TIS) accrued under normal operating conditions. The actions specified by the proposed AD are intended to prevent fatigue failure of the mast or spline plate, which could result in failure of the main rotor system and subsequent loss of control of the helicopter.

DATES: Comments must be received by January 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–20–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., Product Support Department, P.O. Box 482, Fort Worth, Texas, 76101.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 94–SW–20–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No.

94–SW–20–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This notice proposes the adoption of a new AD that is applicable to BHTI Model 412 and 412EP helicopters. This proposal would require, within the next 100 hours TIS, creation of a component history card using a RIN system for certain masts and spline plates used on the Model 412 and 412EP helicopters; would establish a system for tracking increases to the accumulated RIN; and would establish a retirement life of 80,000 RIN for certain helicopter masts and spline plates, and a retirement life of 60,000 RIN for certain other helicopter masts and spline. Fatigue analyses and tests by the manufacturer show that certain masts and spline plates fail earlier than originally anticipated because of an unanticipated high number of takeoffs and external load lifts utilizing high power settings in addition to the TIS accrued under normal operating conditions. This condition, if not corrected, could result in fatigue failure of the mast or spline plate, which could result in failure of the main rotor system and subsequent loss of control of the helicopter.

The FAA has reviewed BHTI Alert Service Bulletin (ASB) No. 412–94–81, Revision B, dated March 4, 1996, which describes procedures for creation of a component history card within the next 100 hours TIS for Model 412 and 412EP helicopters. The ASB also describes utilizing either a retirement life of 10,000 hours TIS or a maximum accumulated RIN of 80,000, whichever occurs first, for the BHTI Model 412 helicopter mast and spline plate; and a retirement life of 10,000 hours TIS or a maximum accumulated RIN of 60,000, whichever occurs first, for the BHTI Model 412EP helicopter mast and spline plate.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 412 and 412EP helicopters of the same type design, the proposed AD would require creation of a component history card using a RIN system for certain masts and spline plates, establishing a system for tracking increases to the accumulated RIN, and establishing a retirement life of 80,000 RIN for certain helicopter masts and spline plates, and a retirement life of 60,000 RIN for certain other helicopter masts and spline plates. Spline plates and masts used on Model 412EP helicopters will be vibro-etched with ''412HP''. This identifier does not indicate FAA approval or certification of a Model 412HP helicopter.

The FAA estimates that 294 helicopters of U.S. registry would be affected by this proposed AD, and that it would take (1) 8 work hours per helicopter to replace the mast and 10 work hours per helicopter to replace the spline plate; (2) 2 work hours per helicopter to create the component history card or equivalent record (record); (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts would cost approximately $21,635 per mast and $5,675 per spline plate. Based on these figures, the total cost impact of the proposed AD on U.S. operators for the first year is estimated to be $1,602,790, and each subsequent year to be $1,573,390. These costs assume replacement of the mast and spline plate in one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the fleet's records and maintenance of the records for all the fleet each subsequent year.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron Inc.: Docket No. 94–SW–20–AD.

Applicability: Model 412 and Model 412EP helicopters with main rotor mast (mast), part number (P/N) 412–040–101–105, –109, –117, –121, –125, –127, or –129, and main rotor spline plate (spline plate) P/N 412–010–167–105 or P/N 412–010–177–101, –105, –109, –113, or –117, installed, certificated in any category.

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

Compliance: Required within 100 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the mast and spline plate, which could result in failure of the main rotor system and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a component history card or an equivalent record for each affected mast and spline plate. Record the accumulated Retirement Index Number (RIN) on the mast and spline plate component history card(s) as follows:

(1) If the numbers of takeoffs (at any gross weight) and external load lift events are known, and those numbers do not include any external load operation in which the load was picked up at a higher elevation and released at a lower elevation, and the difference in elevation between the pickup point and the release point was 200 feet or greater (high power lift event), increase the accumulated RIN by one for each takeoff and external load lift.

(2) If the numbers of takeoffs (at any gross weight) and external load lifts are known, and the number of external load lifts includes a high power lift event, increase the accumulated RIN by two for each takeoff and two for each external load lift.

(3) For each hour time-in-service (TIS) for which the numbers of takeoffs and external

load lifts are unknown, and the number of external load lifts does not include a high power lift event, increase the accumulated RIN by 10 for each hour TIS.

(4) For each hour TIS for which the numbers of takeoffs and external load lifts are unknown, but the number of external load lifts does include a high power lift event, increase the accumulated RIN by 20 for each hour TIS.

(5) For each hour TIS for which the numbers of takeoffs and external load lifts are unknown, and it is unknown whether the external load lifts include any high-power lift event, increase the accumulated RIN by 20 for each hour TIS.

(b) After compliance with paragraph (a) of this AD, during each operation thereafter, maintain a count of each lift or takeoff performed and at the end of each day's operations, increase the accumulated RIN on the component history card as follows:

(1) Increase the RIN by 1 for each takeoff.

(2) Increase the RIN by 1 for each external load lift, or increase the RIN by 2 for each external load operation in which the load is picked up at a higher elevation and released at a lower elevation, and the difference in elevation between the pickup point and the release point is 200 feet or greater.

(c) Retire the mast and spline plate in accordance with the following:

(1) For the mast, part number (P/N) 412–040–101–105, 109, –117, or –127, used on the Model 412 helicopter upon reaching 10,000 hours TIS or 80,000 maximum RIN, whichever occurs first.

(2) For the mast, P/N 412–040–101–121, –125, or –129, used on the Model 412EP helicopter, upon reaching 10,000 hours TIS or 60,000 maximum RIN, whichever occurs first.

(3) For the spline plate, P/N 412–010–167–105 or P/N 412–010–177–101, or –109, used on the Model 412 helicopter, at 10,000 hours TIS or 80,000 maximum RIN, whichever occurs first.

(4) For the spline plate, P/N 412–010–167–105 or P/N 412–010–177–101, –105, –113, or –117, used on the Model 412EP helicopter, at 10,000 hours TIS or 60,000 maximum RIN, whichever occurs first.

(d) For spline plate, P/N 412–010–167–105 or P/N 412–010–177–101, –105, –113, or –117, installed on Model 412EP helicopters, at the next scheduled teardown inspection, beside the P/N on the side of the spline plate, vibro-etch ''412HP'' and annotate in the component history card or equivalent record ''412HP/EP only'' to reflect that this spline plate can only be installed on the Model 412EP helicopter, and not on any other Model 412 helicopter. Retire the spline plates that have been vibro-etched with ''412HP'' on or before accumulating 10,000 hours TIS or 60,000 RIN, whichever occurs first.

Note 2: Bell Helicopter Textron, Inc. Alert Service Bulletin No. 412–94–81, Revision B, dated March 4, 1996, pertains to this subject.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

Issued in Fort Worth, Texas, on November 6, 1996.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–29609 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–218–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes, that currently requires, among other things, repetitive visual inspections to detect discrepancies of the fuel pipe of the fuel transfer system of the tail tank and associated mounting bracket located in the aft fuselage compartment. That AD was prompted by reports of cracking or bending of the fuel pipe mounting support and/or attaching bracket in the aft fuselage compartment due to a fuel pressure surge that caused repetitive loading of this area. This action would add a requirement to install a restraint on the tail tank fuel pipe, which would terminate the repetitive visual inspections. The actions specified by the proposed AD are intended to prevent such cracking/bending, which could expose the fuel pipe coupling O-ring. An exposed O-ring could lose its sealing effect and could allow a fuel leak in the aft fuselage compartment, which would present a fire hazard.

DATES: Comments must be received by December 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ray Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5262; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–218–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 1, 1996, the FAA issued AD 96–14–07, amendment 39–9691 (61 FR 35946, July 9, 1996), applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. That AD requires:

1. repetitive visual inspections to detect discrepancies (i.e., cracks or deformation) of the fuel pipe of the fuel transfer system of the tail tank and associated mounting bracket located in the aft fuselage compartment; and

2. repetitive inspections to verify the correct position of the fuel pipe flange, and various follow-on actions.

That action was prompted by reports of cracking or bending of the fuel pipe mounting support and/or attaching bracket in the aft fuselage compartment due to a fuel pressure surge that caused repetitive loading of this area. The requirements of that AD are intended to prevent such cracking/bending, which could expose the fuel pipe coupling O-ring. An exposed O-ring could lose its sealing effect and could allow a fuel leak in the aft fuselage compartment, which may result in a possible in-flight or ground fire.

In the preamble to AD 96–14–07, the FAA specified that the actions required by that AD were considered ''interim action'' and that the manufacturer was developing a modification to positively address the unsafe condition. The FAA indicated that it may consider further rulemaking action once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and the FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–28–082, dated July 29, 1996, which describes procedures for installation of a restraint on the tail tank fuel pipe. The restraint will minimize the migration of the fuel pipe and reduce the possibility of fuel leaks. Accomplishment of the installation would eliminate the need for the repetitive visual inspections.

The FAA finds that accomplishment of the installation described in McDonnell Douglas Service Bulletin MD11–28–082 will positively address the unsafe condition identified as possible in-flight or ground fire due to fuel leaking from the fuel pipe coupling.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–14–07 to continue to require repetitive visual inspections to detect discrepancies (i.e., cracks or deformation) of the fuel pipe of the fuel transfer system of the tail tank and associated mounting bracket located in the aft fuselage compartment and to verify the correct position of the fuel pipe flange, and various follow-on actions. The proposed AD also would require installation of a restraint on the tail tank fuel pipe, which would constitute terminating action for the repetitive visual inspections requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

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

Cost Impact

There are approximately 152 McDonnell Douglas Model MD–11 and MD–11F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 96–14–07, and retained in this proposed AD, take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $15,120, or $360 per airplane, per inspection cycle.

The new actions that are proposed in this AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $7,560, or $180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9691 (61 FR 35946, July 9, 1996), and by adding a

new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 96–NM–218–AD. Supersedes AD 96–14–07, Amendment 39–9691.

Applicability: Model MD–11 and MD–11F series airplanes, manufacturer's fuselage numbers 0447 through 0599 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the possibility of an in-flight or ground fire due to fuel leaking from the fuel pipe coupling, accomplish the following:

Restatement of Requirements of AD 96–14–07, Amendment 39–9691

(a) Perform a visual inspection to detect discrepancies (i.e., cracks or deformation) of the fuel pipe of the fuel transfer system of the tail tank and associated mounting bracket located in the aft fuselage compartment; and to verify the correct position of the fuel pipe flange, in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A082, dated May 14, 1996; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes on which the modification specified in McDonnell Douglas Service Bulletin 28–22, dated September 24, 1991, has been accomplished; or that have been repaired in accordance with an FAA-approved repair procedure, as specified in paragraph (a)(3) of AD 91–24–09, amendment 39–8095; or on which the shroud assembly has been replaced with a serviceable part: Prior to the accumulation of 600 flight hours, or within 60 days after July 24, 1996 (the effective date AD 96–14–07, amendment 39–9691), whichever occurs later.

(2) For airplanes on which the modification specified in McDonnell Douglas Service Bulletin 28–22, dated September 24, 1991, has not been accomplished: Prior to the accumulation of 600 flight hours, or within 60 days since accomplishment of the last visual inspection in accordance with AD 91–24–09, amendment 39–8095; whichever occurs first.

(b) Condition 1. No Discrepancy Found. If no discrepancy is detected during any visual inspection required by paragraph (a) of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Condition 1. Option 1. Repeat the visual inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 600 flight hours or 60 days, whichever occurs later. Or

(2) Condition 1. Option 2. Prior to further flight, install a temporary phenolic support block assembly, shim, clamp, and bracket between the tail tank fuel pipe and station Y=2033.750 bulkhead, in accordance with Condition 1, Option 2, of McDonnell Douglas Alert Service Bulletin MD11–28A082, dated May 14, 1996. Within 6 months after accomplishment of this installation, perform a one-time inspection to verify the correct position of the temporary support block assembly installation in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin.

(i) If the assembly is found to be positioned properly, repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

(ii) If the assembly is found to be improperly positioned, prior to further flight, reposition the fuel pipe in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin. Repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

(c) Condition 2. Discrepancy Found; O-Ring Not Exposed. If any discrepancy is detected, and the fuel pipe is found to be improperly positioned, but the O-ring is not exposed, during any visual inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Condition 2. Option 1. Repeat the visual inspection in paragraph (a) of this AD thereafter at intervals not to exceed 600 flight hours or 60 days, whichever occurs later. Or

(2) Condition 2. Option 2. Prior to further flight, install a temporary phenolic support block assembly, shim, clamp, and bracket between the tail tank fuel pipe and station Y=2033.750 bulkhead; and reposition the fuel pipe assembly, as applicable; in accordance with Condition 2, Option 2, of McDonnell Douglas Alert Service Bulletin MD11–28A082, dated May 14, 1996. Within 6 months after accomplishment of this installation, perform a one-time inspection to verify the correct position of the temporary support block assembly installation in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin.

(i) If the assembly is found to be positioned properly, repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

(ii) If the assembly is found to be improperly positioned, prior to further flight, reposition the fuel pipe in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin. Repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

(d) Condition 3. Discrepancy Found; O-Ring Exposed. If any discrepancy is detected, and the fuel pipe is found to be improperly positioned, and the O-ring is exposed, during any visual inspection required by paragraph (a) of this AD, prior to further flight, replace the O-ring with a new O-ring, and install a temporary phenolic support block assembly, shim, clamp, and bracket between the tail tank fuel pipe and station Y=2033.750 bulkhead, in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A082, dated May 14, 1996. Within 6 months after accomplishment of the replacement and installation, perform a one-time inspection to verify the correct position of the temporary support block assembly installation in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin.

(1) If the assembly is found to be positioned properly, repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

(2) If the assembly is found to be improperly positioned, prior to further flight, reposition the fuel pipe in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin. Repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

New Requirements of This AD

(e) Within 24 months after the effective date of this AD, install a restraint on the tail tank fuel pipe in accordance with McDonnell Douglas Service Bulletin MD11–28–082, dated July 29, 1996. Accomplishment of the installation constitutes terminating action for the repetitive inspection requirements of this AD.

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

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

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

Issued in Renton, Washington, on November 13, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–29607 Filed 11–19–96; 8:45 am]

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14 CFR Part 39

[Docket No. 96–NM–97–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require a one-time inspection for damage caused by arcing and overheating of the electrical ground posts (''earth posts'') and ground cables for the direct current (DC) power generation and propeller de-icing systems of the left and right engines; and repair and replacement, if necessary. The proposed AD also would require the eventual replacement of earth posts with new posts. This proposal is prompted by reports indicating that earth posts on some airplanes have failed due to overheating. The actions specified by the proposed AD are intended to prevent potential consequences of overheating, such as failure of the DC power generation and propeller de-icing systems.

DATES: Comments must be received by December 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–97–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that it has received reports indicating that electrical ground posts (''earth posts'') for the direct current (DC) power generation and propeller de-icing systems of the left and right engines have failed on some Model 4101 airplanes due to overheating. Ground cables (''earth cables'') from the DC power generation and de-icing systems are attached to the earth post, and when the earth post is loosened, it can overheat and fail. Overheating of the earth post, if not corrected, could have several consequences, such as:

—Failure of the DC power generation and de-icing systems,
—Creation of a fire hazard,
—Incorrect actions by the flight crew who are relying on engine data that could be distorted by a discrepant earth post; and
—Structural erosion, which can weaken adjacent structures.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin J41–24–033, Revision 2, dated January 24, 1996, which describes procedures for a one-time inspection to detect damage and signs of overheating of the earth posts, earth post brackets, and earth cables of the left and right engines. It also describes procedures for repair and replacement of discrepant posts; as well as for replacement of discrepant earth cables. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 007–01–96, dated February 22, 1996, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to detect damage or signs of overheating of the earth posts and earth cables for the DC power generation and propeller de-icing systems of the left and right engines. It would require, prior to further flight, repair and replacement of damaged earth posts with new posts, and replacement of damaged earth cables with new or serviceable cables. The proposed AD also would require the eventual replacement of all earth posts on all affected airplanes. The repair of damaged earth posts would be required to be accomplished in accordance with a method approved by the FAA; all other actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 44 Jetstream Model 4101 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 8 work hours per airplane to accomplish the proposed inspection, at an average labor

rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $21,120, or $480 per airplane.

It would take approximately 8 work hours per airplane to accomplish the proposed replacement of earth posts, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no charge. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $21,120, or $480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Jetstream Aircraft Limited: Docket 96–NM–97–AD.

Applicability: Model 4101 airplanes having constructor number 41004 through 41074 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the electrical ground posts (''earth posts'') for the direct current (DC) power generation and de-icing systems of the left and right engines, which could result in such things as failure of these systems, accomplish the following:

(a) Within 300 hours time-in-service after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD on both the left and right engines:

(1) Inspect each earth post and earth post bracket to detect damage caused by arcing, signs that it has been overheated, and lateral movement of the earth post, in accordance with Part A of Jetstream Service Bulletin J41–24–033, Revision 2, dated January 24, 1996. If any discrepancy is detected, prior to further flight, accomplish both paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) Repair any damage and lateral movement in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; and

(ii) Replace the earth post with a new earth post in accordance with Part B of the service bulletin.

(2) Inspect each ground cable (earth cable) for the DC power generation and propeller de-icing systems to detect damage caused by arcing, and signs that the terminal tags and cable insulation have been overheated, in accordance with Part A of the service bulletin. If any discrepancy is detected, prior to further flight, replace the earth cable with a new or serviceable cable, in accordance with Part A of the service bulletin.

(b) Within 6 months after the effective date of this AD, replace each earth post with a new earth post, in accordance with Part B of Jetstream Service Bulletin J41–24–033, Revision 2, dated January 24, 1996. Any earth post that is replaced in accordance with paragraph (a)(1)(ii) of this AD need not be replaced again under the requirements of this paragraph.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

Issued in Renton, Washington, on November 13, 1996.

James V. Devany, Acting Manager,

Transport Airplane Directorate, Dircraft Certification Service.

[FR Doc. 96–29606 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 95–AWP–26]

Proposed Establishment of Class D Airspace; Victorville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish the Class D airspace area at Victorville, CA. The extension of Southern California International Airport Air Traffic Control Tower operating hours has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Southern California International Airport, Victorville, CA.

DATES: Comments must be received on or before November 30, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 95–AWP–26, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief

Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWP–26.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class D airspace area at Victorville, CA. The extension of Southern California International Airport Air Traffic Control Tower operating hours has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Southern California International Airport, Victorville, CA. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Victorville, CA [New]

Victorville, Southern California International Airport, CA
(Lat. 34°35.67′ N, long. 117°22.93′ W)

That airspace extending upward from the surface to 5,400 feet MSL within a 6-mile radius of the Victorville, Southern California International Airport, CA. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on November 4, 1996.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–29684 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–8]

Proposed Establishment of Class E Airspace; Hemet, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace area at Hemet, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 05 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Hemet-Ryan Airport, Hemet, CA.

DATES: Comments must be received on or before December 16, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–8, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination on the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace area at Hemet, CA. The development of a GPS SIAP at Hemet-Ryan Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 05 SIAP at Hemet-Ryan Airport, Hemet, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulations only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AWP CA E5 Hemet, CA [New]

Hemet-Ryan Airport, CA
(lat. 33°44′02″ N, long. 117°01′21″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Hemet-Ryan Airport and within 2 miles each side of the 242° bearing from the Hemet-Ryan Airport extending from the 6-mile radius to 10.2 miles southwest of Hemet-Ryan Airport, excluding the Riverside, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on November 4, 1996.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–29685 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–30]

Proposed Revision of Class E Airspace; Victorville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise the Class E airspace area at Victorville, CA. The closure of George Air Force Base has made this proposal necessary. The intended effect of this proposal is to redefine the controlled airspace necessary for IFR operations at Southern California International Airport, Victorville, CA.

DATES: Comments must be received on or before November 30, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–30, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief

Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–30.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace area at Victorville, CA. The closure of George Air Force Base has made this proposal necessary. The intended effect of this proposal is to redefine the controlled airspace necessary for IFR operations at Southern California International Airport, Victorville, CA. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996 and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E Airspace

* * * * *

AWP CA E Victorville, CA [Revised]

Victorville, Southern California International Airport, CA
(Lat. 34°35.67′N, long. 117°22.93'W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Victorville, Southern California International Airport, CA.

* * * * *

Issued in Los Angeles, California, on November 4, 1996.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–29683 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Proposed Rule: Requirements for Child-Resistant Packaging; Packages Containing More Than 50 mg of Ketoprofen

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a rule to require child-resistant packaging for ketoprofen preparations containing more than 50 mg of ketoprofen per retail package. Ketoprofen is a nonsteroidal anti-inflammatory drug and is used to relieve minor aches and pains and to reduce fever. The Commission has preliminarily determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting ketoprofen. The Commission takes this action under the authority of the Poison Prevention Packaging Act of 1970.

DATES: Comments on the proposal should be submitted no later than February 3, 1997.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502,

4330 East-West Highway, Bethesda, Maryland 20814–4408, telephone (301) 504–0800.

FOR FURTHER INFORMATION CONTACT: Jacqueline Ferrante, Ph.D., Division of Poison Control and Scientific Coordination, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477 ext. 1199.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 (''PPPA''), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the ''special packaging'' of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging, also referred to as ''child-resistant (CR) packaging,'' is packaging that (1) is designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) is not difficult for ''normal adults'' to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: ''This package for households without young children.'' 15 U.S.C. 1473(a), 16 CFR 1700.5.

2. Ketoprofen

Ketoprofen is a nonsteroidal anti-inflammatory drug (''NSAID''). This class of compounds also includes ibuprofen and naproxen. Ketoprofen is used to relieve minor aches and pains such as those associated with colds, toothaches, menstrual cramps, and muscular aches. It is also used to reduce fever.[2] [1]

For the past ten years, ketoprofen has been a prescription drug. Like all prescription drugs, it was required to be in child-resistant packaging by the Commission's regulation of human oral prescription drugs, 16 CFR 1700.14(a)(10). The U.S. patent on ketoprofen expired in 1993. On October 6, 1995, the Food and Drug Administration (''FDA'') granted nonprescription (''over-the-counter,'' or ''OTC'') status to ketoprofen. [2]

The OTC formulations, ketoprofen and ketoprofen tartrazine, contain 12.5 milligrams (mg) of ketoprofen per dose. The recommended dose is 1 tablet every 4 to 6 hours. The maximum daily dose is 6 tablets. The drug is not recommended for children under 16 years old except under the supervision of a doctor. OTC ketoprofen should not be used (1) with any other analgesic or anti-pyretic, (2) for more than 3 days for fever, (3) for more than 10 days for pain, or (4) during the last trimester of pregnancy unless directed by a physician. [2]

3. Special Packaging

The current marketers are voluntarily placing ketoprofen in child-resistant packaging. However, a mandatory special packaging standard for ketoprofen products would ensure that other companies that may market such products in the future would use CR packaging.

Two other NSAIDs that previously became available OTC are ibuprofen and naproxen. After ibuprofen was introduced OTC, there was an increased incidence of accidental ingestions of the drug by children under 5. [2]

In part to avoid a similar experience with naproxen, in 1995, the Commission then issued a rule requiring CR packaging for naproxen preparations containing 250 mg or more per retail package. 60 FR 38671. The rule became effective February 6, 1996. Similar reasoning applies to ketoprofen.

A mandatory standard for ketoprofen would also enable the Commission to ensure that the packaging used meets the performance requirements of the PPPA test protocol at 16 CFR 1700.15, 1700.20.

B. Toxicity of Ketoprofen

The Commission's Directorate for Epidemiology and Health Sciences reviewed the toxicity of ketoprofen. Side effects commonly associated with ketoprofen, as with other NSAID's, are gastrointestinal (GI) complications. These include nausea, vomiting, diarrhea, constipation, heartburn, and abdominal pain. Other common adverse effects include headache, dizziness, visual disturbances, rash, and hypersensitivity reactions.[2]

Ketoprofen may also cause more severe adverse GI effects, such as gastric or duodenal ulcer with bleeding or perforation; intestinal ulcers; ulcerative stomatitis or colitis; gingival ulcer; perforation and hemorrhage of the esophagus, stomach, small or large intestine; hematemesis; and rectal bleeding. Renal injuries also may result from chronic use of ketoprofen.[2]

The staff reviewed the relevant medical literature which cites several cases of severe adverse reactions to ketoprofen administration. In one case, a 61 year old woman suffered acute renal failure after taking 400 mg of ketoprofen daily for 10 days. She recovered after peritoneal dialysis. In addition, the literature reports one case of pancreatitis after 12 days of ketoprofen therapy and two cases of ketoprofen induced hepatitis. Other cases reported in the literature involved co-ingestion of other substances.[2]

The FDA maintains a data base known as the Adverse Events Reporting System (''AERS'') for reports of adverse reactions detected after marketing a drug or biological product. Drug manufacturers are required to report to the FDA any known adverse effects associated with their products, but only an estimated 1% of all adverse reactions are actually reported. Also, reports may reflect effects from an underlying disease process or a reaction to multiple drugs. Of the 903 ketoprofen-associated cases reported to the FDA between 1986 and October 1995, the most common adverse reactions were abdominal pain (122), diarrhea (87), nausea (82), GI hemorrhage (70), rash (55), indigestion (39), labored breathing (34), allergic reaction (30), dizziness (30), and hives (30).[2]

Among the ketoprofen cases in the AERS database are 51 more serious reactions, i.e., hospitalizations, reactions resulting in permanent disability, or deaths. Five of these involved children under 16 years of age. Three 15 year old children required hospitalization for severe renal injury, and one 15 year old suffered a life-threatening GI hemorrhage and perforation. These events followed 10–18 days of therapy with daily doses of 200–225 mg ketoprofen. A 10 year old also required hospitalization for severe

[1] Numbers in brackets refer to documents listed at the end of this notice.

vision abnormalities after 15 days of treatment with 150 mg ketoprofen.[2]

The medical literature reports 2 overdoses, both involving other substances as well. In one case, a 12 year old girl ingested an unknown amount of ketoprofen plus 12 hydrocodone/acetaminophen tablets. She developed tonic-clonic seizures with loss of consciousness and metabolic acidosis. The symptoms resolved within 2 hours and she recovered fully. In the other incident, an adult ingested 12 capsules of sustained release ketoprofen 200 mg (total=2.4 grams) with 375 milliliters (12.5 ounces) of vodka. Only mild effects resulted since the victim vomited within 1 hour of the ingestion.[2]

The AERS database reports no pediatric ketoprofen overdoses, but there were some incidents involving adults. One intentional overdose of 1,000 mg ketoprofen resulted in moderate to severe kidney injury (kidney pain, bloody urine, increase creatinine levels). Ingestion of 500 mg of ketoprofen plus an unknown amount of ciprofloxacin produced death in a 50 year old woman. The symptoms which included GI hemorrhage, thrombocytopenia, coagulation disorders, and decreased prothrombin, were most likely related to ketoprofen.[2]

The AERS system also reports two neonatal poisoning cases in which the mothers took ketoprofen at some point in their pregnancy. One infant died shortly after birth from acute renal failure. In the second case (which involved multiple medications) twins developed acute renal failure shortly after birth. One twin died and the other recovered but was neurologically impaired.[2]

The staff reviewed accidental ingestion data for children under age 5. The American Association of Poison Control Center (''AAPCC'') collects incident data through its Toxic Exposure Surveillance System (''TESS'') which covers incidents from 1985 to 1994. Poisoning incidents involving ketoprofen are not recorded separately from other NSAIDs unless they were fatal. No deaths involving ketoprofen were reported during this period.[2]

CPSC's data base, the National Electronic Injury Surveillance System (''NEISS'') monitors emergency room visits to selected hospitals throughout the United States. Review of NEISS data from 1988 to June 1996 shows three cases involving ketoprofen and children under 5 years old. All three incidents occurred in 1996. None were fatal or required hospitalization.[2]

C. Level for Regulation

The Commission is proposing a rule that requires special packaging for OTC ketoprofen products containing more than 50 mg ketoprofen per retail package. This level is based on established guidelines for medical treatment following pediatric ingestion of NSAID's.[5] These guidelines suggest medical treatment for young children who ingest five times the maximum single therapeutic dose. For ketoprofen, the maximum single therapeutic dose is 75 mg or 1.08 mg/kg assuming an average adult weight of 70 kg. The dose of ketoprofen requiring medical intervention would be five times 1.08 mg/kg, which in a 10-kg child would be more than 50 mg of ketoprofen, or four OTC tablets.[2]

D. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning children's ingestion of ketoprofen demonstrate that this compound can cause serious illness and injury to children. Moreover, the preparations are readily available to children. The Commission preliminarily concludes that a regulation is needed to ensure that products subject to the regulation will be placed in CR packaging by any new manufacturers. In addition, the regulation will enable the Commission to enforce the CR packaging requirement and ensure that effective CR packaging is used.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission preliminarily finds that the degree and nature of the hazard to children from ingesting ketoprofen is such that special packaging is required to protect children from serious illness. The Commission bases this finding on the toxic nature of these products, described above, and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required to find that the special packaging is ''technically feasible, practicable, and appropriate.'' 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use.[4]

The current marketers of OTC ketoprofen voluntarily use packaging that is child resistant. Similar designs have been shown to meet the revised testing protocol for senior adult use effectiveness. Therefore, the Commission concludes that CR packaging for ketoprofen is technically feasible, practicable, and appropriate.[3]

3. Other Considerations

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this notice, and preliminarily finds no reason to conclude that the rule is unreasonable or otherwise inappropriate.

E. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

The Commission does not believe that a shorter effective date is necessary to protect the public interest. The companies that are currently marketing ketoprofen are voluntarily using CR packaging. The Commission does not have any indication that significant quantities of ketoprofen will be marketed in non-CR packaging before a 180 day effective date, except for a single size non-CR package as allowed under the PPPA. Thus, the Commission finds that a 180 day effective date is consistent with the public interest and proposes that a final rule would take effect 180 days after publication of the final rule. A final rule would apply to products that are packaged on or after the effective date.

F. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.,

generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to require special packaging for ketoprofen preparations with more than 50 mg ketoprofen in a single package. Based on this assessment, the Commission concludes that such a requirement would not have a significant impact on a substantial number of small businesses or other small entities because the current marketers of ketoprofen are using CR packaging. Furthermore, the relatively low costs of CR packages should not be an entry burden for future marketers.

G. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed PPPA requirements for ketoprofen preparations.

The Commission's regulations state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraph (a)(25), reading as follows (although unchanged, the introductory text of paragraph (a) is republished below for context):

§ 1700.14 Substances requiring special packaging.

(a) Substances. The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(25) Ketoprofen. Ketoprofen preparations for human use and containing more than 50 mg of ketoprofen in a single retail package shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c).

* * * * *

Dated: November 15, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, ''Proposed Rule to Require Child-Resistant Packaging for Ketoprofen,'' October 15, 1996.
2. Memorandum from Susan C. Aitken, Ph.D., HSHE, to Jacqueline Ferrante, Ph.D., HSPS, ''Toxicity of Ketoprofen,'' August 19, 1996.
3. Memorandum from Marcia P. Robins, ECSS, to Jacqueline Ferrante, Ph.D., HSPS, ''Preliminary Assessment of Economic and Environmental Effects of a Proposal to Require Child-Resistant Packaging for OTC Pharmaceuticals Containing Ketoprofen,'' August 19, 1996.
4. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, ''Technical Feasibility, Practicability, and Appropriateness Determination for the Proposed Rule to Require Child-Resistant Packaging for OTC Products Containing Ketoprofen,'' August 20, 1996.
5. Vale, J.S. and Meredith, T.J. Acute Poisoning Due to Non-steroidal Anti-inflammatory Drugs: Clinical Features and Management. Med. Toxicol. 1:12–31, 1986.

[FR Doc. 96–29691 Filed 11–19–96; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232 and 240

[Release No. 34–37949; File No. S7–21–96]

RIN 3235–AG99

Lost Securityholders

AGENCY: Securities and Exchange Commission.

ACTION: Extension of the comment period.

SUMMARY: The Securities and Exchange Commission (''Commission'') is extending from October 28, 1996, until November 27, 1996, the comment period for Securities Exchange Act Release No. 37595 (August 22, 1996), 61 FR 44249 (August 28, 1996). In the release the Commission proposed two rules which are designed to address the problem of ''lost securityholders.''

DATES: Comments on the release should be submitted on or before November 27, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549, and should refer to File No. S7–21–96. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. The file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying at the Commission's public reference room, 450 Fifth St., NW, Washington DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director; Christine Sibille, Senior Counsel; or Michele Bianco, Attorney; at 202/942–4187, Office of Risk Management and Control, Mail Stop 5–1, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On August 22, 1996, the Commission proposed two rules designed to address the problem of securityholders for whom a transfer agent or broker-dealer no longer has a current address. Rule 17Ad–17 would require transfer agents to conduct searches in an effort to locate lost securityholders. Rule 17a–24 would allow the Commission to gather data related to lost securityholders and to provide it to information distributors or others. The Commission also is seeking

comments on the extent to which further regulatory or remedial steps are necessary, including whether the Commission should operate a national database for lost securityholders. The Commission requested that comments on the proposed rulemaking be received by October 28, 1996.

Commission staff believes that given the novelty of the issues involved, commenters may need an extension of time within which to comment on the proposed rulemaking. In light of the novel nature of the proposed rulemaking and the Commission's desire to consider the views of all interested persons on the subject, the Commission believes that an extension of the comment period is appropriate. Therefore, the comment period for responding to Securities Exchange Act Release No. 35795 is extended from October 28, 1996, until November 27, 1996.

By the Commission.

Dated: November 15, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29644 Filed 11–19–96; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDO8–96–049]

RIN 2115–AE47

Drawbridge Operation Regulation; Back Bay of Biloxi, MS

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Harrison County Board of Supervisors, the Coast Guard is proposing a change to the regulation governing the operation of the bascule span Popps Ferry Bridge across the Back Bay of Biloxi, mile 8.0, in Biloxi, Harrison County, Mississippi. Presently, the draw of the bridge is required to open on signal at all times. This action would relieve vehicular traffic congestion on the bridge during peak rush hour periods, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before January 21, 1997.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or may be delivered to Room 1313 at the same address between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard for envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Discussion of Proposed Rule

The present regulation requires that the draw of the bridge open on signal at all times. The Harrison County Board of Supervisors has requested that the draw be permitted to remain closed to navigation from 7:30 a.m. to 9 a.m., 11:30 a.m. to 1:30 p.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, because vehicular traffic crossing the bridge during these peak rush hour traffic periods has increased dramatically during recent years and bridge openings at these times paralyze vehicular traffic movement, since the City of Biloxi is bisected by the Popps Ferry Bridge. This is the only route available to mid-city commuters without an extremely long detour to cross one of the two other bridges that connect the City of Biloxi. The new proposed regulation would allow for free flow of vehicular traffic, while still serving the reasonable needs of navigational interests.

The Popps Ferry bridge is a double leaf bascule span structure. Navigational clearances provided by the bridge are 25 feet vertical above mean high water in the closed to navigation position and unlimited in the open to navigation position. Horizontal clearance is 180 feet. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft. Data provided by the Harrison County Board of Supervisors show that from May 1994 through May 1995, the number of vessels that passed the bridge during the proposed 7:30 to 9 a.m. closure period averaged 0.4 vessels per day, the number of vessels that passed the bridge during the proposed 11:30 a.m. to 1:30 p.m. closure period averaged 0.5 vessels per day and the number of vessels that passed the bridge during the proposed 4:30 to 6 p.m. closure period averaged 0.4 vessels per day. Vehicular traffic that crosses the bridge during the proposed closure period of 7:30 to 9 a.m. averages 268 vehicles per day. From 11:30 a.m. to 1:30 p.m., 860 vehicles cross the bridge per day and from 4:30 to 6 p.m., 540 vehicles cross the bridge per day. These vehicular traffic averages were taken over a recent period of eleven weekdays. Vessel traffic through this bridge remains relatively constant, while vehicular traffic is increasing slowly but steadily as development in the area occurs.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number or small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2)

governmental jurisdictions with populations of less than 50,000.

The proposed rule considers the needs of local commercial fishing vessels, as the study of vessels passing the bridge included such commercial vessels. These local commercial fishing vessels will continue to be able to pass the bridge in the early morning, early afternoon and evening hours. Thus, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2.(g)(5) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102.587, 106 Stat. 5039.

2. Section 117.675 is amended by adding a new paragraph (c) to read as follows:

§ 117.675 Back Bay of Biloxi.

* * * * *

(c) The draw of the Popps Ferry Road bridge, mile 8.0, at Biloxi, shall open on signal except that, from 7:30 to 9 a.m., from 11:30 a.m. to 1:30 p.m. and from 4:30 to 6 p.m. Monday through Friday except Federal holidays, the draw need not be opened for passage of vessels. The draw shall open at any time for a vessel in distress.

Dated: October 25, 1996.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 96–29686 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 27, and 97

[GN Docket No. 96–228; FCC 96–441]

Wireless Communications Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this *Notice of Proposed Rule Making* (''*NPRM*''), the Federal Communications Commission (''Commission'') proposes to establish a new Wireless Communications Service (''WCS'') in the 2305–2320 and 2345–2360 MHz bands. This action is being taken pursuant to the Omnibus Consolidated Appropriations Act, 1997 (''Appropriations Act''). The intended effect of this action is to make thirty megahertz of spectrum available for the provision of fixed, mobile, radiolocation services, or satellite Digital Audio Radio Services (''satellite DARS'').

DATES: Comments must be submitted on or before December 4, 1996 and reply comments must be submitted on or before December 16, 1996.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450, or Matthew Moses or Joshua Roland, Wireless Telecommunications Bureau at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM in GN Docket No. 96–228, adopted on November 8, 1996, and released on November 12, 1996. The complete *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington D.C. 20037. The complete *NPRM* is also available on the Commission's Internet home page (http://www.fcc.gov/).

Summary of NPRM

I. Introduction

1. By this action, we propose to establish a new Wireless Communications Service (''WCS'') in the 2305–2320 and 2345–2360 MHz bands. We also propose to award one or more WCS licenses by competitive bidding using multiple round electronic auction procedures. We further propose to permit the WCS licensee to provide any fixed, mobile, radiolocation services, or satellite Digital Audio Radio Services (''satellite DARS''), consistent with the international *Radio Regulations*. Finally, we propose to establish service and technical rules to ensure that harmful interference is not caused to other radio services. We believe that these proposals will enable WCS licensees to use their spectrum in the most technically and economically efficient manner practicable. This action is being taken pursuant to the Omnibus Consolidated Appropriations Act, 1997, P.L. 104–208, 110 Stat. 3009 (1996). (''Appropriations Act'').

II. Background

A. Appropriations Act

2. The Appropriations Act requires the Commission to reallocate the frequencies at 2305–2320 and 2345–2360 MHz to wireless services that are consistent with international agreements concerning spectrum allocations, and to assign the use of such frequencies by competitive bidding pursuant to Section 309(j) of the Communications Act of 1934 (''Communications Act''). *See* 47 U.S.C. 309(j). In addition, the Appropriations Act requires that the Commission, in making these bands of frequencies available for competitive bidding, seek to promote the most efficient use of the spectrum, and take into account the needs of public safety radio services. The Appropriations Act also requires that the Commission commence the competitive bidding process for the assignment of the frequencies made available by this action no later than April 15, 1997. Finally, the Appropriations Act requires the Commission to conduct the competitive bidding for these frequencies in a manner that ensures that all proceeds of the bidding are deposited in accordance with Section 309(j)(8) of the

Communications Act, not later than September 30, 1997.

3. In order to make this spectrum available for licensing quickly, the Appropriations Act grants the Commission permission to use expedited administrative procedures. Specifically, the Appropriations Act states that rules governing the frequencies made available by this proceeding will be effective immediately upon publication in the Federal Register. The Appropriations Act makes inapplicable to this rule making proceeding the contrary requirements of 5 U.S.C. 553(d) (Administrative Procedure Act provision that a substantive rule must generally be published in the Federal Register at least 30 days before its effective date) and 5 U.S.C. §§ 801(a)(3) and 806(a) (Contract With America Advancement Act provisions). The Appropriations Act further provides that 5 U.S.C. Chapter 6 (regulatory flexibility analysis requirements) and 44 U.S.C. 3507 and 3512 (information collection requirements) will not apply to the rules and competitive bidding procedures governing the frequencies at issue here. Further, the statute provides that the Commission may grant a license application for these frequencies no earlier than seven days following issuance of a public notice of the acceptance for filing of the application or major amendment thereto, notwithstanding the 30-day public notice provisions of 47 U.S.C. 309(b). Finally, the statute provides that the Commission may specify a period that is not less than five days following issuance of such public notice for the filing of petitions to deny a license application for these frequencies, notwithstanding the 30-day public notice provisions of 47 U.S.C. § 309(d)(1).

B. Existing Spectrum Allocations and Use

i. International

4. With regard to the frequencies under consideration in this proceeding, the member nations of the International Telecommunication Union (''ITU'') have adopted the following radio service allocations that apply to use of this spectrum in the United States. The 2300–2450 MHz band is allocated to the fixed, mobile, and radiolocation services on a primary basis.[1] In addition, the 2310–2360 MHz band is allocated to the broadcasting-satellite service (sound) and complementary terrestrial sound broadcasting service on a primary basis in the United States, and this use is limited to digital audio broadcasting. Finally, the 2300–2450 MHz band is allocated to the amateur radio service on a secondary basis.

ii. Domestic

5. In the United States, the 2300–2310 MHz band was made available for exclusive non-Government use as of August 10, 1995.[2] Currently, the only non-Government use of this band is by the amateur radio service, which operates in this spectrum on a secondary basis. The 2310–2360 MHz band was recently re-allocated to the non-Government broadcasting-satellite service on primary basis. This allocation is limited to digital audio broadcasting, commonly known as satellite DARS, in the United States.[3] In the action allocating this spectrum to satellite DARS, we stated that it would be necessary to accommodate the aeronautical telemetry services now operating in the 2310–2360 MHz band in the 2360–2390 MHz band. The aeronautical telemetry community supported this re-accommodation. Continued use of the 2310–2360 MHz band by aeronautical telemetry and radiolocation users will be on a secondary basis.[4]

III. Discussion

A. Reallocation of Spectrum for WCS

6. The Appropriations Act directs the Commission to reallocate the 2305–2320 and 2345–2360 MHz bands to wireless services that are consistent with international agreements concerning spectrum allocations. We interpret this provision to mean that the Commission may allocate this spectrum to any or all radio services also contained in the International Table of Frequency Allocations applicable to the United States. We believe that the allocation for WCS should provide for the broadest range of services permitted under international agreements. Accordingly, we propose to allocate the 2305–2320 and 2345–2360 MHz bands to the fixed, mobile, and radiolocation services on a primary basis. We also propose to retain the current primary broadcasting-satellite allocation in the 2310–2320 and 2345–2360 MHz bands. We request comment on these proposals.

7. We note, however, that the large number of Canadian fixed service facilities in the 2310–2320 MHz band has previously caused us to request comment on licensing satellite DARS in the 2320–2360 MHz band first.[5] Accordingly, we request comment on the feasibility of satellite DARS in the 2310–2320 MHz band and on whether we should limit satellite DARS to the 2345–2360 MHz portion of the WCS spectrum. Alternatively, we could limit operations at 2310–2320 MHz to complementary terrestrial DARS operations subject to coordination with

[1] The aeronautical mobile service for telemetry, however, has priority over other uses by the mobile service in the 2300–2390 MHz band in the United States and the 2300–2483.5 MHz band in Canada. *See* international footnote S5.394. We also note that the ITU is transitioning to new Simplified Radio Regulations, which use the ''S'' numbering scheme for international footnotes. In anticipation of the ITU's ultimate conversion to the Simplified Radio Regulations, we are employing the new ''S'' numbering scheme for international footnotes adopted in this proceeding. The Commission lists the international footnotes immediately following the Table of Frequency Allocations in Section 2.106 of the Rules. *See* 47 CFR § 2.106. Until such time as this list is revised in its entirety to comport with the new ''S'' numbering scheme, those international footnotes that are amended to the new scheme in individual proceedings will be listed in Section 2.106 immediately prior to the list of unamended footnotes employing the old numbering scheme.

[2] During the reallocation process, the National Telecommunications and Information Administration (''NTIA'') recommended the following constraints: (1) the 2300–2310 MHz band must not be used for airborne or space-to-Earth links; (2) commercial operations at 2300–2310 MHz must be limited to less than one watt of power; (3) unwanted emission levels of commercial applications on any frequency below 2300 MHz must be attenuated below the mean power of the unmodulated carrier by 70 dB; (4) and operation of commercial devices in the 2300–2310 MHz band must not be permitted on Ft. Irwin, California. *See Spectrum Reallocation Final Report,* U.S. Department of Commerce, February 1995, at pages 4–15 and 4–16.

[3] We are considering service, licensing and technical rules for satellite DARS in IB Docket No. 95–91. *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band,* IB Docket No. 95–91, *Notice of Proposed Rule Making,* 60 FR 35166 (July 6, 1995) (''*Satellite DARS NPRM*'').

[4] The 2320–2345 MHz band will continue to be available for the Government and non-Government mobile service and Government radiolocation service on a primary basis, until January 1, 1997, or until such time as a broadcasting-satellite (sound) service has been brought into use in such a manner as to affect or be affected by the mobile and radiolocation services, whichever is the later date.

[5] *See* note 3, *supra.* Satellite CD Radio, Inc., an applicant for a satellite DARS license, conducted an independent study which analyzed the coordination of U.S. satellite DARS systems with Canadian terrestrial systems and submitted it to the Commission. *See* Letter to Chief, Satellite Radio Branch regarding the Coordination of 2310–2360 MHz with Canada (''Coordination Study''), dated February 14, 1994, IB Docket No. 95–91. According to the Coordination Study, in 1994, 186 of 213 Canadian terrestrial stations operated between 2310–2320 MHz. See Coordination Study at 14. *See also* letter from Satellite Engineering Branch dated February 16, 1996 to representatives of Satellite CD Radio and other DARS applicants. Recent discussions between our staff and Industry Canada indicate that there are now approximately 230 Canadian terrestrial stations operating in the 2310–2360 MHz band. In addition, Canada has mobile aeronautical telemetry (''MAT'') operations in the 2329.25–2390 MHz band.

Canada. We request comment on these options.

8. As mentioned above, the 2300–2310 MHz band is currently allocated to the amateur radio service on a secondary basis. In addition, the 2310–2360 MHz band is permitted to be used by aeronautical telemetry operations on a secondary basis. We do not propose any changes to these allocations at this time. We reiterate, however, that these operations would be secondary to any WCS use of the 2305–2320 and 2345–2360 MHz bands. We seek comment on this approach.

B. Licensing Plan for WCS

i. *Permitted Services*

9. As indicated above, our spectrum allocation proposals for the 2305–2320 and 2345–2360 MHz bands would permit the provision of a broad range of fixed, mobile, radiolocation and broadcasting-satellite services. In keeping with this broad allocation, we propose to permit a WCS licensee to use this spectrum for any use permitted within any of the allocation categories of fixed, mobile, radiolocation, and broadcasting-satellite services, subject to international requirements and coordination. In establishing the General Wireless Communications Service (''GWCS'') in August, 1995, we concluded that authorizing a wide variety of services bounded only by international allocations comported with our statutory authority and served the public interest by fostering the provision and mix of services most desired by the public.[6] Similarly, we believe that permitting this flexibility in service offerings for WCS will foster the provision and mix of WCS services most desired by the public. We request comment on this approach. In particular, we request comment on industry experience and plans with regard to the GWCS, including how our rules permitting any and all allocable services in that band have served or are expected to serve the public interest in rapidly making available to the public those services most desired.

ii. *Licensed Service Areas*

10. We also generally believe that licensing the WCS spectrum on the basis of large geographic service areas would facilitate operation of the broadest possible range of new communications services in the WCS spectrum and would promote their introduction in the most rapid and efficient manner. We request comment on the appropriate size for WCS licenses. Specifically, we request comment on whether WCS should be licensed on the basis of the 51 Major Trading Areas (''MTAs'') defined for the narrowband and broadband Personal Communications Service (''PCS''),[7] regional service areas similar to the 5 regions adopted for narrowband PCS,[8] or on a nationwide basis. For example, in the case of broadband PCS, we noted that the 51 MTA service areas, would provide certain economies of scale and scope needed for the development of low cost equipment, would promote the development roaming within large geographic areas and would facilitate interoperability. In the case of narrowband PCS, we found it desirable to provide a service category that is smaller than nationwide but larger than the 51 Major Trading Areas on which many of the narrowband PCS licenses are based. We observed that regional licenses would better reflect the technologies and business plans of parties intending to implement narrowband PCS systems serving wide areas that cover multiple cities. On the other hand, a nationwide service area would facilitate nationwide roaming and interoperability of services, and avoid the need for negotiation of roaming agreements among multiple carriers. A nationwide approach would also allow for maximum economies of scale, thus minimizing both the cost of providing service and the cost of equipment.

iii. *Spectrum for Each License*

11. We also request comment on the appropriate amount of spectrum to be provided for each WCS license. We specifically request comment on a range of spectrum options for WCS, that is whether 5, 10, 15 or 30 MHz is the most suitable amount. We are particularly interested in commenters' views regarding the minimum bandwidth needed to permit WCS operators to compete effectively. For example, 5 MHz bandwidths would allow for paging, radiolocation, dispatch, or point-to-point backbone operations. Larger bandwidths, such as 10 to 15 MHz, would allow more direct competition with existing fixed and mobile service providers. Such an amount may also better support some multi-channel satellite DARS. Alternatively, a single 30 MHz license may offer the most effective approach for providing new two-way fixed or point-to-multipoint uses such as interconnection with the Internet and other digital network services. Finally, we request comment on what size spectrum block could best support, in part or fully, the provision of fixed local loop services.

12. We also seek comment on plans for licensing the WCS consistent with whatever minimum bandwidth should

[6] *See Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Second Report and Order*, 60 FR 40712 (August 9, 1995). See *also* Becht, ''The General Wireless Communications Service: FCC Spectrum Traffic Cop or Broker?,'' 4 Commlaw Conspectus 95 (1996).

[7] Rand McNally & Company (''Rand McNally'') has divided the 50 States and the District of Columbia into 47 MTAs. *See* Rand McNally *1992 Commercial Atlas & Marketing Guide* at pages 38–39 (123rd edition). Following the approach we have taken with regard to other services in which we have used MTA license areas, we would separate Alaska from the Seattle MTA so that Alaska would be licensed as a separate MTA-like area. We also would license separately the following insular areas as MTA-like areas: (1) Puerto Rico and the United States Virgin Islands; (2) Guam and the Northern Mariana Islands; and (3) American Samoa. Thus, if this alternative is adopted, we would license 51 MTAs and MTA-like areas, which is the approach we adopted in PCS. See 47 CFR §§ 24.102(c) and 24.202(a). We note that Rand McNally owns the copyright to MTA Listings. The Personal Communications Industry Association and Rand McNally entered into an agreement regarding the use of Rand McNally's market area designations (*e.g.*, MTAs) for licensing of various mobile radio services. WCS services in the 2305–2320 and 2345–2360 MHz bands are not covered by this agreement. Accordingly, a license agreement with Rand McNally would be necessary. The listings of the MTAs, including the counties, parishes, and census divisions that comprise each MTA, are available for public inspection in the Office of Engineering and Technology's Technical Information Center, 2nd Floor, 2000 M Street, N.W., Washington, D.C.

[8] The five regional narrowband PCS services areas were developed by aggregating MTAs into five geographic areas, each with approximately twenty percent of the nation's population. The five regions defined for narrowband PCS licenses are set forth in 47 CFR §§ 24.102(b). Thus, if we were to use the narrowband PCS regional service areas, as indicated above for MTAs, a license agreement with Rand McNally would be necessary. Alternatively, if a regional service area approach is deemed appropriate, we could also, for example, aggregate the 172 Economic Areas developed by the Department of Commerce into five geographic areas, each with approximately twenty percent of the nation's population. For example, such an approach was proposed for 220 MHz services in PR Docket No. 89–552. The Bureau of Economic Analysis within the Department of Commerce has divided the 50 States and the District of Columbia into 172 Economic Areas (''EAs''). Each EA consists of one or more economic nodes—metropolitan areas or similar areas that serve as centers of economic activity—and the surrounding counties that are economically related to the nodes. (Metropolitan areas include metropolitan statistical areas, primary metropolitan statistical areas, and New England county metropolitan areas.) Commuting patterns are the main factor used in determining the economic relationship among counties. The EA definition procedure requires that, as far as possible, each area include both the place of work and the place of residence of its labor force. *See Final Redefinition of the BEA Economic Areas*, 60 FR 13114 (March 10, 1995) (reducing number of EAs from 183 to 172). We adopted these 172 EAs as GWCS service areas and have listed them in 47 CFR § 26.102(a). In addition, we defined three additional, EA-like, GWCS service areas: (1) Puerto Rico and the United States Virgin Islands; (2) Guam and the Northern Mariana Islands; and (3) American Samoa. 47 CFR § 26.102(b).

be adopted. We specifically request comment, for example, on whether the WCS spectrum should be assigned on a paired or unpaired basis. Alternatively, we request comment on an approach where spectrum bandwidths or pairing of the spectrum are determined through the competitive bidding process. For example, the 30 MHz of spectrum could be divided into 5 MHz ''channels'' and the amount of spectrum and the location of the spectrum (*i.e.*, contiguous or paired) for each WCS licensee would be determined through the auction process. We seek comment on all of these alternatives and we further invite commenting parties to suggest additional alternatives for both the amount of spectrum and the size of service areas for WCS licensees.

13. Finally, we note that the Appropriations Act requires that the Commission conclude initial licensing of this spectrum and the collection of all bidding proceeds on an expedited basis. We believe that licensing the WCS spectrum for service to large areas, with relatively few licenses to be awarded, would speed the WCS licensing process and the collection of bidding proceeds, consistent with the requirements of the Appropriations Act. In addressing the relative merits of licensing the WCS spectrum on the basis of each of the spectrum and service area possibilities discussed above, we ask interested parties to keep in mind the total number of licenses to be auctioned and to comment on whether that number of licenses can reasonably be auctioned within the time periods established by the Appropriations Act.[9] Whatever initial licensing approach is chosen for WCS, we propose to permit spectrum and service area aggregation through the auction process, *e.g.*, we would permit parties to bid for more than one license. In addition, as discussed below, we propose to allow post-auction partitioning and disaggregation. We request comment on how the choice of the number of licensees and amount of spectrum provided could affect competition. Commenting parties should also address the extent to which the new communications services offered by WCS would compete with other new and existing communications services.

C. Use of Competitive Bidding

14. The Appropriations Act directs the Commission to assign licenses to use the 2305–2320 and 2345–2360 MHz bands by competitive bidding pursuant to Section 309(j) of the Communications Act. Section 309(j) generally provides that auctions may be used to award licenses among mutually exclusive applicants where the principal use of such spectrum will involve, or is reasonably likely to involve, a subscription-based service. We believe that it is reasonable to conclude that, given the broad service allocations we are proposing and the manner in which we are proposing to license this spectrum, the principal use of the WCS will involve, or is reasonably likely to involve, the transmission or reception of communications signals to subscribers for compensation. We anticipate that the most likely uses of WCS will be to provide a mix of fixed and mobile services similar to other services currently operating on a subscription basis. Fixed (and radiolocation) services are expected to include services that are generally similar to the Multichannel Multipoint Distribution Service (''MMDS''), the Location and Monitoring Service (''LMS''), Digital Termination Systems (''DTS''), Digital Electronic Messaging Service (''DEMS'') and certain of the services provided by Local Multipoint Distribution Service (''LMDS''). Mobile services are expected to include services generally similar to PCS, cellular, Specialized Mobile Radio (''SMR'') and paging. All of these services are currently provided to subscribers for compensation and we expect that the new WCS offerings would be provided on a similar basis. In this regard, even if a WCS licensee chooses to offer a satellite DARS service on that portion of the spectrum available for such use, we believe it likely that this service would also be offered on a subscription basis. We request comment on this assessment.

15. As required by the Appropriations Act, we are proposing to assign licenses to use the WCS frequencies by competitive bidding in accordance with the principles set forth in Section 309(j) of the Communications Act. Section 309(j)(3)(A) states that the Commission shall seek to promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays. In this regard, we believe that providing for large service areas, in conjunction with our broad, flexible allocation approach described above, will foster the development of the greatest range of new services and technologies. This approach will also permit these services and technologies to be deployed in a rapid and efficient manner to all areas of the nation, including rural areas.

16. Section 309(j)(3)(B) states that the Commission shall seek to promote economic opportunity and competition and ensure that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Consistent with this objective, we are proposing to allow WCS licensees to disaggregate portions of their assigned spectrum and partition geographic service areas through a transfer of FCC license authority. In addition, licensees would be permitted to ''franchise'' portions of their spectrum and geographic service areas on a leased basis, where the WCS licensee would retain ultimate responsibility for meeting interference and other licensing requirements. We recently addressed the issues of geographic partitioning and spectrum disaggregation by Commercial Mobile Radio Service (''CMRS'') licensees, and noted that providing licensees with the flexibility to partition their geographic service areas will create smaller areas that can be licensed to small businesses, including those entities which may not have the resources to participate, successfully in spectrum auctions.[10] In addition, partitioning may provide a funding source that will enable licensees to construct their systems and provide the latest in technological enhancements to the public. We believe that this ability to disaggregate and franchise the use of this spectrum may also help to promote the prompt introduction of new services to rural areas and facilitate participation in these services by a wide variety of parties including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

17. Finally, we note that Section 309(j)(6)(F) of the Communications Act specifically states that the use of competitive bidding shall not be

[9] We note, however, that a licensing plan of six 5 MHz licenses for each of the 51 MTA-like service areas would require the auctioning of 306 licenses. Given our previous auction experience, such an auction may be difficult to complete within the timeframe required under the Appropriations Act and may require different auction methodology, such as oral outcry, to complete on a timely basis. We therefore generally will not entertain proposals that would require the auctioning of more than 306 WCS licenses.

[10] *See Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; Implementation of Section 257 of the Communications Act—Elimination of Market Entry Barriers (Elimination of Market Barriers),* WT Docket No. 96–148, *Notice of Proposed Rule Making,* 61 FR 38693 (July 25, 1996).

construed to prohibit the Commission from issuing nationwide, regional, or local licenses. We also note that using large geographic service areas would simplify the licensing process, and help to ensure that the auction is completed in a timely manner, as required by the Appropriations Act. Accordingly, we believe that the WCS competitive bidding options described above fully comport with the requirements and intent of Section 3001 of the Appropriations Act and Section 309(j) of the Communications Act. We seek comment on this assessment.

D. Promote Efficient Spectrum Use

18. The Appropriations Act states that in making these frequencies available for competitive bidding, the Commission shall seek to promote the most efficient use of the spectrum. In general, we believe that assigning frequencies through competitive bidding ensures that spectrum is made available to those who value it most highly and therefore are most likely to put it to its most economically efficient use. In addition, as indicated above, we are proposing that the WCS spectrum may be used to provide any type of fixed, mobile, radiolocation or satellite DARS services. We believe there are significant competitive alternatives for each of these types of services that will ensure that WCS licensees have incentives to operate in an efficient and effective manner. We therefore believe that there will be sufficient market incentives to promote the most efficient use of the 2305–2320 and 2345–2360 MHz bands, as required by the Appropriations Act.

E. Public Safety Needs

19. The Appropriations Act instructs the Commission to take into account the needs of public safety radio services in making the WCS spectrum available through competitive bidding. In addition, a letter from the Chairman and Ranking Member of the House Committee on Commerce reiterates Congressional intent that we consider the needs of public safety in auctioning this spectrum. In particular, this letter suggests that the Commission, consistent with its obligation to promote the public interest, ''pay particular attention to how the needs of public safety as well as commercial applicants may best be met in determining how to design this auction.'' As Congress directed, we will consider the needs of public safety radio services in this proceeding by seeking comment on a broad array of options. We note that the Appropriations Act marks the first time that Congress has specifically directed the Commission to consider the needs of public safety radio services in connection with licensing a particular spectrum band. We invite interested parties, including public safety entities, to comment on how we could best effectuate the Congressional intent with regard to public safety needs related to this spectrum.

20. The Public Safety Wireless Advisory Committee recently issued a report (''*PSWAC Final Report*'') that analyzes the current and future communications resource and underlying spectrum needs of entities whose primary mission is public safety. The *PSWAC Final Report* makes several recommendations for satisfying the immediate and future needs of the public safety community through the year 2010 including (1) the provision of additional spectrum, (2) improved interoperability, (3) more flexible licensing policies, (4) increased sharing of spectral and other resources, (5) greater use of commercial services and (6) alternative methods for funding public safety communications. In fulfilling Congress's mandate to take into account the needs of public safety in auctioning this spectrum, we seek comment on which of these objectives can best be achieved through an auction of this spectrum. We ask commenters to make specific recommendations regarding how we can design auction and licensing rules that will benefit the public safety community consistent with the recommendations contained in the *PSWAC Final Report.*

21. One of the needs identified by public safety is additional spectrum. We note that the *PSWAC Final Report* did not recommend this band for public safety use, but we also recognize that Congress had not directed the Commission to reallocate and auction this spectrum when the *PSWAC Final Report* was submitted. We therefore seek comment on whether we should consider an allocation of some portion of this spectrum to meet the needs of public safety providers. In light of the specific language of this statute, we seek comment on whether we have statutory authority to make such an allocation. Alternatively, should the Commission assign this spectrum with a public interest obligation to contribute towards the other needs identified by the public safety community? We seek comment on whether the Commission would have the authority to adopt such an approach.

22. In addition, it may be that in the WCS spectrum some of the communications needs of public safety entities could be met by commercial systems serving the general public and possibly with some customized features for the exclusive use of public safety users. Public safety organizations may find it desirable to subscribe to a service offered by the commercial provider or lease capacity or spectrum from a commercial provider. We note that a key recommendation of the *PSWAC Final Report* suggested that ''a range of non-mission critical communications can be satisfied by commercial systems'' and concluded that: Commercial wireless systems, such as cellular, Personal Communications Services (PCS), mobile satellite, paging, data, and network applications, are evolving rapidly and may offer tangible and reasonable alternatives to the demand for additional spectrum to meet present and future Public Safety requirements.

We seek comment on whether and how commercial services operating in this spectrum could address some of the communications needs of the public safety community. Specifically, what types of commercial services in this band would public safety entities find useful? Should the Commission take steps to encourage the use of the spectrum for such services? If so, what steps should it take? For example, should public safety needs be considered in determining the geographic scope and size of WCS licenses? If so, what size spectrum blocks or particular geographic license areas would be most conducive to the types of services the public safety community would find useful? Should the Commission offer bidding credits to commercial providers who propose to provide these types of services?

F. Service and Technical Rules

i. Eligibility

23. We propose that there be no restrictions on eligibility for a WCS license, other than those foreign ownership restrictions set forth in Sections 310(a), 310(b)(1) and 310(b)(2) of the Communications Act. We believe that opening the WCS market to a wide range of applicants will permit and encourage entrepreneurial efforts to develop new technologies and services, while helping to ensure the highest and best use of this spectrum. We also believe that, given the relatively large amount of spectrum that is available to provide services similar to those that could be operated on the WCS spectrum, opening up eligibility to all applicants, in this instance, will not lead to concerns about excessive concentration of market power.[11] On the

[11] In this regard, we also see no reason to preclude the pending satellite DARS applicants from participating in the competitive bidding

other hand, disallowing existing licensees or other entities from competing for a WCS license could deny the public the benefits of economies of scope and scale from the use of this spectrum.

ii. CMRS Spectrum Cap

24. The CMRS spectrum cap [12] was adopted in 1994 to ''discourage anti-competitive behavior while at the same time maintaining incentives for innovation and efficiency.'' We were concerned that ''excessive aggregation [of spectrum] by any one of several CMRS licensees could reduce competition by precluding entry by other service providers and might thus confer excessive market power on incumbents.'' The spectrum cap is intended to promote a vigorous competitive market for the provision of commercial mobile radio services, and to ensure that each mobile service provider (*i.e.*, cellular, PCS or SMR licensee) has the opportunity to obtain sufficient spectrum to compete effectively and that no single provider is able to preclude the provision of service by effective competitors or significantly reduce the number of competitors by aggregating spectrum.

25. We seek comment on whether WCS spectrum used to provide CMRS should count against the 45 megahertz spectrum cap that applies to certain CMRS licensees. We note that applying the spectrum cap could well exclude firms with the most experience and innovative technologies from participating in the auction and having the opportunity to use this spectrum to serve the public. On the other hand, if a CMRS provider with the maximum amount of spectrum permitted under our current CMRS spectrum cap were to acquire WCS spectrum, that provider possibly could gain a dominant position in the CMRS marketplace. We are interested in commenters' views on whether the WCS spectrum is likely to be used to provide CMRS services, and, if so, whether the current CMRS market is sufficiently competitive that the considerations that gave rise to adoption of the CMRS spectrum cap are not applicable to the WCS spectrum. Commenters should also address the potential costs of applying the cap to the WCS spectrum in terms of lost economies of scale and scope that might exist if CMRS licensees were allowed to acquire this spectrum.

26. To the extent that commenters believe that the WCS spectrum will be used for CMRS services, we also seek comment on any alternative mechanisms that would be appropriate to protect against the concentration of control of licenses for CMRS spectrum, in order to ensure vigorous competition in wireless services and to implement the Communications Act.

iii. Disaggregation and Partitioning

27. As indicated above, we propose to permit the WCS licensee or licensees to partition their service areas and to disaggregate their spectrum. We believe that such an approach would serve to promote the efficient use of the spectrum. It would also provide a means to overcome entry barriers through the creation of smaller licenses that require less capital, thereby facilitating greater participation by smaller entities such as small businesses, rural telephone companies and businesses owned by minorities and women.

28. We therefore propose to permit WCS licensees to partition their service areas into smaller geographic service areas. We also propose to permit WCS licensees to disaggregate their spectrum into smaller blocks. Thus, a WCS licensee would be allowed to transfer the license for all or a portion of its spectrum in a given geographic area to another party. For the purposes of partitioning and disaggregation, we also propose to require that WCS systems be designed to not exceed a signal level of 47 dBuV/m at the licensee's service area boundary, unless the affected adjacent service area licensees have agreed to a different signal level. We request comment on what limits, if any, should be placed on a WCS licensee's ability to partition its service area and disaggregate its spectrum.

29. We note that in WT Docket No. 96–148, we recently proposed to permit both geographic partitioning and spectrum disaggregation by CMRS licensees.[13] In the case of broadband PCS service, we proposed to permit geographic partitioning along county lines and spectrum disaggregation to a minimum of one megahertz. In making this proposal, we tentatively concluded that requiring partitioning of licenses along county lines and spectrum disaggregation of not less than one megahertz would reduce the administrative burden on the Commission and minimize interference concerns among licensees. We also indicated that once an initial license is assigned, we believe that licensees should ordinarily be free to disaggregate their spectrum and to partition their service areas in order to operate within the parameters that they determine to be efficient. We request comment on whether such an approach should apply to the WCS spectrum. We also request comment on whether, if we were to establish initial nationwide WCS service areas, geographic partitioning should be limited to larger areas such as the 51 MTA service areas. Such an approach might facilitate the relicensing of such areas if the licensee were, for example, to go out of business. This approach may also reduce the administrative burden on the Commission or for international coordination of WCS operations. As indicated above, we are also proposing to allow WCS licensees to franchise portions of their spectrum and geographic service areas on a leased basis. In such cases, we see no need to limit such operations to any minimum amount of spectrum or any particular geographic area since the WCS licensee would retain ultimate control and responsibility for all operations and there is no additional administrative burden on the Commission. We request comment on these proposals.

iv. License Term

30. The Communications Act allows the Commission to establish a license term of up to 10 years, except for broadcasting stations, which may have a license term of up to 8 years. Previously, the Commission established a 10 year license term for CMRS, but has used a 5 year license term for private services. For services in the 2305–2320 and 2345–2360 MHz bands, we propose to establish a license term of 10 years, with a renewal expectancy similar to that of PCS and cellular telephone licensees. We believe that this relatively long license term, combined with a high renewal expectancy, should help provide a stable regulatory environment that will be attractive to investors and, thereby, encourage development of this new frequency band. With respect to the renewal of a WCS license, we propose to consider the amount and type of service being provided by the licensee

process for the 2310–2320 and 2345–2360 MHz bands.

[12] The spectrum cap currently provides that ''[n]o licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS shall have an attributable interest in a total of more than 45 megahertz of licensed broadband PCS, cellular and SMR spectrum regulated as CMRS with significant overlap in any geographic area.'' *See* 47 CFR § 20.6(a); *see also Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96–59, *Report and Order*, 61 FR 33859 (July 1, 1996) (maintaining the 45 megahertz CMRS spectrum cap and eliminating the 35 megahertz cellular/PCS spectrum cap and the 40 megahertz PCS spectrum cap).

[13] *See Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees*, WT Docket No. 96–148, *Notice of Proposed Rule Making*, 61 FR 38693 (July 25, 1996).

in connection with its license renewal application. In this connection, we propose to require WCS licensees to submit a showing five years from license grant and ten years from license grant demonstrating the construction of facilities and the level of service being provided.

31. In the event that a WCS license is partitioned or disaggregated, we propose that any partitionee/disaggregatee be authorized to hold its license for the remainder of the partitioner's/disaggregator's original ten-year license term. We tentatively conclude that this approach is appropriate because a licensee, through partitioning, should not be able to confer greater rights than it was awarded under the terms of its license grant. Moreover, we tentatively conclude that this approach would be the simplest to administer. We also observe that this approach is similar to the partitioning provisions we recently adopted for the Multipoint Distribution Service [14] and proposed for Broadband PCS. We solicit comment on this tentative conclusion.

v. Regulatory Status

32. The Communications Act applies differing requirements based on the type of service and the regulatory status of licensees, *e.g.*, whether the service is common carrier or private. A WCS operator would be allowed to provide a variety or combination of fixed, mobile, satellite DARS, and radiolocation services. Therefore, we propose to rely on the applicant to identify the type of WCS service or services it will provide, with sufficient detail to enable the Commission to determine the applicant's regulatory status. This approach should allow us to carry out our responsibilities while imposing the least regulatory burden on the licensee. To clarify and simplify the initial regulatory status, we will presume that a WCS licensee is providing a CMRS service, which we believe will be a likely use of this spectrum, as discussed above. We delegate to the Wireless Telecommunications Bureau authority to develop forms appropriate to collect this data, and to monitor changes in licensee status. Moreover, we propose that the broadcasting-satellite service allocation be governed by the satellite DARS regulations currently under development in IB Docket No. 95–91. We request comment on these proposals.

[14] *See Amendment of Parts of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service,* MM Docket No. 94–131, *Report and Order,* 60 FR 36524 (July 17, 1995).

vi. Out-of-Band Emission Limits

33. Since WCS will operate in the 2305–2320 and 2345–2360 MHz bands, we need to consider interference protection to the following adjacent operations: (1) Satellite DARS at 2320–2345 MHz, (2) Government Deep Space Network receivers at 2290–2300 MHz, and (3) Government and commercial telemetry above 2360 MHz.

34. In order to provide protection to these adjacent operations, we propose that all emissions outside of the WCS bands of operation be attenuated below the maximum spectral power density (p) within the band of operation, as follows:

(1) *For fixed operations, including radiolocation:* By a factor not less than 43 + 10 log (p) dB on all frequencies between 2300 and 2305 MHz and above 2360 MHz; and not less than 70 + 10 log (p) dB on all frequencies below 2300 MHz and between 2320–2345 MHz band.

(2) *For mobile operations, including radiolocation:* By a factor not less than 43 + 10 log (p) dB on all frequencies between 2300 and 2305 MHz, between 2320 and 2345 MHz, and above 2360 MHz; and not less than 70 + 10 log (p) dB on all frequencies below 2300 MHz.

(3) *For WCS satellite DARS operations:* The limits set forth in Section 25.202(f) of the Commission's rules apply.

For fixed and mobile operations, including radiolocation, the above requirements are based on peak measurements using a resolution bandwidth of at least 1 MHz. In addition, to further protect operations in adjacent bands, we propose to require that the frequency stability of transmission within the 2305–2320 and 2345–2360 MHz bands be sufficient to ensure that the fundamental emissions remain within the authorized frequency bands. We request comment on these proposed out-of-band emissions limits.

35. Finally, in order to protect Government Deep Space Network receivers at 2290–2300 MHz, we propose to prohibit use of the 2305–2310 MHz band for airborne or space-to-Earth links. Further, we propose that WCS operations within 50 kilometers (31 miles) of 35°20′ North Latitude and 116°53′ West Longitude (coordinates of the Deep Space Network receive site) be subject to coordination. Alternatively, we request comment on whether it would be more appropriate to require less out-of-band attenuation in the case of mobile transmitters, (*i.e.*, such transmitters would be subject to only the 43 + 10 log (p) dB requirement) but require that the coordination zone be extended to 120 kilometers (75 miles). Parties should address the trade-offs with regard to lower mobile equipment costs and the additional coordination constraints imposed by this alternative.

vii. International Coordination

36. Until international agreements are completed, WCS operations will be required to protect existing non-U.S. operations in the 2305–2320 and 2345–2360 MHz bands, and WCS operations in the border areas would be subject to coordination with those countries, as appropriate. In addition, satellite DARS operations on WCS spectrum would be subject to international satellite coordination procedures. With regard to this matter, parties should be aware that international coordination could be a complex and lengthy process and could vary significantly depending upon the types of WCS services that are to be provided. International coordination requirements, therefore, should be taken carefully into account in developing business plans for the provision of WCS. This is particularly important for parties contemplating the provisions of WCS in border areas or the provision of satellite DARS operations.[15]

viii. RF Safety

37. With regard to RF safety requirements, we propose to treat specific WCS services and devices, operating within the 2305–2320 MHz and 2345–2360 MHz bands, in a comparable manner to other services and devices that have similar operating characteristics. Sections 1.1307(b), 2.1091, and 2.1093 of our rules list the services and devices for which an environmental evaluation must be performed. Accordingly, we propose that an environmental evaluation for RF exposure would be required for the following WCS operations: (1) Transmitting terrestrial stations in the satellite DARS service; (2) fixed operations, including base stations and radiolocation, that have an effective radiated power (''ERP'') greater than 2000 watts; and, (3) mobile and portable devices that have operating characteristics or functions similar to cellular, PCS or ''covered'' SMR services, *i.e.*, operations that are typified by long periods of use or are interconnected to the public switched telephone network. We invite comment

[15] Potential satellite DARS applicants should consult the letter from Satellite Engineering Branch dated February 16, 1996 to representatives of Satellite CD Radio and other DARS applicants and responses thereto that address coordination in these bands for satellite DARS. These documents are filed in IB Docket No. 95–91, GEN Docket 90–357, RM No. 8610, PP–24, PP–86, and PP–87.

on this proposal and request suggestions for alternatives that would ensure public safety with respect to exposure to RF radiation.

G. Auction Procedures

38. In accordance with the Appropriations Act, and pursuant to the expedited schedule imposed thereby, we propose below an auction design and pre-auction procedures for the WCS service. Specifically, we propose that the method of competitive bidding be a simultaneous multiple round electronic auction (if more than one license is offered). We base this proposal on the need to quickly auction the WCS licenses and to promote the efficient use of the spectrum. The Appropriations Act requires the Commission to commence the WCS auction no later than April 15, 1997, and to conduct the auction in a manner that ensures that all proceeds are deposited into the United States Treasury no later than September 30, 1997.

i. Competitive Bidding Design

39. We anticipate conducting the auction for the WCS in conformity with the general competitive bidding rules in Part 1, Subpart Q of the Commission's Rules, and substantially consistent with the auctions that have been employed in other wireless services. In the *Second Report and Order*, 59 FR 22980 (May 4, 1994), in the competitive bidding docket,[16] we indicated that we would tailor the design of each auction to fit the characteristics of the licenses to be awarded, and we established criteria for selecting the auction design most appropriate for each particular service. In general, we indicated that the auction procedures chosen for each service should be those that will best promote the policy objectives identified by Congress.[17] We further concluded in the *Second Report and Order* that in most cases the goals set forth in Section 309(j) will be best achieved by designing auctions that award authorizations to the parties that value them most highly. As we explained, such parties are most likely to deploy new technologies and services rapidly, and to promote the development of competition for the provision of those and other services.

40. We propose to adopt the simultaneous multiple round competitive bidding design used in the PCS auctions for the WCS auction. Multiple round bidding should provide more information to bidders than single round bidding during the auction about the values of the licenses. With better information, bidders have less incentive to shade their bids downward in order to avoid the ''winner's curse,'' that is, the tendency for the winner to be the bidder who most overestimates the value of the item being auctioned. Finally, multiple round bidding is likely to be more fair than single round bidding. Every bidder has the opportunity to win if it is willing to pay the most for it. Thus, we tentatively conclude that multiple round bidding would be the best method of auctioning the WCS license or licenses, and we seek comment on this tentative conclusion.

41. We also tentatively conclude that, if more than one WCS license is to be awarded, all WCS licenses should be awarded in a single simultaneous multiple round auction. A single simultaneous auction will facilitate any aggregation strategies that bidders may have, and it would provide the most information to bidders about license values at a time that they can best put that information to use. We seek comment on this tentative conclusion.

42. If we adopt simultaneous multiple round bidding as our method of auctioning WCS licenses, we believe that bidding should be allowed only by electronic means. Though oral outcry auctions can be simple and rapid, it is not possible to auction multiple licenses simultaneously in an oral auction. Further, given the potentially large value of the WCS spectrum, we believe that an electronic multiple round auction is preferable because it would permit bidders time between rounds to confer with principals and reassess their valuation models and bidding strategies. This is especially important if more than one license is to be awarded. Thus, we tentatively conclude that electronic bidding would be the best method of submitting bids for this auction. In the event that we decide to use electronic multiple round bidding, we tentatively conclude that this auction should be conducted by remote bidding (by computer) without the option of telephonic bidding. We also propose, however, to reserve the discretion to conduct the WCS auction on-site should circumstances warrant. We seek comment on all of these proposals and tentative conclusions.

ii. Bidding Procedures

43. We tentatively conclude that the WCS auction will follow the general competitive bidding procedures of Part 1, Subpart Q. We seek comment on this tentative conclusion.

44. *Minimum Opening Bid and Minimum Bid Increments.* We also tentatively conclude to reserve the discretion to establish a minimum opening bid for the WCS license or licenses. A minimum opening bid would cause bidders to start bidding at a substantial fraction of the final price of the license or licenses, thus ensuring that the auction proceeds quickly and increasing the likelihood that the public receives fair market value for the license or licenses. We seek comment on this tentative conclusion. In addition, we ask interested parties to suggest the appropriate level of a minimum opening bid for the WCS license or licenses. We also tentatively conclude that the Wireless Bureau should be given discretion to establish, raise and lower minimum bid increments in the course of the auction. We seek comment on this approach.

45. *Tie Bids.* Where a tie bid occurs, we tentatively conclude that the high bidder should be determined by the order in which the bids were received by the Commission. We request comment on this tentative conclusion.

iii. Procedural and Payment Issues

46. Subpart Q of Part 1 of the Commission's rules also establishes procedural and payment rules for FCC auctions generally, and we tentatively conclude that, with certain modifications proposed below, these rules should apply to the WCS auction. We seek comment on this tentative conclusion.

47. *Pre-Auction Application Procedures.* Applicants would be required to file a short-form application, FCC Form 175, prior to the auction. In addition, although we have previously allowed for both electronic and manual filing of such applications, we tentatively conclude that we should require electronic filing of all applications for this auction. We believe that electronic filing of applications would serve the best interests of auction participants as well as ensure that the WCS auction will be completed within the timeframe mandated under the Appropriations Act. We have developed user-friendly electronic filing software and Internet World Wide Web forms to give applicants the ability to easily and inexpensively file and review applications. This software helps applicants ensure the accuracy of their applications as they are filling them out, and enables them to avoid discovering errors and omissions after the applications are already filed.

[16] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* PP Docket No. 93–253, FCC 94–61, *Second Report and Order*, 59 FR 22980 (May 4, 1994) (''*Second Report and Order*'').

[17] Congress's objectives are, in this instance, set forth in two places: Section 309(j) of the Communications Act (47 U.S.C. § 309(j)) and Section 3001 of the Appropriations Act.

Particularly in light of the legislative deadline of April 15, 1997, for commencement of this auction, we believe that requiring electronic filing would be helpful to applicants as well as the Commission. By shortening the time required for the Commission to process applications before the auction, electronic filing would increase the lead time available to applicants to pursue business plans and arrange necessary financing before the short-form deadline. We seek comment on these proposals and tentative conclusions.

48. As part of the information provided in the short-form application, we propose to require that an applicant's electronic submission of FCC Form 175 include a certification that the applicant is not in default on any Commission licenses and that it is not delinquent on any extension of credit from any federal agency. In the *Second Report and Order,* we decided that we should require sufficient information on the short-form application to make a determination that ''the application is not in violation of Commission rules and that applications not meeting those requirements may be dismissed prior to the competitive bidding.'' Part of this documentation includes certification that the bidder has the legal, technical, financial, and other qualifications to bid in the auction. A certification regarding defaulted licenses and delinquent payments to federal agencies would enable us to better evaluate the financial qualifications of potential bidders, because it would allow us to determine whether any bidder may later be subject to a monetary judgment or collection procedures that may impair its financial ability to provide service.

49. *Upfront Payment.* The Part 1 rules require the submission of an upfront payment as a prerequisite to participation in spectrum auctions. We propose to set the amount of the WCS upfront payment based on the general formula we adopted in the Competitive Bidding *Second Report and Order* of $.02 per megahertz per population. We seek comment on this proposal. We also seek comment on alternative methods of establishing an upfront payment, and in particular, on how the Commission may estimate the value of the spectrum to be auctioned.

50. We also propose to require that bidders deposit their upfront payments in our lock-box bank by wire transfer by a date to be announced by public notice. Although in the past we have permitted payment by cashier's check, we believe that requiring wire transfers would benefit bidders by streamlining and expediting the administration of the auction. Our experience has shown that verification of payments remitted to us by cashier's check is time-consuming and cumbersome and requires the allotment of extra processing time prior to the start of the auction. Permitting payment by cashier's check would require that upfront payments be made at an earlier point, which would decrease applicants' lead time to pursue business plans and arrange necessary financing before the start of the auction. In addition, we believe that, given the large number of financial institutions offering wire transfer services, a requirement that bidders remit their upfront payments by wire transfer would result in minimal, if any, extra cost to auction applicants. Such a cost is far outweighed by the benefit of speeding the auction process through quicker verification of payments. We seek comment on this tentative conclusion.

51. *Down Payment and Full Payment.* We tentatively conclude that to help ensure that auction winners are able to pay the full amount of their bids requires every winning bidder in an auction to tender a down payment sufficient to bring its total amount on deposit with the Commission up to 20 percent of its winning bid. We therefore tentatively conclude that the winning bidder or bidders in the WCS auction should be required to submit a down payment equal to 20 percent of its winning bid within 10 business days after the issuance of a public notice announcing the winning bidder for the license. We seek comment on this tentative conclusion.

52. If a winning bidder makes its down payment in a timely manner, we propose that it file an FCC Form 600 long-form application and follow the long-form application procedures in Section 1.2107. After reviewing the winning bidder's long-form application, and after verifying receipt of the winning bidder's 20 percent down payment, the Commission would announce the application's acceptance for filing, thus triggering the filing window for petitions to deny. Under Section 3001(c) of the Appropriations Act, parties would have five days following public notice that an application was accepted for filing to file a petition to deny. Because Section 3001(c) provides for a period of seven (7) days following such public notice before any licenses may be awarded, we propose to allow three (3) days for parties to file a response to any petition to deny. If, pursuant to Section 309(d) of the Communications Act, the Commission dismissed or denied any and all petitions to deny, the Commission would announce by public notice that it is prepared to award the license, and the winning bidder would then have 10 business days to submit the balance of its winning bid. If the bidder does so, the license would be granted. If the bidder fails to submit the required down payment or the balance of the winning bid or the license is otherwise denied, we would assess a default payment as discussed below. We request comment on these proposals.

53. *Amendments and Modifications of Applications.* To encourage maximum bidder participation, we propose to allow applicants to amend or modify their short-form applications as provided in Section 1.2105. In the broadband PCS context, we modified our rules to permit ownership changes that result when consortium investors drop out of bidding consortia, even if control of the consortium changes due to this restructuring.[18] We propose to adopt the same exception to our rule prohibiting major amendments in the WCS auction. We seek comment on all of this proposal.

54. *Bid Withdrawal, Default and Disqualification.* We tentatively conclude that the withdrawal, default, and disqualification rules for the WCS auction should be based upon the procedures established in our general competitive bidding rules. With regard to bids which are submitted in error, we propose to apply the guidelines which we recently fashioned to provide for relief from the bid withdrawal payment requirements under certain circumstances.[19]

iv. Regulatory Safeguards

55. *Anti-Collusion.* In the *Second Report and Order,* we adopted anti-collusion rules in connection with competitive bidding, explaining that these rules, which are codified at 47 CFR § 1.2105, would enhance the competitiveness of both the auction process and the post-auction market structure.[20] We propose to apply these

[18] *See Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* PP Docket No. 93–253, *Fourth Memorandum Opinion and Order,* 59 FR 53364 (October 24, 1994).

[19] *See* Atlanta Trucking Associates, Inc. and MAP Wireless L.L.C. Requests to Waive Bid Withdrawal Payment Provisions, *Order,* 61 FR 25807 (May 23, 1996), *recon. pending. See also* Georgia Independent PCS Corporation Request to Waive Bid Withdrawal Payment Provision, *Order,* 61 FR 25810 (May 23, 1996), *app. rev. pending.*

[20] *See* 47 CFR § 1.2105(c). *See also Second Report and Order,* 59 FR 22980 (May 23, 1996); *Second Memorandum Opinion and Order,* 59 FR 7245 (August 26, 1996); ''Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,'' *Public Notice,* 11 FCC Rcd 9645 (1995); ''Wireless Telecommunications Bureau Ponders Guidance on the Anti-Collusion Rule for D, E and

same rules to the auction of the WCS spectrum.

56. *Performance Requirements.* In implementing auction procedures, the Commission is required under Section 309(j) of the Communications Act to include ''safeguards to protect the public interest in the use of the spectrum'' and performance requirements ''to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.'' We have previously found that these objectives could be satisfied through build-out requirements (*see, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Fifth Report and Order,* PP Docket No. 93–253, FCC 94–178, 9 FCC Rcd 5532, 5570 (1994); *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Report and Order,* PP Docket No. 93–253 and MM Docket No. 94–131, FCC 95–230, 10 FCC Rcd 9589, 9659–60 (1995); *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Second Report and Order,* ET Docket No. 94–32, FCC 95–319, 11 FCC Rcd 624, 669–670 (1995)). We note, however, that we have never concluded that such requirements are mandated by Section 309(j).

57. Build-out requirements may encourage the provision of service to areas that would not necessarily receive service expeditiously solely through the operation of market forces. In addition, build-out requirements may also prevent stockpiling or warehousing of spectrum by allowing licenses to be recovered and made available to entities more willing and able to provide service expeditiously. As is discussed below, however, we have some concern as to whether applying these requirements to the licenses of the WCS spectrum is the best way to address Congress's concerns.

58. In this NPRM, we propose that a WCS licensee have the flexibility to offer a range of services, rather than being restricted to a particular use. *See* para. 9, *supra.* Given the broad range of services that may be deployed over WCS spectrum, it may be that performance requirements in the form of construction benchmarks are not necessary to meet Section 309(j)'s objectives regarding warehousing and rapid deployment. Where we allow flexible use and the ultimate use (or uses) of a license is uncertain, simply requiring construction by itself does not sufficiently encourage the licensee to deploy assets in any particular market (*e.g.,* the voice or data market) or to provide any particular service. In addition, requiring construction by itself does not ensure that licenses are put to use in an efficient and procompetitive manner. Moreover, WCS construction requirements alone may not be effective to ensure the provision of service to rural areas.

59. We also note that build-out requirements can be harmful because they might result in one of several forms of uneconomic construction: construction in geographic areas different than those that would be served in a competitive environment; deployment at a different rate than would occur in a competitive environment; or deployment of technology and equipment differing from that which competition would dictate. Further, strict build-out requirements might have the unintended consequence of causing firms to build first in urban areas where the mandatory benchmarks could be met most cheaply, and thus slow the development of service to rural areas. It may be difficult to devise construction requirements that avoid these negative effects.

60. We believe we may be able to appropriately address the statutory concerns of preventing warehousing of spectrum and promoting rapid deployment of new technologies and services in other ways. First, the concern regarding warehousing may be addressed by awarding licenses through auctions. Auctioning itself provides economic incentives for licensees to utilize spectrum efficiently and to provide service rapidly. Second, the goal of promoting service to rural areas can be furthered by our proposal to allow partitioning and disaggregation. And, of course, the broad universal service policies of the Telecommunications Act of 1996 will contribute substantially to addressing this objective as well.

61. Commenters should address whether the auction and service rules that we are proposing here, together with our overall competition and universal service policies, constitute effective safeguards and performance requirements for WCS licensing, or whether specific construction requirements are also needed. If we decide not to impose construction requirements, we would reserve the right to review this policy in the future if we receive complaints related to Section 309(j)(4)(B), or if our own monitoring initiatives or investigations indicate that a reassessment is warranted. Thus, we propose to further reserve the right to impose construction requirements on a WCS license or licenses in the future if evidence of actual competitive or rural service problems arises and if construction requirements can effectively ameliorate those problems. We seek comment on these proposals and tentative conclusions.

v. Treatment of Designated Entities

62. Section 309(j) of the Communications Act provides that, when promulgating competitive bidding regulations, the Commission must ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women [commonly referred to as 'designated entities'] are given the opportunity to participate in the provision of spectrum-based services.'' As noted above, our allocation proposal contemplates that a WCS licensee will have broad flexibility in determining the range of services it will offer, and that licenses will be issued for broad geographic areas. Commenters should address the extent to which potentially high capital costs for constructing WCS systems affect the advisability of adopting specific provisions applicable to the WCS auction. We note that our proposed partitioning and disaggregation rules for WCS licensing may provide designated entities with additional opportunities to participate in the provision of WCS service.

63. The Appropriations Act requires that the Commission conduct the auction in a manner that ensures that all proceeds of the bidding are deposited in the Treasury no later than September 30, 1997. Because of the expedited procedures imposed by the Appropriations Act, an entity acquiring a WCS authorization must be prepared to make payment on its full bid amount quickly. Thus, we tentatively conclude that installment payment plans would be an inappropriate mechanism for encouraging designated entity participation in the WCS auction. We invite comment on this tentative conclusion and on how the Congressional intent concerning designated entities can be effectuated in connection with competitive bidding for WCS licenses. For example, would bidding credits be appropriate in this service? If so, should they be limited to small businesses or provided to all designated entities? In addition, to the

F Block Bidders,'' *Public Notice,* 11 FCC Rcd 10134 (1996).

extent commenters suggest special provisions for small businesses, we also seek comment on the appropriate definition for small business. Additionally, should any special provisions be afforded to rural telephone companies? To the extent that commenters propose specific provisions to ensure the participation of minority and women-owned businesses, we also invite them to address how such provisions should be crafted to meet the relevant standards of judicial review (strict scrutiny for minorities and intermediate scrutiny for women).[21]

H. Other Administrative Matters

64. We propose to update the entries for the 2300–2450 MHz band in the international table (columns 1 through 3 of the Table of Frequency Allocations (''Table''), 47 CFR 2.106) in accordance with the *Final Acts of the 1995 World Radiocommunication Conference.* Specifically, the following international footnotes would be re-numbered using the new ''S'' numbering scheme: 664 (S5.282), 750B (S5.393), 751 (S5.394),[22] 751A (S5.395), 751B (S5.396), and 752 (S5.150).[23]

65. We also propose to update the entries for the 2300–2310, 2400–2402, and 2417–2450 MHz bands in the Government radio service allocations' column (column 4 of the Table) in accordance with the newly revised *NTIA Manual.* Specifically, all existing Government allocations and footnote references would be deleted from the 2300–2310 and 2400–2402 MHz bands and reference to footnote G123 would be added to both bands. Footnote G123, which permits Government operations in 2300–2310 and 2400–2402 MHz bands to continue only on a non-interference basis to authorized non-Government operations and requires that Government operations not hinder the implementation of any non-Government operation, would also be added to the list of Government footnotes. With regard to the 2417–2450 MHz band, the primary Government radiolocation service allocation would be downgraded to a secondary service and reference to footnote G124 would be added. Footnote G124, which states that the 2417–2450 MHz band has been reallocated to shared Government/non-Government use, would also be added to the list of Government footnotes.

66. We also propose to update the entries for the 2305–2320 and 2345–2360 MHz bands in the non-Government radio service allocations' column (column 5 of the Table) in accordance with our proposals herein. Specifically, we propose to add the fixed, mobile, and radiolocation services on a primary basis to the 2305–2320 and 2345–2360 MHz bands, to delete the reference to footnote US253 from the 2300–2310 MHz band, to add a reference to footnote USxxx to the 2305–2310 MHz band, and to add a reference to footnote USyyy in the 2310–2320 and 2345–2360 MHz bands. Proposed United States footnote USxxx, which prohibits airborne and space-to-Earth transmissions in the 2305–2310 MHz band and which also requires that WCS operations in the 2305–2310 MHz band within 50 kilometers of the Deep Space receive site located on Fort Irwin, California be coordinated, and proposed United States footnote USyyy, which provides for continued secondary aeronautical telemetry use of the 2310–2320 and 2345–2360 MHz bands, would be added to the list of United States footnotes. In addition, we propose to update the entries for the 2305–2320 and 2345–2360 MHz bands in the rule part cross reference column (column 6 of the Table) to add a reference to the Wireless Communications Service.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 2

Radio.

47 CFR Part 27

Administrative practice and procedure, Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 97

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Amendatory Text

Parts 1, 2, 27, and 97 of title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. In § 1.1307, the text of paragraph (b)(1) preceding the table and the first sentence of paragraph (b)(2) are revised and new entries for Wireless Communications Service are added to Table 1 in paragraph (b)(1) following the entry for Satellite Communications (part 25) to read as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) The exposure limits in § 1.1310 are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in § 1.1310 (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in Table 1 of this paragraph (b)(1), or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of Table 1, ''rooftop'' means the roof or otherwise outside, topmost level or levels of a building structure that is occupied as a workplace or residence and where either workers or the general public may have access. The term ''power'' in column 2 of Table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in § 2.1 of this chapter. For the case of the Cellular Radiotelephone

[21] *See*, for relevant standards of review, *Adarand Constructors v. Pěna,* 115 S.Ct. 2097 (1995) (''[Racial] classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests''), and *United States v. Virginia,* 116 S.Ct. 2264 (June 26, 1996) (''Parties who seek to defend gender-based governmental action must demonstrate an 'exceedingly persuasive justification' for that action'').

[22] In addition to being re-numbered, the text of footnote 751 was modified. Specifically, aeronautical telemetry in the United States now has priority over other mobile service uses in the 2300–2390 MHz band (that is, the 2300–2310 MHz band has been added to the existing restriction). (At the next competent conference, we intend to have the aeronautical telemetry restriction removed from the 2300–2320 and 2345–2360 MHz bands in the United States.) In addition, aeronautical telemetry in Canada now has priority over other mobile service uses in the 2300–2483.5 MHz band (this is an entirely new restriction in Canada). Finally, Australia and Papua New Guinea have removed the aeronautical telemetry priority use restriction from the 2310–2390 MHz band.

[23] Footnote 752 was one of seven international footnotes that separately designated certain bands for industrial, scientific and medical applications. These international footnotes (534, 546, 548, 707, 752, 806, and 881) were combined into a single international footnote, S5.150.

Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter, the Wireless Communications Service, part 27 of this chapter and covered Specialized Mobile Radio Service operations, part 90 of this chapter, the phrase ''total power of all channels'' in column 2 of Table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters of the facility. When applying the criteria of Table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (Title 47 CFR Rule Part)	Evaluation required if
* * * * * * *	
Wireless Communications Service (for those services with similar or identical operating characteristics or functions to the Digital Audio Radio Service) (part 27).	All included.
Wireless Communications Service (for those services with similar or identical operating characteristics or functions to the Multipoint Distribution Service, Cellular Radiotelephone Service, Personal Communications Service, Paging or Radiotelephone Service, or Paging Operations or ''covered'' Specialized Mobile Radio Services within the Private Land Mobile Radio Services) (part 27).	Total power of all channels > 2000 W ERP (3280 W EIRP)
* * * * * * *	

* * * * *

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Wireless Communications Service, the Satellite Communications Services, the Maritime Services (ship earth stations only) covered Specialized Mobile Radio Service, providers authorized under subpart H of part 22, part 24, part 25, part 27, part 80, and part 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter.

* * *

* * * * *

3. New paragraph (a)(9) is added to § 1.2102 to read as follows:

§ 1.2102 Eligibility of applications for competitive bidding.

(a) * * *

(9) Wireless Communications Service (WCS) (see part 27 of this chapter).

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: Section 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Remove the existing entries for 2300–2450 MHz.

b. Add entries in numerical order for 2300–2450 MHz.

c. In the International Footnotes under heading I., add footnotes S5.150, S5.282 , S5.393, S5.394, S5.395, and S5.396 in numerical order.

d. In the International Footnotes under heading II., remove footnotes 750B, 751, 751A, and 751B.

e. Remove United States footnote US253.

f. Add United States footnotes US[xxx] and US[yyy].

g. Revise United States footnotes US276 and US328.

h. Revise Government footnote G2.

i. Add Government footnotes G120, G123 and G124 in numerical order.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
2300–2305 FIXED MOBILE Amateur Radiolocation	2300–2305 FIXED MOBILE RADIOLOCATION Amateur S5.394	2300–2305 FIXED MOBILE RADIOLOCATION Amateur	2300–2305 G123	2300–2305 Amateur	Amateur (97)	
2305–2310 FIXED MOBILE Amateur Radiolocation	2305–2310 FIXED MOBILE RADIOLOCATION Amateur S5.394	2305–2310 FIXED MOBILE RADIOLOCATION Amateur	2305–2310 USxxx G123	2305–2310 FIXED MOBILE RADIOLOCATION Amateur USxxx	WIRELESS COMMUNICATIONS (27) Amateur (97)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2310–2320 FIXED MOBILE Amateur Radiolocation S5.395	2310–2320 FIXED MOBILE RADIOLOCATION Amateur S5.393 S5.394 S5.396	2310–2320 FIXED MOBILE RADIOLOCATION Amateur S5.393 S5.396	2310–2320 Fixed Mobile USyyy Radiolocation G2 S5.396 US327 US328 G120	2310–2320 BROADCASTING-SATELLITE US327 FIXED MOBILE USyyy RADIOLOCATION S5.396 US328	WIRELESS COMMUNICATIONS (27)	Digital Audio Radio Services.
2320–2345 FIXED MOBILE Amateur Radiolocation S5.395	2320–2345 FIXED MOBILE RADIOLOCATION Amateur S5.393 S5.394 S5.396	2320–2345 FIXED MOBILE RADIOLOCATION Amateur S5.393 S5.396	2320–2345 Fixed Mobile US276 Radiolocation G2 S5.396 US327 US328 G120	2320–2345 BROADCASTING-SATELLITE US 327 Mobile US276 S5.396 US328		Digital Audio Radio Services.
2345–2360 FIXED MOBILE Amateur Radiolocation S5.395	2345–2360 FIXED MOBILE RADIOLOCATION Amateur S5.393 S5.394 S5.396	2345–2360 FIXED MOBILE RADIOLOCATION Amateur S5.393 S5.396	2345–2360 Fixed Mobile USyyy Radiolocation G2 S5.396 US327 US328 G120	2345–2360 BROADCASTING SATELLITE US327 FIXED MOBILE USyyy RADIOLOCATION S5.396 US328	WIRELESS COMMUNICATIONS (27)	Digital Audio Radio Services.
2360–2390 FIXED MOBILE Amateur Radiolocation	2360–2390 FIXED MOBILE RADIOLOCATION Amateur S5.394	2360–2390 FIXED MOBILE RADIOLOCATION Amateur	2360–2390 MOBILE US276 RADIOLOCATION G2 Fixed G120	2360–2390 MOBILE US276		
2390–2400 FIXED MOBILE Amateur Radiolocation	2390–2400 FIXED MOBILE RADIOLOCATION Amateur S5.394	2390–2400 FIXED MOBILE RADIOLOCATION Amateur	2390–2400 G122	2390–2400 AMATEUR	AMATEUR (97) Radio Frequency Devices (15)	
2400–2402 FIXED MOBILE Amateur Radiolocation S5.150 S5.282	2400–2402 FIXED MOBILE RADIOLOCATION Amateur S5.150 S5.282 S5.394	2400–2402 FIXED MOBILE RADIOLOCATION Amateur S5.150 S5.282	2400–2402 S5.150 G123	2400–2402 Amateur S5.150 S5.282	Amateur (97)	
2402–2417 FIXED MOBILE Amateur Radiolocation S5.150 S5.282	2402–2417 FIXED MOBILE RADIOLOCATION Amateur S5.150 S5.282 S5.394	2402–2417 FIXED MOBILE RADIOLOCATION Amateur S5.150 S5.282	2402–2417 S5.150 G122	2402–2417 AMATEUR S5.150 S5.282	AMATEUR (97) Radio Frequency Devices (15)	
2417–2450 FIXED MOBILE Amateur Radiolocation S5.150 S5.282	2417–2450 FIXED MOBILE RADIOLOCATION Amateur S5.150 S5.282 S5.394	2417–2450 FIXED MOBILE RADIOLOCATION Amateur S5.150 S5.282	2417–2450 Radiolocation G2 S5.150 S5.282 G124	2417–2450 Amateur S5.150 S5.282	Amateur (97)	
*	*	*	*	*	*	*

International Footnotes

* * * * *

I. New ''S'' Numbering Scheme

* * * * *

S5.150 The following bands:

13533–13567 kHz (centre frequency 13560 kHz),
26957–27283 kHz (centre frequency 27120 kHz),
40.66–40.70 MHz (centre frequency 40.68 MHz),
902–928 MHz in Region 2 (centre frequency 915 MHz),
2400–2500 MHz (centre frequency 2450 MHz),
5725–5875 MHz (centre frequency 5800 MHz), and
24–24.25 GHz (centre frequency 24.125 GHz)

are also designated for industrial, scientific and medical (ISM) applications. Radiocommunication services operating within these bands must accept harmful interference which may be caused by these applications. ISM equipment operating in these bands is subject to the provisions of No. 1815/S15.13.

S5.282 In the bands 435–438 MHz, 1260–1270 MHz, 2400–2450 MHz, 3400–3410 MHz (in Regions 2 and 3 only) and 5650–5670 MHz, the amateur-satellite service may operate subject to not causing harmful interference to other services operating in accordance with the Table (see No. S5.43). Administrations authorizing such use shall ensure that any harmful interference caused by emissions from a station in the amateur-satellite service is immediately eliminated in accordance with the provisions of No. 2741/S25.11. The use of the bands 1260–1270 MHz and 5650–5670 MHz by the amateur-satellite service is limited to the Earth-to-space direction.

* * * * *

S5.393 *Additional allocation:* in the United States and India, the band 2310–2360 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial sound broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (WARC–92).

S5.394 In the United States, the use of the band 2300–2390 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile services. In Canada, the use of the band 2300–2483.5 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile services.

S5.395 In France, the use of the band 2310–2360 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

S5.396 Space stations of the broadcasting-satellite service in the band 2310–2360 MHz operating in accordance with No. S5.393 that may affect the services to which this band is allocated in other countries shall be coordinated and notified in accordance with Resolution 33. Complementary terrestrial broadcasting stations shall be subject to bilateral coordination with neighboring countries prior to their bringing into use.

* * * * *

United States (US) Footnotes

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US276 Except as otherwise provided for herein, use of the bands 2320–2345 and 2360–2390 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof. The following four frequencies are shared on a co-equal basis for telemetering and associated telecommand operations of expendable and re-usable launch vehicles whether or not such operations involve flight testing: 2332.5, 2364.5, 2370.5, and 2382.5 MHz. All other mobile telemetering uses shall be secondary to the above uses.

* * * * *

US328 In the band 2320–2345 MHz, the mobile and radiolocation services are allocated on a primary basis until 1 January 1997 or until broadcasting-satellite (sound) service has been brought into use in such a manner as to affect or be affected by the mobile and radiolocation services in those service areas, whichever is later. The broadcasting-satellite (sound) service during implementation should also take cognizance of the expendable and reusable launch vehicle frequencies 2312.5, 2332.5, and 2352.5 MHz, to minimize the impact on this mobile service use to the extent possible.

* * * * *

US[xxx] In the 2305–2310 MHz band, airborne and space-to-Earth operations are prohibited. Additionally, in the 2305–2310 MHz band, Wireless Communications Service operations within 50 kilometers of 35°20′ North Latitude and 116°53′ West Longitude shall be coordinated on a case-by-case basis through the frequency assignment subcommittee in order to minimize harmful interference to NASA's Goldstone Deep Space facility.

US[yyy] The bands 2310–2320 and 2345–2360 MHz are also available for aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof on a secondary basis to the Wireless Communications Service. The following two frequencies are shared on a co-equal basis for telemetering and associated telecommand operations of expendable and re-usable launch vehicles whether or not such operations involve flight testing: 2312.5 and 2352.5 MHz. Other mobile telemetering uses may be provided on a non-interference basis to the above uses.

* * * * *

Government Footnotes

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G2 In the bands 216–225, 420–450 (except as provided by US217), 890–902, 928–942, 1300–1400, 2310–2390, 2417–2450, 2700–2900, 5650–5925, and 9000–9200 MHz, the Government radiolocation is limited to the military services.

* * * * *

G120 Development of airborne primary radars in the band 2310–2390 MHz with peak transmitter power in excess of 250 watts for use in the United States is not permitted.

* * * * *

G123 The bands 2300–2310 and 2400–2402 MHz were identified for reallocation, effective August 10, 1995, for exclusive non-Government use under Title VI of the Omnibus Budget Reconciliation Act of 1993. Effective August 10, 1995, any Government operations in these bands are on a non-interference basis to authorized non-Government operations and shall not hinder the implementation of any non-Government operations.

G124 The band 2417–2450 MHz was identified for reallocation, effective August 10, 1995, for mixed Government and non-Government use under Title VI of the Omnibus Budget Reconciliation Act of 1993.

3. Section 2.1091 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile and unlicensed devices.

* * * * *

(c) Mobile devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Wireless Communications Service, the Satellite Communications Services, the Maritime Services and the Specialized Mobile Radio Service authorized under subpart H of part 22 of this chapter, part 24 of this chapter, part 25 of this chapter, part 27 of this chapter (only mobile devices with similar or identical operating characteristics to those authorized under subpart H of part 22, part 24, and ''covered'' SMR under part 90 of this chapter), part 80 of this chapter (ship earth station devices only) and part 90 of this chapter (''covered'' SMR devices only, as defined in the note to Table 1 of § 1.1307(b)(1) of this chapter), are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their effective radiated power (ERP) is 1.5 watts or more. * * *

* * * * *

4. Section 2.1093 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Wireless Communications Service, the Satellite Communications services, the Maritime Services and the Specialized Mobile Radio Service authorized under subpart H of part 22 of this chapter, part 24 of this chapter, part 25 of this chapter, part 27 of this chapter (only portable devices with similar or identical operating characteristics to those authorized under subpart H of

part 22, part 24, and ''covered'' SMR under part 90 of this chapter), part 80 of this chapter (ship earth station devices only), part 90 of this chapter (''covered'' SMR devices only, as defined in the note to Table 1 of § 1.1307(b)(1) of this chapter), and portable unlicensed personal communication service and millimeter wave devices authorized under § 15.253, § 15.255 or subpart D of part 15 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. * * *

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5. A new part 27 is added to read as follows:

PART 27—WIRELESS COMMUNICATIONS SERVICE

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Sec.
27.1 Basis and purpose.
27.2 Permissible communications.
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27.319 Opposition to applications.
27.320 Mutually exclusive applications.
27.321 Consideration of applications.
27.322 Post-auction divestitures.
27.323 Transfer of control or assignment of station authorization.
27.324 Termination of authorization.

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332.

Subpart A—General Information

§ 27.1 Basis and purpose.

This section contains the statutory basis for the rules in this part and provides the purpose for which this part is issued.

(a) *Basis.* The rules for the Wireless Communications Service (WCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vest authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations.

(b) *Purpose.* This part states the conditions under which the 2305–2320 MHz and 2345–2360 MHz bands are made available and licensed for the provision of WCS.

(c) *Scope.* The rules in this part apply only to stations authorized under this part.

§ 27.2 Permissible communications.

Subject to the rules in this part, fixed, mobile and radiolocation services may be provided using the 2305–2320 and 2345–2360 MHz bands. In addition, satellite digital audio radio service (DARS) may be provided using the 2310–2320 and 2345–2360 MHz bands. Satellite DARS service shall be provided in manner consistent with part 25 of this chapter.

§ 27.3 Other applicable rule parts.

Other FCC rule parts in this chapter applicable to the Wireless Communications Service include the following:

(a) *Part 0.* Part 0 of this chapter describes the Commission's organization and delegations of authority. Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) *Part 1.* Part 1 of this chapter includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; competitive bidding procedures, and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction.

(c) *Part 2.* Part 2 of this chapter contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. Part 2 of this chapter also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) *Part 5.* Part 5 of this chapter contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) *Part 17.* Part 17 of this chapter contains requirements for construction, marking and lighting of antenna towers.

(f) *Part 25.* Part 25 of this chapter contains the requirements for satellite communications, including the satellite DARS.

(g) *Part 68.* Part 68 of this chapter contains technical standards for connection of terminal equipment to the telephone network.

§ 27.4 Terms and definitions.

Assigned frequency. The center of the frequency band assigned to a station.

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Effective Radiated Power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its

gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (e.i.r.p.). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed Service. A radio communication service between specified fixed points.

Fixed Station. A station in the fixed service.

Land Mobile Service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land Mobile Station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land Station. A station in the mobile service not intended to be used while in motion.

Mobile Service. A radio communication service between mobile and land stations, or between mobile stations.

Mobile Station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

National Geodetic Reference System (NGRS). The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

Radiodetermination. The determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves.

Radiolocation. Radiodetermination used for purposes other than those of radionavigation.

Radionavigation. Radiodetermination used for the purpose of navigation, including obstruction warning.

Satellite Digital Audio Radio Service (''satellite DARS''). A radiocommunication service in which compact disc quality programming is digitally transmitted by one or more space stations.

Wireless Communications Service. A radiocommunication service that encompasses fixed, mobile, satellite DARS, and radiolocation services.

Subpart B—Applications and Licenses

§ 27.11 Initial authorization.

(a) An applicant must file an application for an initial WCS authorization.

(b) The initial WCS authorizations shall be granted for [XX] megahertz of spectrum and shall be on a [geographical basis to be determined].

(c) The initial WCS authorizations shall be a blanket license. Applications for individual sites are not required and will not be accepted.

§ 27.12 Eligibility.

Any entity, other than those precluded by 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

§ 27.13 License period.

Licenses shall be granted for ten year terms from the date of original issuance or renewal.

§ 27.14 Criteria for comparative renewal proceedings.

(a) A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that the renewal applicant:

(1) Has provided ''substantial'' service during its past license term. In addition, the communications provided must be sound, favorable, and substantially above a level of mediocre service which might just minimally warrant renewal; and

(2) Has substantially complied with applicable Commission rules, policies and the Communications Act.

(b) At five and ten years from the date of original issuance or renewal, the licensee shall report to the Commission what it has built and the percentage of its service area population that it serves. The Commission shall take these reports into account during its consideration of the renewal application.

§ 27.15 Geographic partitioning and spectrum disaggregation.

(a) Geographic partitioning and spectrum disaggregation are permitted without restriction.

(b) In the event that the WCS license is partitioned or disaggregated, any partitionee/disaggregatee shall be authorized to hold its license for the remainder of the partitioner's/disaggregator's original ten-year license term.

§ 27.16 Franchising.

In the event that the WCS licensee franchises portions of its spectrum and geographic service area on a leased basis, the WCS licensee shall retain ultimate responsibility for meeting interference and other licensing requirements.

Subpart C—Technical Standards

§ 27.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure.

(b) The Commission periodically publishes a list of type accepted equipment, entitled ''Radio Equipment List, Equipment Accepted for Licensing.'' Copies of this list are available for public reference at the Commission's offices in Washington, D.C., at each of its field offices, and may be ordered from its copy contractor.

(c) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter. Such equipment if approved or accepted will not normally be included in the Commission's Radio Equipment List but will be individually enumerated on the station authorization.

§ 27.52 RF safety.

Licensees and manufacturers are subject to the radio frequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091, and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

§ 27.53 Emission limits.

(a) The peak power of any emission outside the licensee's bands of operation shall be attenuated below the maximum peak spectral power density (p) within the band of operation by the following amounts:

(1) For fixed operations: By a factor not less than 43 + 10 log (p) dB on all frequencies between 2300 and 2305 MHz and above 2360 MHz; and not less than 70 + 10 log (p) dB on all frequencies below 2300 MHz and between 2320–2345 MHz band;

(2) For mobile operations: By a factor not less than 43 + 10 log (p) dB on all frequencies between 2300 and 2305

MHz, between 2320 and 2345 MHz, and above 2360 MHz; and not less than 70 + 10 log (p) dB on all frequencies below 2300 MHz;

(3) For the purposes of this section, radiolocation shall be classified as either a fixed or mobile service, depending upon the application; and

(4) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency bands of operation a smaller resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed, provided the measured energy is integrated to provide the total energy in a 1 MHz bandwidth.

(b) *For WCS satellite DARS operations:* The limits set forth in § 25.202(f) of this chapter apply.

(c) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the edges, both upper and lower, of the license's bands of operation as the design permits.

(d) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

§ 27.54 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emissions stay within the authorized bands of operation.

§ 27.55 Field strength limits.

If geographic partitioning is employed, the predicted or measured median field strength at any location on the border of the WCS service area shall not exceed 47 dBuV/m unless the parties agree to a higher field strength.

§ 27.56 Antenna structures; air navigation safety.

A licensee that owns its antenna structures must not allow these antenna structures to become a hazard to air navigation. In general, antenna structure owners are responsible for registering antenna structures with the FCC if required by part 17 of this chapter, and for installing and maintaining any required marking and lighting. However, in the event of default of this responsibility by an antenna structure owner, the FCC permittee or licensee authorized to use an affected antenna structure will be held responsible by the FCC for ensuring that the antenna structure continues to meet the requirements of part 17 of this chapter. See § 17.6 of this chapter.

(a) *Marking and lighting.* Antenna structures must be marked, lighted and maintained in accordance with part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration.

(b) *Maintenance contracts.* Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) may enter into contracts with other entities to monitor and carry out necessary maintenance of antenna structures. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) that make such contractual arrangements continue to be responsible for the maintenance of antenna structures in regard to air navigation safety.

§ 27.57 International coordination.

WCS operations shall protect existing Canadian and Mexican operations in the 2305–2320 and 2345–2360 MHz bands. WCS operations along the US/Canadian and US/Mexican border areas shall be subject to coordination, as appropriate. In addition, satellite DARS operations on WCS spectrum shall be subject to international coordination procedures.

Subpart D—Competitive Bidding Procedures for WCS

§ 27.201 WCS subject to competitive bidding.

Mutually exclusive initial applications to provide WCS service are subject to competitive bidding procedures. In addition to the rules set forth in this subpart, the following competitive bidding rules found in part 1, subpart Q, of this chapter shall apply to WCS: §§ 1.2101, 1.2102, 1.2103, 1.2104(a) through (f), (h) and (i), 1.2105(b) through (c), 1.2109 and 1.2111 of this chapter.

§ 27.202 Competitive bidding mechanisms.

In addition to the provisions of § 1.2104(a) through (f), (h) and (i), the following provisions will apply to WCS:

(a) *Tie bids.* Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

(b) *Maximum bid increments.* The Commission may, by announcement before or during the auction, require maximum bid increments in dollar or percentage terms.

§ 27.203 Withdrawal, default and disqualification payments.

When the Commission conducts a simultaneous multiple round auction pursuant to section 27.202, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(a) *Bid withdrawal prior to close of auction.* A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment would be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(b) *Default or disqualification after close of auction.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (a) of this section plus an additional payment equal to 3 percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(c) *Erroneous bids.* If at any point during an auction an erroneous bid is withdrawn in the same round in which it was submitted, the bid withdrawal payment will be the greater of:

(1) The minimum bid increment for that license and round; and

(2) The standard bid withdrawal payment, as defined in paragraph (a) of this section, calculated as if the bidder had made the minimum accepted bid. If an erroneous bid is withdrawn in the round immediately following the round in which it was submitted, and the auction is in Stage I or Stage II, the withdrawal payment will be the greater of:

(i) Two times the minimum bid increment during the round in which the erroneous bid was submitted; and

(ii) The standard withdrawal payment, as defined in paragraph (a) of this section, calculated as if the bidder had made a bid one bid increment above the minimum accepted bid. If an erroneous bid is withdrawn two or more rounds following the round in which it was submitted, the bidder will not be eligible for any reduction in the bid withdrawal payment as defined in paragraph (a) of this section. During Stage III of an auction, if an erroneous bid is not withdrawn during the round

in which it was submitted, the bidder will not be eligible for any reduction in the bid withdrawal payment as defined in paragraph (a) of this section.

§ 27.204 Bidding application and certification procedures.

(a) *Submission of short-form application (FCC Form 175).* In order to be eligible to bid, an applicant must timely submit, by means of electronic filing, a short-form application (FCC Form 175). Unless otherwise provided by public notice, the Form 175 need not be accompanied by an upfront payment (see § 27.205).

(1) All Form 175s will be due on the date specified by public notice.

(2) The Form 175 must contain the following information:

(i) Identification of each license on which the applicant wishes to bid;

(ii) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the name, citizenship and address of all partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons;

(iii) The identity of the person(s) authorized to make or withdraw a bid;

(iv) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to section 308(b) of the Communications Act of 1934, as amended. The Commission will accept applications certifying that a request for waiver or other relief from the requirements of section 310 is pending;

(v) Certification that the applicant is in compliance with the foreign ownership provisions of section 310 of the Communications Act of 1934, as amended;

(vi) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;

(vii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure;

(viii) Certification under penalty of perjury that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to paragraph (a)(2)(vii) of this section regarding the amount of their bids, bidding strategies or the particular licenses on which they will or will not bid; and

(ix) Certification under penalty of perjury that it is not in default on any Commission licenses and that it is not delinquent on any extension of credit from any federal agency;

Note to paragraph (a): The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) *Modification and amendment of application.* Applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175 to make changes to the information required by paragraph (a) of this section (such as ownership changes or changes in the identification of parties to bidding consortia), provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for licenses in any of the same geographic license areas as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105 of this chapter.

§ 27.205 Submission of upfront payments.

(a) The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a public notice. No interest will be paid on upfront payments.

(b) Upfront payments must be made by wire transfer.

(c) If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.

(d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder. Where the upfront payment amount exceeds the required deposit of a winning bidder, the Commission may refund the excess amount after determining that no bid withdrawal payments are owed by that bidder.

(e) In accordance with the provisions of paragraph (d) of this section, in the event a payment is assessed pursuant to § 27.203 for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default payment before being applied toward any additional payment obligations that the high bidder may have.

§ 27.206 Submission of down payment and filing of long-form applications.

(a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.

(b) Within ten (10) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the ''down payment'') as are necessary to bring its total deposits (not including upfront payments applied to satisfy bid withdrawal or default payments) up to twenty (20) percent of its high bid(s). This down payment must be made by wire transfer or cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable payments. No interest will be paid on any down payment.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder,

submit an additional application (the ''long-form application'') pursuant to the rules governing the service in which the applicant is the high bidder. Notwithstanding any other provision in chapter I of title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Notwithstanding any other provision in chapter I of title 47 of the Code of Federal Regulations to the contrary, the high bidder's long-form application must be mailed or otherwise delivered to: Office of the Secretary, Federal Communications Commission, Attention: Auction Application Processing Section, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. An applicant that fails to submit the required long-form application as required under this section, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the payments set forth in § 27.203.

(d) As an exhibit to its long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Such agreements must have been entered into prior to the filing of short-form applications pursuant to § 27.204.

§ 27.207 Procedures for filing petitions to deny against WCS long-form applications.

(a) Within five (5) days after the Commission gives public notice that a long-form application has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof, and be served by hand upon the applicant or its representative.

(b) An applicant may file an opposition to any petition to deny within three (3) days after the deadline for filing petitions to deny. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof, and such opposition must be served by hand upon the petitioner.

(c) If the Commission determines that:

(1) An applicant is qualified and there is no substantial and material issue of fact concerning that determination, it will grant the application;

(2) An applicant is not qualified and that there is no substantial issue of fact concerning that determination, the Commission need not hold a evidentiary hearing and will deny the application; and

(3) Substantial and material issues of fact require a hearing, it will conduct a hearing. The Commission may permit all or part of the evidence to be submitted in written form and may permit employees other than administrative law judges to preside at the taking of written evidence. Such hearing will be conducted on an expedited basis.

Subpart E—Application, Licensing, and Processing Rules for WCS

§ 27.301 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 27.302 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under those laws, including §§ 27.101 and 27.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership. A WCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien;

(2) Any corporation organized under the laws of any foreign government;

(3) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country; or

(4) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(c) A WCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

§ 27.303 Formal and informal applications.

(a) Except for an authorization under any of the conditions stated in section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission may grant only upon written application received by it, the following authorization: station licenses; modifications of licenses; renewals of licenses; transfers and assignments of station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

(1) ''Formal applications'' where the Commission has prescribed in this part a standard form; or

(2) ''Informal applications'' (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 27.304 Filing of WCS applications, fees, and numbers of copies.

(a) As prescribed by §§ 27.305 and 27.307, standard formal application forms applicable to the WCS may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554; or

(2) By calling the Commission's Forms Distribution Center, (202) 418–3676.

(b) Applications for the initial provision of WCS service must be filed on FCC Form 175 in accordance with the rules in §§ 27.204 and 27.305 and part 1, subpart Q, of this chapter. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form [XXX] for initial WCS licenses. Mutually exclusive applications filed on Form 175 are subject to competitive bidding under the rules in §§ 27.204 and 27.305 and part 1, subpart Q, of this chapter. WCS applicants filing Form [XXX] need not complete Schedule B.

(c) All applications for WCS radio station authorizations (other than

applications for initial provision of WCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: WCS Processing Section. Applications requiring fees as set forth at part 1, subpart G, of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Wireless Telecommunications Bureau, Washington, DC 20554, WCS Processing Section.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (with the exception of FCC Form 175, which is to be filed electronically pursuant to § 27.204) shall be submitted on one original paper copy and with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743 of this chapter. Unless otherwise provided by the FCC, filings of five pages or less are exempt from the requirement to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped ''original''. In addition to the original hard copy, those filing pleadings, including pleadings under § 1.2108 of this chapter shall also submit 2 paper copies as provided in § 1.51 of this chapter.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148 mm 0A 105 mm negative (clear transparent characters appearing on an opaque background) at 240A to 270A reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm 0A 176 mm) or 5 0A 7.5 inch envelope. All applicants must leave Row ''A'' (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) All applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The type of application (e.g. nationwide, regional, etc.);

(iii) The month and year of the document;

(iv) Name of the document;

(v) File number, applicant identification number, and call sign, if assigned; and

(vi) Each microfiche copy of pleadings shall include:

(A) The month and year of the document;

(B) Name of the document;

(C) Name of the filing party; and

(D) File number, applicant identification number, and call sign, if assigned:

§ 27.305 Standard application forms and permissive changes or minor modifications for the Wireless Communications Service.

(a) Applications for the initial provision of WCS service must be filed electronically on FCC Forms 175 and 175–S.

(b) Subsequent application by auction winners or non-mutually exclusive applicants for WCS radio station(s) under this part. FCC Form [XXX] (''Application for New or Modified Wireless Communications Service Under Part 27'') shall be submitted by each auction winner for each WCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the Commission will so inform the applicant and the applicant will also file FCC Form [XXX]. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 27.11. WCS applicants filing Form [XXX] need not complete Schedule B.

§ 27.306 Miscellaneous forms.

(a) Licensee qualifications. FCC Form 430 (''Common Carrier and Satellite Radio Licensee Qualifications Report'') shall be filed by Wireless Communications Service licensees only as required by Form 490 (Application for Assignment or Transfer of Control Under part 22 of this chapter).

(b) Renewal of station license. Except for renewal of special temporary authorizations, FCC Form 405 (''Application for Renewal of Station License'') must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed.

§ 27.307 General application requirements.

(a) Each application (including applications filed on Forms 175 and [XXX]) for a radio station authorization or for consent to assignment or transfer of control in the WCS shall disclose fully the real party or parties in interest and must include the following information:

(1) A list of its subsidiaries, if any. Subsidiary means any business five per cent or more whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant.

(2) A list of its affiliates, if any. Affiliates means any business which holds a five percent or more interest in the applicant, or any business in which a five percent or more interest is held by another company which holds a five percent interest in the applicant (e.g. Company A owns 5% of Company B and 5% of Company C; Companies B and C are affiliates).

(3) A list of the names, addresses, citizenship and principal business of any person holding five percent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement.

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application. This information must be included in Exhibit V of the application.

(b) Each application for a radio station authorization in the WCS must:

(1) Submit the information required by the Commission's rules, requests, and application forms;

(2) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this chapter; and

(3) Show compliance with and make all special showings that may be applicable.

(c) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one A4 (21 cm × 29.7 cm) or 8.5 × 11 inch (21.6 cm × 27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) The station call sign or application file number whenever the reference is to station files or previously filed applications; and

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding. However, questions on an application form which call for specific technical data, or which can be answered by a ''yes'' or ''no'' or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(d) In addition to the general application requirements of subpart F of this part and § 1.2105 of this chapter, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by this chapter; and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(e) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(f) All applicants (except applicants filing FCC Form 175) are required to indicate at the time their application is filed whether or not a Commission grant of the application may have a significant environmental impact as defined by § 1.1307 of this chapter. If answered affirmatively, the requisite environmental assessment as prescribed in § 1.1311 of this chapter must be filed with the application and Commission environmental review must be completed prior to construction. See § 1.1312 of this chapter. All WCS licensees are subject to a continuing obligation to determine whether subsequent construction may have a significant environmental impact prior to undertaking such construction and to otherwise comply with §§ 1.1301 through 1.1319 of this chapter. See § 1.1312 of this chapter.

§ 27.308 Technical content of applications; maintenance of list of station locations.

All applications required by this part shall contain all technical information required by the application forms or associated public notice(s). Applications other than initial applications for a WCS license must also comply with all technical requirements of the rules governing the WCS (see subparts C and D of this part as appropriate).

§ 27.310 Waiver of rules.

(a) *Request for waivers.* (1) Waivers of the rules in this chapter may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule in this chapter will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule in this chapter inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) *Denial of waiver, alternate showing required.* If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules in this chapter (including any required showings).

§ 27.311 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements. See also § 1.2105 of this chapter.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2) The application (other than an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter; or

(3) The application is filed prior to the public notice issued under § 27.317 announcing the application filing date for the relevant auction or after the cutoff date prescribed in that public notice.

(c) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 27.312 Inconsistent or conflicting applications.

While an application is pending and undecided under this part, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

§ 27.313 Amendment of applications for Wireless Communications Service (other than applications filed on FCC Form 175).

This section applies to all applications for Wireless Communications Service other than applications filed on FCC Form 175.

(a) Amendments as of right. A pending application may be amended as a matter of right if the application has not been designated for hearing.

(1) Amendments shall comply with § 27.319, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 27.319 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) Major amendments, minor amendments. The Commission will classify all amendments as minor except

in the cases listed in this paragraph (c). An amendment shall be deemed to be a major amendment subject to § 27.317 under any of the following circumstances:

(1) Change in technical proposal. If the amendment results in a substantial change in the engineering proposal such as (but not necessarily limited to) a change in, or an addition of, a radio frequency;

(2) Amendment to proposed service area. If the amendment extends the reliable service area of the proposed facilities outside its EA or other applicable market area as defined in § 27.102; or

(3) A substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, requests for waiver, (or other written communications) shall be served on the petitioner by hand, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also § 1.2108 of this chapter.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(2) The amendment corrects typographical transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

(3) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option; or

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure.

§ 27.314 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 27.303 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization. A request received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirements of § 27.317 when:

(1) The authorization is for a period not to exceed 30 days and no application for regular operation is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorizations of operation not to exceed 180 days may be granted under the standards of section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the renewal applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the president or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant radio station authorizations and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

§ 27.315 Receipt of application; applications in the Wireless Communications Service filed on FCC Form 175 and other applications in the WCS Service.

(a) All applications for the initial provision of WCS service must be submitted by means of electronic filing on FCC Forms 175 and 175–S. Mutually exclusive initial applications in the Wireless Communications Service are subject to competitive bidding. FCC Form [XXX] (''Application for New or Modified Subscription Radio Service Radio Station Under Part 27'') must be submitted by each winning bidder for each WCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the applicant will also file FCC Form 401. The aforementioned Forms 175, 175–S, and [XXX] are subject to the provisions of part 1, subpart Q, of this chapter (''Competitive Bidding Proceedings'') and subpart D of this part. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 27.11.

(b) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules in this chapter.

(c) Acceptance of an application for filing merely means that it has been the

subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules in this chapter.

§ 27.316 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of all applications and major amendments thereto;

(2) Significant Commission actions concerning applications listed as acceptable for filing;

(3) Information which the Commission in its discretion believes of public significance. Such notices are solely for the purpose of informing the public and do not create any rights in an applicant or any other person; or

(4) Special environmental considerations as required by part 1 of this chapter.

(b) The Commission will not grant any application until expiration of a period of seven (7) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing. Provided, that the Commission will not grant an application filed on Form [XXX] filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of forty (40) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also § 27.207.

(c) As an exception to paragraphs (a)(1), (a)(2) and (b) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 27.314) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities, see § 27.104;

(4) For temporary authorization pursuant to § 27.314;

(5) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(6) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(7) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 27.317 Dismissal and return of applications.

(a) Any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175–S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications are also subject to § 1.2104 of this chapter.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record; and

(2) The petition complies with the provisions of this section and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory compliance or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 27.318 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of § 1.2105 of this chapter (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which §§ 27.313(c) and 27.313(g) apply [or which would cause the applicant to lose its status as a designated entity under § 27.XXX]; or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petition or other pleading.

(b) The provisions of § 22.129 of this chapter will apply in the event of the filing of petitions to deny or other pleadings or informal objections filed against WCS applications. The provisions of § 22.129 of this chapter will apply in the event of dismissal of WCS applications. The provisions of § 22.129(c) of this chapter will apply in the event of threats to file petitions to deny or other pleadings or informal objections against WCS applications.

§ 27.319 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with § 27.207 and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§ 1.41 through 1.52 of this chapter except where otherwise provided in § 27.207;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within five (5) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been hand delivered to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain

standing because of the major amendment.

(c) Parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating in future auctions.

§ 27.320 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume ''harmful electrical interference'' to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of WCS service are subject to competitive bidding in accordance with the procedures in subpart F of this part and in part 1, subpart Q, of this chapter.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§ 27.321 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity. See also § 1.2108 of this chapter.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules (47 CFR chapter I), regulations, and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 27.320 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 27.319, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (see also § 1.2108 of this chapter);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements; or

(3) The application is entitled to comparative consideration (under § 27.320) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or part 1 of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with part 1, subpart A, of this chapter.

§ 27.322 Post-auction divestitures.

Any parties sharing a common non-controlling ownership interest who aggregate more WCS spectrum among them than a single entity is entitled to hold will be permitted to divest sufficient properties within 90 days of the license grant to come into compliance with the spectrum aggregation limits as follows:

(a) The WCS applicant shall submit a signed statement with its long-form application stating that sufficient properties will be divested within 90 days of the license grant. If the licensee is otherwise qualified, the Commission will grant the applications subject to a condition that the licensee come into compliance with the WCS spectrum aggregation limits within 90 days of grant.

(b) Within 90 days of license grant, the licensee must certify that the applicant and all parties to the application have come into compliance with the WCS spectrum aggregation limits. If the licensee fails to submit the certification within 90 days, the Commission will immediately cancel all broadband WCS licenses won by the applicant, impose the default payment and, based on the facts presented take any other action it may deem appropriate. Divestiture may be to an interim trustee if a buyer has not been secured in the required time frame, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the property as it sees fit. In no event may the trustee retain the property for longer than six months from grant of license.

§ 27.323 Transfer of control or assignment of station authorization.

(a) Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the Wireless Communications Service is also subject to § 1.2111 of this chapter (Assignment or transfer of control: unjust enrichment).

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the

relationships of the owners, including family relationships.

(b) Form required: (1) Assignment. (i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within 30 days of the event causing the assignment.

(2) Transfer of control. (i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within 30 days of the event causing the transfer.

(3) Form 430. Whenever an application must be filed under paragraphs (a)(1) or (a)(2) of this section, the assignee or transferee shall file FCC Form 430 (''Common Carrier Radio License Qualification Report'') unless an accurate report is on file with the Commission.

(4) Notification of completion. The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original build-out requirement of § 27.104.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Applicants seeking to transfer their licenses within three years after the initial license grant date are required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration to be received in return for the transfer of the license.

§ 27.324 Termination of authorization.

(a)(1) All authorizations shall terminate on the date specified on the authorization or on the date specified by the rules in this part, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30 day period reinstatement applications must be filed on FCC Form 489. Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. See also § 27.14 (Criteria for Comparative Renewal Proceedings).

(b) Special Temporary Authority. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.303(j)(2) is revised to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(j) * * *

(2) The 2300–2310 MHz segment is allocated to the amateur service on a secondary basis. The 2390–2400 MHz and 2402–2417 MHz segments are allocated to the amateur service on a primary basis. No amateur station transmitting in the 2400–2450 MHz segment is protected from interference due to the operation of industrial, scientific, and medical devices on 2450 MHz.

* * * * *

[FR Doc. 96–29530 Filed 11–15–96; 10:55 am]

BILLING CODE 6712–01–P

DEPARTMENT OF ENERGY

48 CFR Parts 952 and 970

Acquisition Regulation, Classification, Security and Counterintelligence

AGENCY: Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend the Department of Energy Acquisition Regulation (DEAR) to revise its classification contract clause, revise its access authorization (security clearance) procedures for contractor personnel, and add new counterintelligence provisions. Specific material being revised or added is summarized in the ''Section-by-Section Analysis'' appearing later in this document.

DATES: Written comments should be forwarded no later than January 21, 1997.

ADDRESSES: Send written comments to the attention of Richard B. Langston, Office of Policy (HR–51), Office of the Assistant Secretary for Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Richard Langston, (202) 586–8247.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Analysis
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the National Environmental Policy Act
G. Public Hearing Determination

I. Background

This proposed rule will accomplish three objectives.

First, it will update the classification contract clause to incorporate interim changes set forth in Acquisition Letter 92–2R dated April 8, 1993 which provides that only Federal Government employees may serve as ''original classifiers'' and that both Federal Government employees and contractor employees may serve as ''derivative classifiers.'' The clause is also changed to recognize that a balance is required between the Department's mission to protect the national security and prevent nuclear proliferation and its commitment to maximize the amount of information available to the public. As revised, the clause not only requires that information, documents or equipment originated or generated in classified or potentially classified subject areas be reviewed for classification by the appropriate officials using proper classification guidance provided by the Department, but also requires that documents containing information which is no longer classified by current classification guidance be systematically reviewed for declassification by a Derivative Declassifier. Only when both classification and declassification reviews are performed can the Department achieve its goal of protecting the national security while providing the public with access to as much Government information as possible.

Second, it will provide a definition of ''counterintelligence'' consistent with E.O. 12333, a policy statement regarding DOE's counterintelligence program, and a new contract clause on counterintelligence applicable to certain

DOE management and operating contractors and other contractors managing DOE-owned facilities.

Third, it will revise the DEAR to be consistent with the General Accounting Office Report on Nuclear Security, RCED–93- 183, as implemented by DOE Order 472.1 entitled ''Personnel Security Activities.'' The GAO report stresses contractor responsibility for certifying preemployment checks conducted on prospective employees. Where DOE access authorization is required, the contractor must perform normal and prudent preemployment checks and the applicant's job qualifications and suitability must be established before a request is made to the Department for a security clearance. This revision is applicable to DOE management and operating contractors and other contractors managing DOE-owned facilities.

II. Section-by-Section Analysis

1. The authority citations for Parts 952 and 970 are restated.
2. The classification clause at 952.204–70 is renamed classification/declassification and is updated to incorporate changes set forth as interim changes in Acquisition Letter 92–2R dated April 8, 1993. It is also revised to require systematic declassification reviews as well as classification reviews.
3. A definition of counterintelligence is added to subsection 970.0404–1.
4. A new paragraph is added to 970.0404–2 to describe DOE policy on counterintelligence.
5. New instructions are added to 970.0404–4 to detail the security clause requirements for management and operating contractors and other contractors managing DOE-owned facilities.
6. Section 970.2201 is amended to describe the procedures for confirming to DOE the conduct and outcome of preemployment checks performed by management and operating contractors and other contractors managing DOE-owned facilities, when such contractors request that the DOE process an applicant for access authorization.
7. Section 970.5204–1 is amended to add a new clause entitled counterintelligence.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the interim final regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 5 U.S.C. 601, *et seq.*, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This proposed rule revises established classification, and security requirements and adds counterintelligence requirements. The security and counterintelligence requirements of this proposed rule are applicable only to management and operating contractors and other contractors managing DOE-owned facilities. Typically, such contractors are large businesses or universities, therefor, this proposed rule will have no significant impact on a substantial number of small entities. These security and counterintelligence requirements apply only to prime contractors and there is no flowdown to subcontractors who might be small entities. The change to the classification clause applies to all contracts and subcontracts with classified information but has no significant economic impact. Based on this review, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

This proposed rule imposes no new information collection or record keeping requirements. Accordingly, they require no OMB clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal Government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of states.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A), DOE has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Public Hearing Determination

DOE has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 48 CFR Parts 952 and 970

Government procurement.

Issued in Washington, D.C., on November 13, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for Part 952 continues to read:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c); 42 U.S.C. 13524.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.204–70 [Amended]

2. Subsection 952.204–70 is amended by revising the section heading and revising the clause to read:

952.204–70 Classification/Declassification.

* * * * *

CLASSIFICATION/DECLASSIFICATION (XXX 1996)

In the performance of work under this contract, the contractor shall ensure that all information originated or generated under the contract in a classified or potentially classified subject area is reviewed by a Federal Government Original Classifier and that any documents or equipment originated or generated in such areas are reviewed by a Federal Government or Contractor Derivative Classifier in accordance with classification regulations (e.g., internal agency directives) and guidance furnished to the contractor by the Department of Energy. Every subcontract and purchase order issued hereunder involving the origination or generation of classified information, documents, or equipment shall require that, in the performance of such subcontract or purchase order, the subcontractor or supplier shall ensure that all such information, documents or equipment in a classified or potentially classified subject area are reviewed by a Federal Government Original Classifier or a Federal Government or Contractor Derivative Classifier in accordance with classification regulations (e.g., internal agency directives) and guidance furnished to such subcontractor or supplier by the contractor. In addition, each contractor or subcontractor shall assure that documents containing information which is no longer classified by current classification regulations are systematically reviewed by a Federal Government or Contractor Derivative Declassifier under applicable regulations in order to maximize the public's access to as much Government information as possible while minimizing security costs.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

The authority citation for Part 970 continues to read:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

970.0404–1 [Amended]

3. Subsection 970.0404–1 is amended by adding in alphabetical order ''counterintelligence'' as a new definition to read as follows:

970.0404–1 Definitions.

* * * * *

Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities.

* * * * *

4. Subsection 970.0404–2 is amended by adding paragraph (e) to read as follows:

970.0404–2 General.

* * * * *

(e) Executive Order 12333, United States Intelligence Activities, provides for the organization and control of United States foreign intelligence and counterintelligence activities. In accordance with this Executive Order, DOE has established a counterintelligence program which is described in DOE Order 5670.3 (as amended). All DOE elements, including management and operating contractors and other contractors managing DOE-owned facilities, should undertake the necessary precautions to ensure that DOE and covered contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

5. Subsection 970.0404–4 is amended by revising paragraph (a)(1) and by adding a new paragraph (a)(2) to read as follows:

970.0404–4 Contract clauses.

(a) * * *

(1) *Security and Classification/Declassification, 970.5204–1(a).* These clauses are required in all contracts which involve access to classified information, nuclear material, or access authorizations.

(2) *Counterintelligence, 970.5204–1(b).* This clause is required in all management and operating contracts and other contracts for the management of DOE-owned facilities which include the security and classification/declassification clauses.

* * * * *

6. Section 970.2201 is amended by revising paragraph (b)(1)(ii) to read as follows:

970.2201 Basic labor policies.

* * * * *

(b) * * *

(1) * * *

(ii) The job qualifications and suitability of prospective employees should be established by the contractor prior to employment by careful personnel investigations. Such personnel investigations should include, as appropriate: A credit check; verification of high school degree/diploma or degree/diploma granted by an institution of higher learning within the last 5 years; contacts with listed personal references; contacts with listed employers for the past 3 years (excluding employment of less than 60 days duration, part-time employments, and craft/union employments); and local law enforcement checks when such checks are not prohibited by state or local law, statute, or regulation, and when the individual had resided in the jurisdiction where the contractor is located. When a DOE access authorization (security clearance) will be required, the preemployment checks must be conducted and the applicant's job qualifications and suitability must be established before a request is made to the DOE to process the applicant for access authorization. Evidence must be furnished to the DOE with the applicant's security forms that specifies: the date each check was conducted, the entity contacted that provided information concerning the applicant, a synopsis of the information provided as a result of each contact, and a statement that all information available has been reviewed and favorably adjudicated in accordance with the contractor's personnel policies. When an applicant is being hired specifically for a position which requires a DOE access authorization, the applicant shall not be placed in that position prior to the access authorization being granted by the DOE unless an exception has been obtained from the Head of the Contracting Activity or designee. If an applicant is placed in that position prior to access authorization being granted by the DOE, the applicant may not be afforded access to classified matter or special nuclear materials (in categories requiring access authorization) until the

DOE notifies the employer that access authorization has been granted.

* * * * *

970.5204–1 [Amended]

7. Section 970.5204–1 is revised to read as follows:

970.5204–1 Security.

(a) As prescribed in 970.0404–4(a)(1), insert the Security and Classification/Declassification clauses found at 952.204–1 and 952.204–70.

(b) As prescribed in 970.0404–4(a)(2), insert the following clause in contracts containing the security and classification/declassification clauses:

COUNTERINTELLIGENCE (XXX 1996)

(a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

[FR Doc. 96–29542 Filed 11–19–96; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1319

[STB Ex Parte No. 598]

Exemption of Freight Forwarders in the Noncontiguous Domestic Trade From Rate Reasonableness and Tariff Filing Requirements

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Board is considering whether it should exempt freight forwarders in the noncontiguous domestic trade from rate reasonableness and tariff filing requirements.

DATES: Comments are due on December 20, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 598 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 927–5612. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain of its responsibilities, including the responsibility for regulating intermodal surface transportation in the noncontiguous domestic trade, to the Surface Transportation Board (Board). Additionally, the ICCTA transferred the responsibility for regulating port-to-port water carrier transportation in the noncontiguous domestic trade from the Federal Maritime Commission (FMC) to the Board.

Under the FMC's regulations, both vessel operating common carriers (VOCCs) and non vessel operating common carriers (NVOCCs) were required to file tariffs for their transportation services in the noncontiguous domestic trade. Under the ICCTA, VOCCs are classified as water carriers and NVOCCs are classified as freight forwarders.

The ICCTA significantly reduced economic regulation over surface transportation. Nevertheless, the provisions of 49 U.S.C. 13701 and 13702 continue to impose rate reasonableness and tariff filing requirements on certain property transportation in the noncontiguous domestic trade. While these requirements are related primarily to the services of water carriers, and joint intermodal services with water carriers, they also appear to encompass freight forwarder services.[1]

Pursuant to the provisions of 49 U.S.C. 13541, the Board is to exempt a class of persons from an otherwise applicable statutory provision if it finds that the application of that provision (1) is not necessary to carry out the transportation policy of section 13101; (2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and (3) when an exemption is in the public interest.[2] Pursuant to this statutory requirement, we are considering whether we should relieve freight forwarders in the noncontiguous domestic trade from rate reasonableness and tariff filing requirements.

Freight forwarders assume responsibility for transportation from the place of receipt to the place of destination, and frequently provide consolidation, assembly, break-bulk, distribution and other services of value to their customers. The freight forwarder industry is highly competitive, and any person meeting basic fitness and financial responsibility requirements can become a freight forwarder and provide service to the public. Additionally, noncontiguous domestic trade transportation services are available from the underlying water carriers, which must file tariffs and charge rates that are subject to challenge on reasonableness grounds.

Given the availability of transportation services from the underlying carriers, as well as the highly competitive environment for freight forwarder services, we seek comment on whether the rate reasonableness and tariff filing requirements for freight forwarders in the noncontiguous domestic trade are necessary to carry out the transportation policy of 49 U.S.C. 13101 or protect shippers from the abuse of market power, and whether the elimination of such requirements may be in the public interest. We note in this connection that freight forwarders subject to the former ICC's jurisdiction were relieved of tariff filing requirements in 1986,[3] even though motor carriers continued to be subject to such requirements until 1994.[4] Although Congress, in the ICCTA, recently reenacted the tariff filing and rate reasonableness requirements for water carriers themselves, we seek comment on whether these requirements are necessary as to freight forwarders in the noncontiguous domestic trade.

Request for Comments

We invite comments on all aspects of the proposed exemption. We encourage

[1] See, for example, 49 U.S.C. 13702(b)(2)(C).

[2] We note that the statute, as written, directs us to exempt when ''(3) (regulation) is in the public interest.'' We presume that Congress, in drafting the ICCTA, intended to direct us to exempt when ''an exemption is in the public interest.''

[3] Freight forwarder tariff filing requirements were eliminated by the Surface Freight Forwarder Deregulation Act of 1986.

[4] Motor carrier tariff filing requirements for individually determined rates for the transportation of property (other than household goods) were eliminated by the Trucking Industry Regulatory Reform Act of 1994, with respect to transportation other than in the noncontiguous domestic trade.

any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

The Board preliminarily concludes that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The Board, nevertheless, seeks comment on whether there would be effects on small entities that should be considered, so that the Board can determine whether to prepare a regulatory flexibility analysis at the final rule stage.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1319

Exemptions, Freight forwarders, Tariffs.

Decided: November 6, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Board proposes to add a new part 1319 to title 49, Chapter X, of the Code of Federal Regulations to read as follows:

PART 1319—EXEMPTIONS

Sec.

1319.1 Exemption of freight forwarders in the noncontiguous domestic trade from rate reasonableness and tariff filing requirements.

Authority: 49 U.S.C. 721(a) and 13541.

§ 1319.1 Exemption of freight forwarders in the noncontiguous domestic trade from rate reasonableness and tariff filing requirements.

Freight forwarders subject to the Board's jurisdiction under 49 U.S.C. 13531 are exempted from the rate reasonableness and tariff filing requirements of 49 U.S.C. 13701 and 13702.

[FR Doc. 96–29554 Filed 11–19–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 101096A]

Snapper-Grouper Fishery of the South Atlantic Region

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

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); request for comments.

SUMMARY: NMFS announces the intention of the South Atlantic Fishery Management Council (Council) to prepare an SEIS for its proposed Amendment 8 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). Amendment 8 will address overfishing and overcapitalization problems in the snapper-grouper fishery. The SEIS will assess the environmental impacts of the proposed and alternative management measures of Amendment 8 as well as the impacts of the snapper-grouper fishery on the human environment (including impacts on other fisheries and on protected species).

DATES: Written comments on the scope of the SEIS must be submitted by December 16, 1996.

ADDRESSES: Written comments and requests for copies of the SEIS should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Bob Mahood, 803–571–4366.

SUPPLEMENTARY INFORMATION: The Council prepared the FMP and NMFS approved and implemented it in 1983 under provisions of the Magnuson Fishery Conservation and Management Act. A principal, initial objective of the FMP was to prevent overfishing of thirteen species in the snapper-grouper complex and to establish a procedure for preventing overfishing of other FMP management unit species. Initial measures focused on size limits for the more significantly overfished species (e.g., red snapper, yellowtail snapper, red grouper, Nassau grouper, black sea bass, and vermilion snapper). Subsequent to FMP implementation, the Council developed several amendments to address overfishing issues regarding additional single species (e.g., jewfish, wreckfish, etc.). At the time of FMP implementation, the Council was concerned about preventing overfishing of all FMP management unit species even though there were limited data on the status of certain stocks. The Council intended over the long term to amend the FMP, based on acquiring the necessary scientific information, to provide for a more comprehensive and appropriate means of preventing overfishing of all managed species and stabilizing overall fishing effort.

The Council has held scoping meetings on overfishing, overcapitalization, and other problems in the snapper-grouper fishery to determine the scope of significant issues to be addressed in the SEIS and associated Amendment 8. The scoping meetings were held in conjunction with the following Council meetings: June 21, 1994, in Marathon, FL, (59 FR 29420, June 7, 1994), August 24, 1994, in Charleston, SC (59 FR 41275, August 11, 1994), and October 25, 1994, in Wrightsville Beach, NC (59 FR 52136, October 14, 1994). Minutes of the scoping meetings are available from the Council office.

As a result of the scoping process, the Council has decided to prepare FMP Amendment 8 to address more extensively the issues of overfishing, overcapitalization, excess harvesting capacity, and associated economic problems in the snapper-grouper fishery. In support of Amendment 8, the Council will prepare an SEIS.

The Council's tentative schedule calls for completion of a draft Amendment 8, based in part on recommendations of its Snapper-Grouper Advisory Panel and Scientific and Statistical Committee, and of a draft SEIS this fall with release of both documents for public hearings some time during the period December 1996 through January 1997. The Council expects to make decisions regarding the contents of the draft amendment and draft SEIS at its meeting of November 18–22, 1996. As required by regulations implementing the National Environmental Policy Act, the draft SEIS will be filed with the Environmental Protection Agency and made available for a 45-day public comment period. NMFS will issue a hearing notice on behalf of the Council with specific hearing locations, dates, and times. The Council intends to take final action on Amendment 8 by the end of February. Shortly thereafter, the Council will prepare a final Amendment 8 and final SEIS that will be submitted to NMFS for review, approval, and implementation.

In preparing Amendment 8 and the SEIS, the Council is considering

proposed management actions and their respective alternatives as indicated below. Note that under each action, the Council will consider a no-action (status quo) management option in addition to other options indicated.

Action 1—Permit qualification. This action would limit permit holders to those who can demonstrate landings of at least 1,000 lb (454 kg) of snapper-grouper species in 2 of the 3 years (1993 through 1995). The Council will consider a wide variety of management options, each involving different specific criteria for permit qualification.

Action 2—Trip limits. This action would control fishing effort by establishing trip limits for identified ''sub-unit'' groups of species within the FMP's management unit. The sub-unit trip limits would be implemented and enforced by requiring fishermen to have a sub-unit endorsement on their fishing permit; without such an endorsement for a specific sub-unit group, fishermen would be limited to 100 pounds of fish per trip for the subject species. Qualification for a given sub-unit group permit endorsement would require meeting the Council's specific criteria related to demonstration of landings within recent years (e.g., so many pounds annually in two out of three recent years). The Council is considering the following sub-unit groups: (1) Deep Shelf Complex consisting of snowy grouper, warsaw grouper, yellowedge grouper, and golden tilefish and other deep water snapper-grouper species. Greater amberjack would continued to be managed as a separate unit and qualifying fishermen would receive a greater amberjack permit endorsement allowing landings in excess of 100 lb per trip. Wreckfish would continue being managed under the current individual transferable quota system; (2) Temperate Mid-Shelf Complex consisting of red porgy, vermilion snapper, red snapper, speckled hind, gag, scamp, black sea bass, gray triggerfish, and white grunt; and (3) Tropical Complex consisting of yellowtail snapper, mutton snapper, gray snapper, lane snapper, black grouper, and red grouper.

The Council is considering limits on the transferability of the sub-unit permit endorsements to immediate family members and to new fishery entrants based on specific criteria. The Council is considering an Application Oversight Committee whose members would make recommendations to the NMFS Regional Administrator in resolving fishermen's disputes over eligibility for permits and endorsements. The Committee would be composed of the principal State officials with marine fishery management responsibility who sit as voting members of the Council as well as the NMFS Regional Administrator. The Committee members would make recommendations on permit/endorsement disputes regarding whether the criteria established by Amendment 8 for permit eligibility and initial resource allocations were being applied correctly. The Council is considering a number of management options for controlling fishing effort, including a no-action alternative as well as a variety of alternatives based on different categories and levels of trip limits, different qualification criteria for fishery participation, and different permit transferability restrictions.

Action 3—Refine the FMP's definitions of overfishing and optimum yield (OY). This action would: (1) Define a snapper-grouper species (including jewfish) as overfished when the transitional spawning potential ratio (SPR) is below 20%; (2) establish a target level for stock rebuilding (to the OY level) at 40% static SPR; (3) require implementation of a stock rebuilding program for an overfished species that makes consistent progress toward restoring the stock, within an acceptable time frame, to the target or OY level; (4) define the act of overfishing of a non-overfished stock (transitional SPR equal to or greater than 20%) as a static SPR that exceeds 20% (F20%); if overfishing is occurring, fishing mortality rates will be reduced to allow the stock size to increase so as to reach the target or OY level; (5) establish a threshold level for snapper-grouper species as 10% transitional SPR; if an overfished stock falls below the threshold level, the Council will recommend appropriate regulatory action through the FMP's framework rulemaking procedure, including eliminating directed fishing and bycatch mortality; (6) if there is insufficient information to determine whether a stock is overfished, define overfishing as a fishing mortality rate in excess of the fishing mortality rate corresponding to a default static SPR of 30%; by this criteria, if overfishing is occurring, a program will be instituted to reduce fishing mortality rate to a level allowing stock recovery to the target or OY level; and (7) retain the current time frame for recovery of overfished stocks; for stocks not documented by Amendment 3 as overfished, year 1 is the year in which the species is documented as overfished. The Council is considering several management alternatives in revising definitions of overfishing and OY, including a no-action alternative as well as optional definitions of overfishing and target and threshold levels.

Action 4—Red porgy minimum size and bag limits. This action would increase the red porgy minimum size limit from 12 inches (30.5 cm) total length (TL) to 14 inches (36 cm) TL for recreational and commercial fishermen and establish a recreational bag limit of 2 red porgy. Management alternatives include no action, a bag limit between 1 and 5 fish, and an increase of the recreational minimum size limit to 14 inches (36 cm) TL in conjunction with a bag limit of 3–5 porgy.

Action 5—Black sea bass minimum size. This action would increase the black sea bass minimum size limit from 8 inches (20.3 cm) TL to 10 inches (25.4 cm) TL. Management alternatives include no-action and a size increase to 9 inches (22.86 cm) TL.

Action 6—Black sea bass Special Management Zone (SMZ). The Council has not identified a preferred action but is considering several alternatives including prohibiting the use of black sea bass pots within a range 3–18 or 3–30 miles offshore in the areas bounded by a line due east from Frying Pan Shoals, NC (or a line following the shoals) to a line south, extending due east of Cape Romain, SC.

Action 7—Black sea bass recreational bag limit. This action would establish a bag limit of between 5 and 20 fish; a no-action alternative will be considered.

Action 8—Black sea bass pot escape vents. This action would require between 1 and 4 escape vents on black sea bass pots with vent size meeting one of several alternatives (e.g., for rectangular vents, the allowable size would be established between 1 inch and 1.75 inches (2.5 - 6 cm) wide and between 5 and 6 inches (12.7 cm - 15.24 cm) long; and for ring vents, the allowable vent opening diameter would be established between 1.75 and 2.5 inches (4.4 cm - 5 cm)). A no-action option will be considered.

Action 9—Degradable fasteners in sea bass pots. This action would require the use of escape panels with degradable fasteners in sea bass pots. A black sea bass pot that is used or possessed in the South Atlantic EEZ north of 28° 35.1 N. lat. is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to, or larger than, the interior end of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of specified degradable materials. A no-action option will be considered.

Action 10—Amber jack sale prohibition. This action would prohibit the sale of greater amberjack caught under the bag limit during the greater

amberjack spawning season, south of Cape Canaveral, FL. The Council is considering a wide variety of options for this action, including expanding the 3–fish bag limit for both commercial and recreational fisheries to extend through the month of May. The Council is also proposing to prohibit the sale of greater amberjack during April and May, establish special oceans areas of protection (e.g., EEZ adjacent to Monroe County, FL) prohibit coring (removal of head and tail), establish a commercial quota and trip limits, and reduce the recreational bag limit.

Action 11—Vermilion snapper annual commercial quota. This action would establish, effective January 1, 1998, an annual commercial quota for vermilion snapper of 600,000 lb (272,155 kg) and a recreational fishery bag limit of 5 fish and a recreational minimum size limit of 12 inches (61 cm) TL. Management options to be considered include reducing the recreational and commercial catch 45 percent by imposing a bag limit and quota (no size limit), or reducing the recreational and commercial catch 43 percent by imposing a bag limit and quota (or effort reduction) along with a minimum size limit of 10 inches (25.4 cm) TL.

Action 12—Gag harvesting restrictions. This action would increase the gag minimum size limit from 20 inches (50.8 cm) TL to 24 inches (61 cm) TL for the commercial and recreational fisheries, and prohibit all harvest January through March. The Council will consider a considerable variety of management options for this action including different combinations of seasonal harvest prohibitions, bag limits, trip limits, total allowable catch limits, and minimum size limit changes.

Action 13—Logbooks. This action would require logbook reporting by the 10th of the month following the month of activity. Options under consideration include requiring that all reports submitted more than 2 months late be accompanied by landings receipts or other such supporting documentation and allowing 30 days for submission of report after the sale of fish.

Action 14—Transit zone. This action would establish a zone in the South Atlantic EEZ through which vessels carrying fish traps could transit if they have valid Gulf reef fish permits and fish trap endorsements. Except for the transit zone, possession of fish traps in the South Atlantic EEZ would be prohibited.

Action 15—Bottom longline restrictions. This action would restrict vessels with bottom longline gear aboard to possessing only snowy grouper, tilefish, yellowedge grouper and other deepwater species. A no-action option will be considered.

Action 16—Bait net restrictions. This action would allow the use of one bait net up to 50 ft (1,524 cm) long by 10 ft (305 cm) high with a stretched mesh size of 1.5 inch (5.0 cm) or smaller and allow one net per boat. Allowing possession of cast nets is an option under consideration.

Action 17—Fishery closures. The Council is considering options for closures of the EEZ to fishing for species in the snapper-grouper complex, including closures during the January-April period as well as other times, to achieve significant reductions in landings. The Council has not identified a preferred option.

Action 18—Trip limits for temperate mid-shelf snapper grouper species. The Council is considering options for establishing trip limits for all temperate mid-shelf snapper grouper species, but has not identified a preferred option. Options include a 1,000–2,500 lb trip limit and a 200–2,000 lb trip limit depending upon vessel operating characteristics.

Action 19—Aggregate Temperate mid-shelf species quota. The Council is considering options for establishing an aggregate quota for temperate mid-shelf species to achieve a 30% to 40% reduction in landings (over the average annual landings during 1986–1995 period), but has not identified a preferred option.

Action 20—Bahamian caught fish. This action would allow species within the snapper-grouper complex (whether whole or fillets) caught in Bahamian waters in accordance with Bahamian law to be possessed aboard a vessel in the EEZ and landed in the U.S., provided the vessel is in transit from the Bahamas and valid Bahamian fishing and cruising permits are on board. A no-action options will be considered.

Action 21—Aggregate Recreational Bag Limit. The Council is considering options for establishing an aggregate recreational bag limit inclusive of all snapper-grouper species (excluding other species and existing bag limits). The Council has not identified a preferred option. Options include a 20–25 fish aggregate bag limit and a no-action option.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 13, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–29604 Filed 11–15–96; 12:13 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 225
Wednesday, November 20, 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

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on December 3, 1996 at the Douglas Forest Protective Association office at 1758 Airport Road, Roseburg, Oregon.

The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Local area issues presentation; (2) Year-end review of Advisory Committee activities; (3) Update on Rogue and Umpqua River Basin assessments; (4) Update on status of effectiveness monitoring proposal; (5) Subcommittees for ACS/Restoration, Monitoring, and Timber Sales will continue work to define their priorities; and (5) Public comments.

All Province Advisory committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kurt Austermann, Province Advisory Committee staff, USDI, Medford District, Bureau of Land Management, 3040 Biddle Rd., Medford, Oregon 97504, phone 541–770–2200.

Dated: November 13, 1996.

James T. Gladen,

Forest Supervisor, Designated Federal Official.

[FR Doc. 96–29643 Filed 11–19–96; 8:45 am]

BILLING CODE 3410–11–M

Water Rights Task Force Meeting; Correction

AGENCY: Forest Service, USDA.

ACTION: Correction of meeting notice.

SUMMARY: The Forest Service announces a change in a meeting of the Water Rights Task Force. The chairman has re-scheduled the times and location of the fourth meeting in Denver, Colorado, on December 16, 1996. Notice of this meeting was previously published in the Federal Register, October 21, 1996 (61 FR 54611).

DATES: The fourth meeting will still be held December 16, but the time has changed to 10:30 a.m. until 5:00 p.m., rather than the 8:30 a.m. to 5:00 p.m. schedule previously published.

ADDRESSES: The fourth meeting will be held at the Red Lion Hotel, Executive (B) Room, 3203 Quebec Street, Denver, Colorado.

Send written comments to Eleanor Towns, FACA Liaison, Water Rights Task Force, c/o USDA Forest Service, MAIL STOP 1124, P.O. Box 96090, Washington, DC 20090–6090. Telephone: (202) 205–1248; Fax: (202) 205–1604.

FOR FURTHER INFORMATION CONTACT: Stephen Glasser, Watershed & Air Management Staff, Telephone: (202) 205–1172; fax: (202) 205–1096.

SUPPLEMENTARY INFORMATION: Notice of the establishment of the Water Rights Task Force was published in the Federal Register on September 11, 1996 (61 FR 47858). The Task Force terminates either in August of 1997 or upon submission of a final report.

Dated: November 15, 1996.

David G. Unger,

Associate Chief.

[FR Doc. 96–29676 Filed 11–19–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–825]

Preliminary Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring (''LHF'') From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 20, 1996.

FOR FURTHER INFORMATION CONTACT: David Boyland or Daniel Lessard, Office 1, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4198 or 482–1778, respectively.

Preliminary Determination

The Department preliminarily determines that countervailable subsidies are not being provided to manufacturers, producers, or exporters of LHF in Canada.

Case History

Since the publication of the notice of initiation in the Federal Register (61 FR 15041 (April 4, 1996)), the following events have occurred:

On April 8, 1996, we issued countervailing duty questionnaires to the Government of Canada (''GOC''), the Government of Quebec (''GOQ''), and the companies identified in the petition as exporters of LHF from Canada concerning petitioner's allegations. We received responses to our questionnaire on May 16, 1996. We issued supplemental questionnaires to parties in May, July, and September for which responses were received in June, July, August, and October.

On June 7, 1996, we inititiated an upstream subsidy investigation and postponed the preliminary determination (61 FR 29077). We issued a questionnaire relating to the upstream subsidy allegation to Nilus Leclerc Inc. and Industries Leclerc Inc. (Leclerc) on June 12, 1996 (*see, Related Party* section, below). We received Leclerc's response on June 27, 1996, with additional information submitted on July 11, 1996. From August 5 through 7, 1996, we conducted verification of the questionnaire responses relating to the upstream subsidy investigation.

Scope of Investigation

Based on information provided by U.S. Customs, the Department, for purposes of clarification only, drafted proposed changes to the original scope language (*see* May 7, 1996 memo to the file from analyst). On May 9, 1996, petitioner submitted comments on the Department's proposed changes. The scope of this investigation as outlined below reflects the clarification.

The scope of this investigation consists of certain edge-glued hardwood flooring made of oak, maple, or other hardwood lumber. Edge-glued

hardwood flooring is customized for specific dimensions and is provided to the consumer in ''kits,'' or pre-sorted bundles of component pieces generally ranging in size from 6″ to 14″x48′ to 57′x1″ to 1(½)″ for trailer flooring, from 6″ to 13″x12' to 28′x1(⅛)″ to 1(½)″ for vans and truck bodies, from 9″ to 12(½)″x8' to 10′x1(⅞)″ to 2(½)″ for rail cars, and from 6″ to 14″x19′ to 48′x1(⅛)″ to 1(⅜)″ for containers. The merchandise under investigation is currently classified, in addition to various other hardwood products, under subheading 4421.90.98.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Edge-glued hardwood flooring is commonly referred to as ''laminated'' hardwood flooring by buyers and sellers of subject merchandise. Edge-glued hardwood flooring, however, is not a hardwood laminate for purposes of classification under HTSUS 4412.14. Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930 (the ''Act''), as amended by the Uruguay Round Agreements Act effective January 1, 1995. References to *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (''Proposed Regulations''), which have been withdrawn, are provided solely for further explanation of the Department's countervailing duty practice.

Injury Test

Because Canada is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of LHF from Canada materially injure, or threaten material injury to, a U.S. industry. On May 9, 1996, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Canada of the subject merchandise (61 FR 21209).

Petitioner

The petition in this investigation was filed by the Ad Hoc Committee on Laminated Hardwood Trailer Flooring, which is composed of the Anderson-Tully Company, Havco Wood Products Inc., Industrial Hardwoods Products Inc., Lewisohn Sales Company Inc., and Cloud Corporation.

Period of Investigation (''POI'')

The period for which we are measuring subsidies is calendar year 1995.

Ontario Companies

We have preliminarily determined that three producers of the subject merchandise have received zero or *de minimis* subsidies. Two companies, Erie Flooring & Wood Products (Erie) and Industrial Hardwood Products Ltd. (IHP) formally requested that they be excluded from any potential countervailing duty order. The other company, Milner Rigsby Co. (Milner) responded to our questionnaire.

IHP certified that the only subsidy it received during the POI was consulting services pursuant to the *Industrial Research Assistance Program* (IRAP). The GOC and Government of Ontario also certified that this was the only benefit IHP received. Even assuming this assistance constituted a countervailable subsidy, the benefit would be *de minimis.*

Erie certified that it received no countervailable subsidies. The GOC and the Government of Ontario also certified this. In its questionnaire response, Milner states that it did not receive benefits during the POI.

The remainder of this notice deals exclusively with Leclerc.

Related Parties

In the present investigation, we have examined affiliated companies (within the meaning of section 771(33) of the Act) whose relationship may be sufficient to warrant treatment as a single company with a single, combined countervailing duty rate. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently related where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also stated that companies may be considered sufficiently related where there are common directors or one company performs services for the other company. According to the questionnaire, where such companies produce the subject merchandise or where such companies have engaged in certain financial transactions with the company producing the subject merchandise, the affiliated parties are required to respond to our questionnaire.

Nilus Leclerc Inc. was identified in the petition as an exporter of LHF from Canada. Nilus Leclerc Inc. is part of a consolidated group, Groups Bois Leclerc. Nilus Leclerc Inc. and Industries Leclerc Inc. are the only companies in the group directly engaged in the production of LHF. Because of the extent of common ownership, we find it appropriate to treat these two LHF producers as a single company (''Leclerc''). As a consequence, we are calculating a single countervailing duty rate for both companies by dividing their combined subsidies by their combined sales.

In addition, certain separately incorporated companies in the group received subsidies. Where those subsidies were tied to the production of a corporation that is not directly involved in the production of LHF, we have not included those subsidies in our calculations. Where the subsidies were tied to the production of both LHF and other merchandise, we included those subsidies in our calculations using the sales of both products in the denominator of the *ad valorem* calculations.

Creditworthiness

Petitioner has alleged that Leclerc was uncreditworthy during 1993, 1994, and 1995. In an October 8, 1996 memorandum, we declined to initiate a creditworthiness investigation because Leclerc had not experienced losses during the relevant period. Because requiring a finding of prior losses before determining a company uncreditworthy may mask situations where it is appropriate to apply an uncreditworthy benchmark, we have proceeded to analyze Leclerc's creditworthiness looking at the other factors described in 355.44(b)(6)(i) of the Proposed Regulations.

Section 355.44(b)(6)(i) of the Proposed Regulations states that the receipt of comparable long-term commercial loans shall normally ''constitute dispositive evidence that the firm is creditworthy.'' In 1993 and 1994, Leclerc received long-term commercial financing. For purposes of the preliminary determination we consider this financing to be comparable to the allegedly subsidized financing received by Leclerc. In a November 1, 1996 submission, Leclerc reported that it reached agreement in 1995 to receive comparable long-term commercial financing. Although the Department intends to examine the 1995 agreement closely at verification to gain a more detailed understanding of it, we have preliminarily determined that Leclerc was creditworthy in 1993, 1994, and 1995 on the basis that it secured comparable commercial financing in those years.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: Leclerc reported that it had secured long-term, variable-rate, Canadian dollar-denominated loans during all relevant years. Therefore, we have used these company-specific interest rates as the benchmark for the company in those years. For those years in which Leclerc did not provide a company-specific discount rate, we used the long-term corporate bond rate in Canada as the discount rate.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets to determine the allocation period for nonrecurring subsidies. *See General Issues Appendix* appended to *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria* (58 FR 37217, 37226; July 9, 1993) (*General Issues Appendix*). However, in *British Steel plc.* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel),* the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel,* 929 F. Supp. 426, 439 (CIT 1996).

The Department has decided to acquiesce to the Court's decision and, as such, we intend to determine the allocation period for nonrecurring subsidies using company-specific AUL data where reasonable and practicable. In this case, the Department has preliminarily determined that it is reasonable and practicable to allocate all nonrecurring subsidies received prior to or during the POI using Leclerc's AUL of 18 years.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Analysis of Direct Subsidies

A. Programs Preliminarily Determined to Be Countervailable

1. Canada-Quebec Subsidiary Agreement on Industrial Development

This Subsidiary Agreement, which spans five years, was jointly funded by the GOC and GOQ on March 27, 1992. Under this agreement, the GOC and GOQ established a program to improve the competitiveness and vitality of the Quebec economy by providing financial assistance to companies for major industrial projects. The following four types of activities are eligible for contributions: (1) capital investment projects, (2) product or process development projects involving a major investment or leading to a capital investment, (3) studies required to assess the feasibility of an investment project, and (4) municipal infrastructure required for a major capital investment project. Leclerc received a long-term interest-free loan under this program.

We analyzed whether the program is specific ''in law or in fact,'' within the meaning of section 771(5A) of the Act. Funds paid out by the GOC under this program are limited to companies in a particular region of Canada (*i.e.,* the Province of Quebec) and, hence, regionally specific under section 771(5A)(D)(iv) of the Act. Because the interest-free loan provided to Leclerc was financed entirely by the GOC, we preliminarily determine that the total amount of assistance is regionally specific.

We also preliminarily determine that the loan received by Leclerc constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOC providing a benefit in the amount of the difference between the benchmark interest rate and the zero interest rate paid by Leclerc.

To calculate the countervailable subsidy for Leclerc, we used as the benchmark the interest rate on a variable-rate, long-term loan taken out in 1995 by Leclerc because the company had not taken out either a fixed-rate, long-term loan or a fixed-rate debt obligation in that year. Thus, we followed our variable-rate, long-term loan methodology to calculate the benefit conferred on Leclerc. We then divided the benefit attributable to the POI by Leclerc's LHF sales in the POI. On this basis, we determine the countervailable subsidy for this program to be 0.07 percent *ad valorem* for Leclerc.

2. Industrial and Regional Development Program (IRDP)

The IRDP was created by the Industrial and Regional Development Act and Regulations in 1983 and was administered by the Canadian Department of Regional Industrial Expansion. It was terminated on June 30, 1988. No new applications for IRDP projects were accepted after that date. The goals of IRDP were to achieve economic development in all regions of Canada, promote economic development in those regions in which opportunities for productive employment are exceptionally inadequate, and improve the overall economy in Canada. To accomplish these objectives, financial support in the form of grants, contributions and loans were provided to companies for four major purposes: (1) establishing, expanding, modernizing production; (2) promoting the marketing of products or services; (3) developing new or improved products or production processes, or carrying on research in respect thereof; and (4) restructuring so as to continue on a commercially viable basis.

Under this program, Canada's 260 census districts were classified into one of four tiers on the basis of the economic development of the region. The most economically disadvantaged regions were included in Tier IV; the most advanced regions were classified as Tier I.

Those districts classified as Tiers III and IV were authorized to receive the highest share of assistance under IRDP (as a percentage of assistance per approved project); those in Tiers I and II received the lowest. For example, a grant toward the eligible costs of modernizing or significantly increasing the production of companies in Tiers I and II could not exceed 17.5 percent of the capital costs of the project, while in Tiers III and IV grants could cover up to 25 percent of eligible costs.

Nilus Leclerc Inc. was located in a Tier III district when it received three grants under this program. We have preliminarily determined that the grants received by Leclerc constitute a countervailable subsidy within the meaning of section 771(5) of the Act. The grants are direct transfers of funds from the GOC and confer a benefit in the amount of the portion of the grant that is in excess of the most favorable, nonspecific level of benefits (*i.e.,* Tiers I and II). Also, IRDP grants are regionally specific within the meaning of section 771(5A) of the Act because the preferential levels of benefits (*i.e.,* contributions to Tiers III and IV) are limited to companies in particular regions of Canada.

We have treated these grants as ''non-recurring'' grants based on the analysis set forth in the Allocation section of the General Issues Appendix in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217, 37226, July 9, 1993). In accordance with our past practice, we have allocated those grants which exceeded 0.5 percent of a company's sales in the year of receipt over time.

To calculate the countervailable subsidy, we used our standard grant

methodology. For those grants which were tied to the production of both LHF and residential flooring, we divided the benefit attributable to the POI by the total sales of Leclerc and Planchers Leclerc (the company in the Leclerc group that produces residential flooring) during the same period. Otherwise, for those grants which benefited only the production of LHF, we divided the benefit attributable to the POI by Leclerc's LHF sales during the same period. On this basis, we determine the countervailable subsidy for this program to be 0.04 percent *ad valorem* for Leclerc.

3. Societe de Developpement industriel du Quebec (SDI): Expansion and Modernization program and ''Programme d'appui a la reprise'' (PREP) Program

Leclerc obtained loans under SDI's Expansion and Modernization program and loan guarantees under SDI's PREP program. These loans and loan guarantees were part of a larger package of commercial and government financing used to increase Leclerc's productive capacity. Firms in Quebec can participate in Expansion and Modernization and PREP by meeting a requirement that ''the project for which financing is requested is aimed at markets outside Quebec.'' An alternative requirement for receiving assistance is that the market in Quebec is inadequately served by businesses in Quebec and that the supported production is expected to replace imported goods into Quebec. Under either requirement, the market for the products to be supported must have an expected growth rate that is above the average for the manufacturing sector in Canada. In addition to these requirements, which are contained in the regulations governing Expansion and Modernization and PREP, the GOQ has stated that commercial financing must accompany the SDI loans in all cases. Also, certain general requirements must be met regarding the length of the project and the financial structure of the company involved.

With respect to whether this program can be considered an export subsidy, section 771(5A)(B) of the Act states that an export subsidy is ''a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions.'' Article 3.1(a) and note 4 of the Agreement on Subsidies and Countervailing Measures clarifies that the ''in fact'' standard ''is met when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings . . . However, the mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.''

We recognize that the projects for which Leclerc sought financing were largely aimed at the U.S. market in the sense that the company expected to sell most of its increased production to the United States. However, there is no evidence to support a finding that Leclerc's receipt of the loans and guarantees was contingent upon or tied to actual or anticipated exportation to the United States. Although the granting authority was aware of the anticipated destination of the output, this fact alone does not render the program a *de facto* export subsidy. Specifically, we do not believe that the assistance awarded Leclerc was contingent upon the company exporting outside of Canada. Indeed, Leclerc could have qualified for assistance by ''exporting'' to another province in Canada. Therefore, we have preliminarily determined that the loans and guarantees given under the Export and Modernization and PREP programs are not export subsidies.

The situation we are addressing here can be contrasted with other situations that might give rise to possible *de facto* export subsidies. For example, a loan program might be structured to require repayment in U.S. dollars rather than local currency. If currency restrictions make it impossible to obtain U.S. dollars in that country except through exportation, then the requirement to repay the loan in U.S. dollars could lead to the finding of a *de facto* export subsidy.

We intend to review the Export and Modernization and PREP programs closely at verification. In particular, we will examine the bases upon which the granting authority approved assistance to Leclerc. If the prospect of future exports outside of Canada—beyond a normal commercial analysis of whether a viable market, domestic or export, existed for the anticipated production—was one of the bases for granting assistance, we will likely find these programs to be export subsidies in the final determination.

While we do not consider Expansion and Modernization and PREP to be export subsidies for purposes of the preliminary determination, we have considered whether these programs may be specific domestic subsidies within the meaning of Section 771(5A)(D)(i) of the Act. (For our analysis of PREP, please see the section entitled *Programs Preliminarily Determined To Be Not Countervailable.*)

Expansion and Modernization program

Loans under the Expansion and Modernization program can be provided to companies involved in: manufacturing, recycling, computer services, software or software package design and publishing, contaminated soils remediation, the operation of a research laboratory, and the production of technical services for clients outside of Quebec. The regulations for this program further indicate that businesses in other categories may be considered ''in exceptional cases.'' The assistance may be used to cover the following types of expenditures: (1) capital investments; (2) the purchase and introduction of a new technology; (3) the acquisition of information production or management equipment; (4) investments for project-related training; and (5) other training investments related to project start-up. Based on our review of the eligibility criteria, we preliminarily determine that the program is not *de jure* specific.

Pursuant to section 771(5A)(D)(iii) of the Act, a subsidy is *de facto* specific if one or more of the following factors exists: (1) the number of enterprises, industries or groups thereof which use a subsidy is limited; 2) there is predominant use of a subsidy by an enterprise, industry, or group; (3) there is disproportionate use of a subsidy by an enterprise, industry, or group; or (4) the manner in which the authority providing a subsidy has exercised discretion indicates that an enterprise or industry is favored over others.

During the period 1990 through 1995, assistance under this program was distributed to a large number and wide variety of users. Therefore, the program is not limited based on the number of users. During this same period, the level of financing obtained by the wood products industry and by Leclerc varied. In 1993, 1994, and 1995, the wood products industry was consistently among the largest beneficiaries under the program. Leclerc's share of financing as a percentage of total authorized financing was also large relative to the shares received by other users. Taking these two findings together, we preliminarily determine that the assistance received by Leclerc was disproportionate in 1993, 1994, and 1995 and, therefore, the subsidy is specific.

In order to calculate the benefit from long-term variable rate loans, the Department normally calculates the difference during the POI between the amount of interest paid on the

subsidized loan and the amount of interest that would have been paid using a benchmark interest rate that reflects what the company would pay to obtain a comparable commercial loan. In this case, the loans given under the Expansion and Modernization program include premia and stock options. In addition, the SDI loans have variable repayment schedules. In order to account for the value of the premia and the variable repayment schedule, we have estimated a repayment schedule for the SDI loan and compared the amount Leclerc would repay under that schedule with the amount Leclerc would repay under a comparable commercial loan. For purposes of the preliminary determination, we have not determined the value of the stock option. We note, however, that we are considering methods to do so for the final determination.

We next determined the grant equivalent of these loans, *i.e.*, the present value of the difference between what would be paid under the commercial loan and the SDI loan, using the discount rates described in the *Subsidies Valuation Information* section above. If the grant equivalent calculated under this methodology was less than .5 percent of Leclerc's sales of subject merchandise, the benefit was expensed. If the grant equivalent was greater than .5 percent, we allocated the benefit over the life of the benchmark loan using the grant allocation formula outlined in section 355.49 (b)(4)(3) of the Department's Proposed Regulation. We used the life of the benchmark loan as the allocation period because of the variable repayment schedule on the SDI loans. We would, however, welcome comments on the appropriate allocation period for our final determination. The benefit allocated to the POI was then divided by Leclerc's total sales of subject merchandise during the POI. Using this methodology, we determine the countervailable subsidy from the Expansion and Modernization program to be 0.20 percent *ad valorem*.

B. Programs Preliminarily Determined to Be Not Countervailable

1. Export Development Corporation (EDC)

The EDC was established by the Export Development Act in 1969 to support and develop Canada's export trade. One of its services is the provision of insurance to exporters of Canadian goods. The insurance policies protect exporters against losses due to non-payment relating to commercial and political risks. Nilus Leclerc Inc. and Industries Leclerc Inc. purchased export credit insurance from the EDC during the POI which covered sales of the subject merchandise. No claims were made or payouts received by Leclerc during this period.

The Department's standard methodology for examining government export credit insurance programs (as outlined in section 355.44(d) of the Proposed Regulations) is to determine whether the premium rates charged by the government entity are adequate to cover the long-term operating costs and losses of the program. Under this approach, the Department analyzes the financial results of the department responsible for administering the program during the POI and the four previous years. According to EDC Annual Reports, the EDC and the EDC's insurance program, in particular, have reported profits during each of the years from 1991 to 1995.

Given that the premium rates charged by the EDC have been more than adequate to cover the operating costs and losses of its export insurance program, we preliminarily determine that this program does not confer a countervailable subsidy.

2. Hydro-Quebec Electrotechnology Implementation Program

The Electrotechnology Implementation Assistance Program is administered by Hydro-Quebec, a public utility wholly-owned by the GOQ. The program was first available in 1985 and has been implemented in three phases, the most recent of which has been extended until December 31, 1996. Phases I and II of this program were designed to reduce dependence on fossil fuels by increasing the consumption of hydroelectric power. Phase III was created to promote research and development on more efficient uses of energy and to contribute toward industrial development in Quebec. It is primarily intended for Quebec industries seeking to improve their overall productivity. To be eligible for this program, the company must: (1) be subject to electricity rates G, G–9, M or L and (2) consume electrical power to manufacture, assemble, or process merchandise, or to extract raw materials.

With respect to the grants received by Leclerc under this program, we analyzed whether the program is specific ''in law or in fact,'' within the meaning of section 771(5A)(D) (i) and (iii). Based on our review of the eligibility criteria, we preliminarily determine that this program is not *de jure* specific.

Section 771(5A)(D)(iii) of the Act provides that a subsidy is *de facto* specific if one or more of the following factors exists: (1) the number of enterprises, industries or groups thereof which use a subsidy is limited; (2) there is predominant use of a subsidy by an enterprise, industry, or group; (3) there is disproportionate use of a subsidy by an enterprise, industry, or group; or (4) the manner in which the authority providing a subsidy has exercised discretion indicates that an enterprise or industry is favored over others.

Regarding *de facto* specificity, during the period 1985 through 1992, assistance under this program was distributed over a large number and wide variety of users, representing a wide cross-section of the Quebec economy. Thus, the program is not specific based on the number of users. We also examined evidence regarding the usage of the program to determine whether Leclerc or the wood products industry was a predominant user or received disproportionately large amounts of the subsidies. We preliminarily determine that neither Leclerc nor the wood products industry received a dominant or disproportionate share of the benefits distributed under this program. As explained in the Statement of Administrative Action (SAA) (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Session (1994) at 931), where the number of users is large and there is no dominant or disproportionate use of the program by Leclerc, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Therefore, we preliminarily determine that this program is not specific and has not conferred countervailable subsidies on Leclerc.

3. Decentralized Fund for Job Creation Program (DFJC) of the Société Québécoise de Développement de la Main-d'Oeuvre (SQDM)

The Decentralized Fund for Job Creation Program (DFJC) was created by the Société Québécoise de Développement de la Main-d'Oeuvre (SQDM), an agency of the GOQ, in 1994 for the purpose of increasing employment and reducing public expenditures for the unemployed. By providing a one-time cash grant to qualifying enterprises, the program aims to induce private enterprises to develop projects to hire the unemployed. The GOQ reported that all commercial enterprises, except retail businesses, all nonprofit incorporated entities, and local and regional municipalities, are eligible for the grants. The criteria for selection include: (1) the number and type of jobs created; (2) whether the project is consistent with regional

objectives; (3) whether the project is likely to be self-supporting in a reasonable period of time; and (4) whether financing from other sources is available.

With respect to the grants received by Leclerc under this program, we analyzed whether the program is specific ''in law or in fact,'' within the meaning of section 771(5A)(D) (i) and (iii). Based on our review of the eligibility criteria, we preliminarily determine that this program is not *de jure* specific. Regarding *de facto* specificity, during the period of February 1994 to March 1996, assistance under the program was distributed to many sectors representing virtually every industry and commercial sector found in Quebec. On this basis, we preliminarily conclude that the program is not specific based on the number of users.

We also examined evidence regarding the usage of the program and found that neither Leclerc nor the wood products industry was a dominant or disproportionate user of this program. Because the number of users is large and there is no dominant or disproportionate use of the program by producers under investigation, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Thus, we preliminarily determine that this program is not specific and has not conferred a countervailable subsidy on Leclerc.

4. Societe de placement dans l'enterprise quebecoise (SPEQ)

The SPEQ program is administered by the SDI to encourage equity investments into Quebec companies. It provides a tax incentive for owners of business investment companies to make equity investments in eligible, small-to-medium sized Quebec companies.

With respect to assistance received by Leclerc under this program, we analyzed whether the program is specific ''in law or in fact,'' within the meaning of section 771(5A)(D) (i) and (iii). Any enterprise which has gross assets of less than $25 million or net shareholders'' equity equal to or less than $10 million, and which has engaged in manufacturing, recycling, tourism, research and development, environmental, exporting, cinematography production, ''industriel culture,'' or aquaculture/incubator activities is eligible to apply for assistance under this program. Based on our review of the eligibility criteria, we preliminarily determine that this program is not *de jure* specific. Regarding *de facto* specificity, during 1988 through 1993, assistance under this program was distributed over a large number and wide variety of users, representing a wide cross-section of the Quebec economy. Thus, the program is not specific based on the number of users.

We also examined evidence regarding the usage of the program and determined that neither Leclerc nor the wood products industry was a dominant or disproportionate user of this program. Therefore, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Thus, we preliminarily determine that this program is not specific and has not conferred a countervailable subsidy on Leclerc.

5. Societe de Developpement Industriel du Quebec (SDI): ''Programme d'appui a la reprise'' (PREP) Program

PREP was a temporary program under which SDI provided loan guarantees on commercial bank loans. The program was active between 1992 and 1995 and was designed to assist small-to-medium sized firms in Quebec experiencing liquidity problems as a result of the recession of the early 1990s. Among other things, PREP financing was provided for production expansion.

The GOQ has stated that the same general eligibility criteria apply to PREP and Expansion and Modernization. Therefore, consistent with our analysis of the Expansion and Modernization program, we preliminarily determine that assistance under PREP is not *de jure* specific.

Regarding *de facto* specificity, the companies that obtained loan guarantees under PREP represented a large number of different industries. Based on the broad mix of industries using the program, PREP is not limited in terms of the number of users.

We also examined evidence regarding the usage of the program and determined that neither Leclerc nor the wood products industry was a dominant or disproportionate user of this program. Therefore, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Thus, we preliminarily determine that this program is not specific and has not conferred countervailable subsidies on Leclerc.

C. Programs Preliminarily Determined To Be Not Used

The following programs were not used:

1. *Capital Gains Exemptions*
2. *Investment Tax Credits*
3. *Performance Security Services through the Export Development Corporation*
4. *Program for Export Market Development*
5. *Working Capital for Growth from BDBC*
6. *St. Lawrence Environmental Technology Development Program (ETDP)*
7. *Canada-Quebec Subsidiary Agreement on the Economic Development of Quebec*
8. *Quebec Stumpage Program*
9. *Programs Provided by the Industrial Development Corporation (SDI)*
   - Article 7 Assistance
   - Export Assistance Program
   - Business Financing Program
   - Research and Innovation Activities Program
10. *Export Promotion Assistance Program (APEX)*
11. *Private Forest Development Program (PFDP)*

D. Program for Which Additional Information Is Required

On November 1, 1996, the GOQ submitted information regarding a program operated by SQDM entitled Program for the Development of Human Resources. This information was received too late to be taken into account for purposes of this preliminary determination.

II. Analysis of Upstream Subsidies

The petitioner alleged that Leclerc receives upstream subsidies through its purchase of lumber from suppliers which harvest stumpage from Quebec's public forest (''allegedly subsidized'' suppliers). Section 771A(a) of the Act, defines upstream subsidies as follows:

The term ''upstream subsidy'' means any subsidy . . . by the government of a country that:

(1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an ''input product'') that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to find that an upstream subsidy exists. The absence of any one element precludes the finding of an upstream subsidy. As discussed below, we preliminarily determine that a competitive benefit is not bestowed on Leclerc through its purchases of

allegedly subsidized lumber. Therefore, we have not addressed the first and third criteria.

Competitive Benefit

In determining whether subsidies to the upstream supplier(s) confer a competitive benefit within the meaning of section 771A(a)(2) on the producer of the subject merchandise, section 771A(b) directs that:

...a competitive benefit has been bestowed when the price for the input product...is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

The Department's Proposed Regulations offer the following hierarchy of benchmarks for determining whether a competitive benefit exists:

...In evaluating whether a competitive benefit exists pursuant to paragraph (a)(2) of this section, the Secretary will determine whether the price for the input product is lower than:

(1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's length transaction; or

(2) A world market price for the input product.

In this instance, Leclerc purchases the input product, lumber, from numerous unsubsidized, unrelated suppliers in Canada. Therefore, we have used the prices charged to Leclerc by these suppliers as the benchmark.

We compared the prices paid by Leclerc to its ''allegedly subsidized'' suppliers with the prices paid to unsubsidized suppliers on a product-by-product and aggregate basis (see, October 10 and November 6, 1996, Memoranda from Team to Susan H. Kuhbach, Acting Deputy Assistant Secretary). Based on our comparison of these prices, we found that the price of allegedly subsidized lumber was generally equal to or exceeded the price of unsubsidized lumber. Therefore, we preliminarily determine that Leclerc did not receive an upstream subsidy.

Summary

The total estimated preliminary net countervailable subsidy rate for Leclerc is 0.31 percent, which is *de minimis.* As noted above, the rates for IHP, Erie and Milner are either zero or *de minimis.* Therefore, we preliminarily determine that countervailable subsidies are not being provided to manufacturers, producers, or exporters of LHF in Canada.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Critical Circumstances

The petitioner alleged that critical circumstances exist with respect to imports of subject merchandise. Because we have reached a negative preliminary determination, this issue is moot.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will be held on January 3, 1997, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 10 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, 10 copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than December 17, 1996. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than December 23, 1996. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 355.38 and will be considered if received within the time limits specified above. This determination is published pursuant to section 703(f) of the Act.

Dated: November 12, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–29661 Filed 11–19–96; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice

to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 89–3A010.''

Air-Conditioning and Refrigeration Institute's (''ARI'') original Certificate was issued on May 10, 1991 (56 FR 23284, May 21, 1991) and previously amended on July 6, 1992 (57 FR 30956, July 13, 1992) and February 9, 1995 (60 FR 9011, February 16, 1995). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Air-Conditioning and Refrigeration Institute (''ARI''), 4301 North Fairfax Drive, Suite 425, Arlington, Virginia 22203.

Contact: Renee Hancher, Director of International Trade, Telephone: (703) 524–8800.

Application No.: 89–3A010.

Date Deemed Submitted: November 6, 1996.

Proposed Amendment: ARI seeks to amend its Certificate to:

1. Add each of the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Calmac Manufacturing Corporation, Englewood, New Jersey; Des Champs Laboratories, Inc., Natural Bridge Station, Virginia; Elkhart Product Corporation, Geneva, Indiana; IMI Cornelius, Inc., Anoka, Minnesota; Inter-City Products Corporation, USA, Lewisburg, Tennessee; Mainstream Engineering Corporation, Rockledge, Florida; Metal Industries Inc., Clearwater, Florida; National Comfort Products, Bensalem, Pennsylvania; New Thermal Technologies Inc., Clearwater, Florida; Refrigerant Recovery Technologies, Inc., Garrett, Indiana; Refron, Inc., Long Island City, New York; SPX Corporation, for the activities of its Robinair Division-HVAC/R Group, Montpelier, Ohio; Russell, Brea, California; Semco, Incorporated, Columbia, Missouri; The Whalen Company, Easton, Maryland; and two subsidiaries of AAF/McQuay: AAF International, Louisville, Kentucky and McQuay International, Minneapolis, Minnesota;

2. Delete the following companies as ''Members'' of the Certificate: Brookside Group, Inc., McCordsville, Indiana; Eaton Corporation, for the activities of its Automotive & Appliance Control Operations, Carol Stream, Illinois; and Tomkins Industries, Inc., Dayton, Ohio;

3. Change the listing of the company name of the following current ''Members'' as follows: Change Heat Exchangers, Inc., and Mestek, Inc., for the activities of its Sterling Radiator Division, to Mestek, Inc., for the activities of its KOLDWAVE, Division and its Sterling HVAC Equipment Division; Lau to LAU Industries; MDI Major Diversities, Inc. to Pinnacle Products, Inc.; Miller-Picking Corporation to Miller-Picking International Corporation; NIBCO, Inc., for the activities of its OEM Division to NIBCO, Inc.; and NORDYNE Inc. to NORDYNE, INC.; and

4. Add as new products to be covered as Export Trade under the Certificate within the meaning of section 325.2(j) of the Regulations (15 CFR 325.2(j)): (1) unit ventilators, (2) air-to-air energy recovery ventilation equipment, (3) desiccant cooling and dehumidification equipment, and (4) refrigerant reclaimers.

Dated: November 14, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–29625 Filed 11–19–96; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 15, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting import limits and guaranteed access levels.

EFFECTIVE DATE: November 20, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

On the request of the Government of the Dominican Republic, the U.S. Government agreed to increase the 1996 Guaranteed Access Levels for Categories 338/638, 339/639 and 633. Also, the current limits for Categories 433 and 448 are being increased for swing, reducing the limit for Categories 342/642 to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 61 FR 1359, published on January 19, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 11, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on November 20, 1996, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
342/642	454,702 dozen.
433	24,243 dozen.
448	45,470 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Guaranteed Access Level (GAL) for Categories 342/642, 433 and 448 remain unchanged. The GALs for textile products in the following categories shall be increased:

Category	Guaranteed Access Level
338/638	3,650,000 dozen.
339/639	2,650,000 dozen.
633	120,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–29648 Filed 11–19–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

November 14, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6707. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Korea and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–223, 224–V [1], 224–O [2], 225–229, 300–326, 360–363, 369–O [3], 400–414, 464–469, 600–629, 665–669 and 670–O [4], as a group.	412,168,188 square meters equivalent.
Sublevels within Group I	
200	444,982 kilograms.
201	2,008,311 kilograms.
218	9,019,924 square meters.
219	8,213,263 square meters.
224–V	10,354,076 square meters.
300/301	3,025,717 kilograms.
313	49,308,915 square meters.
314	27,492,488 square meters.
315	17,883,782 square meters.
317/326	18,324,475 square meters.
363	1,055,992 numbers.
410	3,501,026 square meters.
604	372,548 kilograms.
607	1,082,392 kilograms.
611	3,607,970 square meters.
613/614	6,013,282 square meters.
617	4,986,625 square meters.
619/620	93,181,150 square meters.
624	8,799,926 square meters.
625/626/627/628/629.	15,394,003 square meters.
669–P [5]	2,214,210 kilograms.
Group II	
237, 239, 330–359, 431–459 and 630–659, as a group.	585,584,176 square meters equivalent.
Sublevels within Group II	
237	59,838 dozen.
239	999,399 kilograms.
333/334/335	270,598 dozen of which not more than 138,306 dozen shall be in Category 335.
336	57,185 dozen.
338/339	1,202,657 dozen.
340	625,382 dozen of which not more than 324,718 dozen shall be in Category 340–D [6].
341	178,839 dozen.
342/642	217,495 dozen.
345	116,836 dozen.
347/348	444,982 dozen.
350	16,632 dozen.
351/651	228,483 dozen.
352	177,800 dozen.
353/354/653/654	264,431 dozen.
359–H [7]	2,561,384 kilograms.
433	13,835 dozen.
434	7,096 dozen.
435	34,726 dozen.
436	14,701 dozen.
438	58,938 dozen.
440	197,221 dozen.
442	49,679 dozen.
443	322,056 numbers.
444	54,135 numbers.
445/446	51,901 dozen.
447	88,548 dozen.
448	34,949 dozen.
459–W [8]	94,539 kilograms.
631	300,213 dozen pairs.
632	1,590,350 dozen pairs.

Category	Twelve-month restraint limit
633/634/635	1,352,738 dozen of which not more than 153,398 dozen shall be in Category 633 and not more than 571,665 dozen shall be in Category 635.
636	265,727 dozen.
638/639	5,266,681 dozen.
640–D [9]	3,114,013 dozen.
640–O [10]	2,595,010 dozen.
641	1,044,554 dozen of which not more than 39,456 dozen shall be in Category 641–Y [11].
643	773,856 numbers.
644	1,164,233 numbers.
645/646	3,567,066 dozen.
647/648	1,309,024 dozen.
650	24,339 dozen.
659–H [12]	1,311,886 kilograms.
659–S [13]	178,988 kilograms.
Group III	
831–844 and 847–859, as a group.	18,202,375 square meters equivalent.
Sublevel within Group III	
835	28,591 dozen.
Group IV	
845	2,315,056 dozen.
846	817,601 dozen.
Group VI	
369–L/670–L/870[14].	70,560,181 square meters equivalent.

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36,0020.

[2] Category 224–O: all remaining HTS numbers in Category 224.

[3] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090 (Category 369–L); and 5601.21.0090.

[4] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[7] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[8] Category 459–W: only HTS number 6505.90.4090.

[9] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[10] Category 640–O: all HTS numbers except 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030 (Category 640–D).

[11] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[12] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The conversion factors for the following merged categories are listed below:

Category	Conversion factor (Square meters equivalent/category unit)
333/334/335	33.75
369–L/670–L/870	3.8
633/634/635	34.1
638/639	12.96

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–29647 Filed 11–19–96; 8:45 am]

BILLING CODE 3510–DR–F

Amendment Export Visa Requirements for Certain Silk Apparel and Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

November 15, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of export licenses/commercial invoices printed on light grey guilloche paper with a map of the People's Republic of China in the middle.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the People's Republic of China have agreed to amend the existing export visa requirements to provide for the use of export licenses/commercial invoices, issued by the Government of the People's Republic of China, for shipments of goods produced or manufactured in China and exported from China on and after January 1, 1997, which are printed on light grey guilloche patterned background paper with a newly added dull color map of the People's Republic of China in the middle. The light grey form replaces the light green export license/commercial invoice currently in use. The visa stamp is not being changed at this time. The Chinese Embassy in Washington, DC, will continue to issue the white pre-printed replacement visa now in use.

Shipments of textile and apparel products which are produced or manufactured in China and exported from China during the period January 1, 1997 through February 28, 1997 may be accompanied by a visa printed on either the light green or light grey background paper with a dull color map of the People's Republic of China in the middle.

See 59 FR 35324, published on July 11, 1994; and 60 FR 22567, published on May 8, 1995.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on July 5, 1994 and May 3, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives establish export visa arrangements for certain silk apparel and cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on January 1, 1997, you are directed to amend the July 5, 1994 and May 3, 1995 directives to provide for the use of export licenses/commercial invoices issued

by the Government of the People's Republic of China which are printed on light grey guilloche patterned background paper with a newly added dull color map of the People's Republic of China in the middle. The light grey form will replace the light green form currently being used. The Chinese Embassy in Washington, DC, will continue to issue the white pre-printed replacement visa now in use.

To facilitate implementation of this amendment to the export licensing system, I request that you permit entry of textile products, produced or manufactured in China and exported from China during the period January 1, 1997 through February 28, 1997, for which the Government of the People's Republic of China has issued an export license/commercial invoice printed on either a light green form or a light grey form with a dull color map of the People's Republic of China in the middle.

Goods exported on and after March 1, 1997 must be accompanied by an export visa issued by the Government of the People's Republic of China only on the light grey license/invoice form with a dull color map of the People's Republic of China in the middle.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–29649 Filed 11–19–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Petition of the Philadelphia Stock Exchange, Inc. for Exemptive Relief To Permit United States Customers To Establish or Offset Positions in Certain Foreign Currency Options on the Hong Kong Futures Exchange Ltd. Through Registered Broker-Dealers

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of Comment Period.

SUMMARY: On October 2, 1996, the Commodity Futures Trading Commission (''Commission'') issued a notice of proposed order and request for comment on the Philadelphia Stock Exchange, Inc.'s petition for exemptive relief to permit United States customers to establish or offset positions in certain foreign currency options on the Hong Kong Futures Exchange Ltd. through registered broker-dealers, 61 FR 52921 (October 9, 1996). The original period for comment was thirty days, with the deadline for the submission of comments November 8, 1996. By letter dated November 8, 1996, the Chicago Mercantile Exchange, the Chicago Board of Trade and the Futures Industry Association have requested a thirty-day extension of the comment period. The Commission has determined to extend the comment period to December 11, 1996.

DATES: Written comments must be received on or before December 11, 1996.

ADDRESSES: Comments should be submitted to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT:

Susan C. Ervin, Deputy Director/Chief Counsel, or Christopher W. Cummings, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone number: (202) 418–5450. Facsimile number: (202) 418–5536. Electronic mail: tm@cftc.gov.

SUPPLEMENTARY INFORMATION: On October 2, 1996, the Commission issued a request for comment on the petition of the Philadelphia Stock Exchange, Inc. (''PHLX'') for exemptive relief to permit United States customers to establish or offset positions in certain foreign currency options on the Hong Kong Futures Exchange Ltd. through registered broker-dealers. On November 8, 1996, the Chicago Mercantile Exchange, the Chicago Board of Trade and the Futures Industry Association filed a written request for a thirty-day extension of the comment period. The extension request was based on the signatories' belief that additional time was necessary to fully evaluate the merits of the PHLX's petition in light of important policy questions.

The Commission has determined to extend the period for public comment on the PHLX's petition to December 11, 1996.

Issued in Washington, DC., on November 13, 1996, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–29651 Filed 11–19–96; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–81–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

November 14, 1996.

Take notice that on November 4, 1996, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP97–81–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a delivery point connection located in Jefferson County, Pennsylvania, under National Fuel's blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National Fuel proposes to abandon a delivery point connection which provides service to one residential customer of National Fuel Gas Distribution Corporation. National Fuel states this delivery point is located along a non-jurisdictional production pipeline that will be conveyed to Contract Services, a producer of natural gas located in Pennsylvania, who will assume service obligations to this customer following conveyance of these facilities.

National Fuel advises the affected customer is aware of the proposed sale of facilities to Contract Services and does not object to this sale and the two parties have entered into an Agreement for the Transfer of Service, dated July 18, 1996. National Fuel states such transfer is subject to the approval of the Pennsylvania Public Utility Commission.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request

shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–29616 Filed 11–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–15–000, et al.]

Termo Santander de Colombia, E.S.P., et al. Electric Rate and Corporate Regulation Filings

November 14, 1996.

Take notice that the following filings have been made with the Commission:

1. Termo Santander de Colombia, E.S.P.

[Docket No. EG97–15–000]

On November 8, 1996, Termo Santander de Colombia, E.S.P. (''Termo''), with its principal office at Carrera 11, No. 93–53, Piso 6°,—Bogota D.C., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is currently a sociedad anonima, a Colombian corporation, but will be converted to a limited partnership by shares under Colombian law prior to commerical operation. The Applicant will be engaged, exclusively in leasing, owning, and operating a 220 MW gas-fired electric generating plant and associated 65 km, 230 kV transmission line on the OPON gas field in the town of Cimitarra, the Department of Santander, Colombia and engaging in project development activities with respect thereto and other activities as permitted by the Commission.

Comment date: December 4, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Amoco Power Finance (BVI) Limited

[Docket No. EG97–16–000]

On November 8, 1996, Amoco Power Finance (BVI) Finance. (the ''Applicant''), with its principal office at Craigmuir Chambers, P.O. BOX 71, Road Town, Tortola, BVI, filed with the Federal Energy Regulatory Commission an application for determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

The Applicant is a company organized under the laws of the British Virgin Islands. The Applicant will be engaged, exclusively in owning and leasing gas fired electric generation equipment with an approximate name plate rating of 220 MW which will be located on the OPON gas field in the town of Cimitarra, the Department of Santander, Colombia and engaging in project development activities with respect thereto, and other activities as permitted by the Commission.

Comment date: December 4, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Powernet Corporation; Morgan Stanley Capital Group, Inc.; Industrial Energy Applications, Inc.; Texaco Natural Gas Inc.; Enserve, L.C.; Power Fuels, Inc.

[Docket Nos. ER94–931–010, ER94–1384–012, ER95–1465–004, ER95–1787–004, ER96–182–004, ER96–1930–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 5, 1996, Powernet Corporation filed certain information as required by the Commission's April 22, 1994, order in Docket No. ER94–931–000.

On November 4, 1996, Morgan Stanley Capital Group, Inc. filed certain information as required by the Commission's November 8, 1994, order in Docket No. ER94–1384–000.

On November 4, 1996, Industrial Energy Applications, Inc. filed certain information as required by the Commission's September 28, 1995, order in Docket No. ER94–1465–000.

On November 4, 1996, Texaco Natural Gas Inc. filed certain information as required by the Commission's January 25, 1996, order in Docket No. ER95–1787–000.

On October 30, 1996, Enserve, L.C. filed certain information as required by the Commission's December 28, 1996, order in Docket No. ER96–182–000.

On October 30, 1996, Power Fuels, Inc. filed certain information as required by the Commission's July 5, 1996, order in Docket No. ER96–1930–000.

4. Louisville Gas & Electric Company

[Docket No. ER96–2688–000]

Take notice that on October 21, 1996, Louisville Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas & Electric Company

[Docket No. ER96–2748–000]

Take notice that on October 21, 1996, Louisville Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas & Electric Company

[Docket No. ER96–2824–000]

Take notice that on October 21, 1996, Louisville Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER97–297–000]

Take notice that on October 30, 1996, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and the Public Service Company of New Hampshire tendered for filing a summary of NUSCO's activity under the NU System Companies Tariff No. 7 (market-based rates) for the quarter ending September 30, 1996.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER97–367–000]

Take notice that on November 4, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Southern Energy Marketing, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Southern Energy Marketing, Inc, pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 8, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER97–368–000]

Take notice that on November 4, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Heartland Energy Services, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Heartland Energy Services, Inc. pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company,* 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 8, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Company

[Docket No. ER97–370–000]

Take notice that on November 4, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, First Revised Volume No. 2, an executed Service Agreement with Franklin County PUD.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective November 1, 1996.

A copy of this filing was caused to be served upon Franklin County PUD as noted in the filing letter.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER97–371–000]

Take notice that on November 5, 1996, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Virginia Electric and Power Company for Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on November 1, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Delmarva Power & Light Company

[Docket No. ER97–372–000]

Take notice that on November 5, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing revisions to Appendix C of its Rate Schedule No. 95 to add a new delivery point and update the information provided therein about its existing delivery points.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. The Washington Water Power Company

[Docket No. ER97–373–000]

Take notice that on November 5, 1996, The Washington Water Power (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, a Five Year Agreement For The Sale Of Firm Energy Between The Washington Water Power Company And The City Of Cheney. The term of the Agreement is to commence on January 1, 1997 and continue through September 30, 2001.

WWP requests that the Commission accept the amended filing effective January 1, 1997 and waive the 60-day notice requirement. No parties will be adversely effected by the granting of this waiver.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Gulf Power Company

[Docket No. ER97–374–000]

Take notice that on November 5, 1996, Gulf Power Company, tendered for filing an amendment to the Interconnection Agreement between Gulf Power Company and Alabama Electric Cooperative, Inc. The purpose of this filing is to reflect Alabama Electric Cooperative's responsibility for scheduling the delivery of SEPA capacity and energy to SEPA's preference customers located in Northwest Florida.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER97–375–000]

Take notice that on November 5, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Koch Power Services, Inc. under Rate GSS.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company

[Docket No. ER97–376–000]

Take notice that on November 5, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Point-to-Point Transmission Service Agreement between Louisville Gas and Electric Company and Florida Power and Light Company under LG&E's Open Access Transmission Tariff.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company

[Docket No. ER97–377–000]

Take notice that on November 5, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Point-to-Point Transmission Service Agreement between Louisville Gas and Electric Company and Virginia Electric and Power Company under LG&E's Open Access Transmission Tariff.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk Power Corporation

[Docket No. ER97–378–000]

Take notice that on November 5, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and AIG Trading Corporation has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and AIG Trading Corporation to enter into separately scheduled transactions under which NMPC will provide transmission service for AIG Trading Corporation as the parties may mutually agree.

NMPC requests an effective date of October 24, 1996. NMPC has requested

waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and AIG Trading Corporation.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Southwestern Public Service Company

[Docket No. ER97–379–000]

Take notice that on November 5, 1996, Southwestern Public Service Company (Southwestern), submitted an executed service agreement under its open access transmission tariff. This service agreement provides for Southwestern's merchant functions to take umbrella non-firm point-to-point transmission service under Southwestern's open access transmission tariff.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Southwestern Public Service Company

[Docket No. ER97–380–000]

Take notice that on November 5, 1996, Southwestern Public Service Company (Southwestern), submitted an executed service agreement under its open access transmission tariff. This service agreement provides for Southwestern's merchant functions to take umbrella firm point-to-point transmission service under Southwestern's open access transmission tariff.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Central Illinois Public Service Company

[Docket No. ER97–381–000]

Take notice that on November 5, 1996, Central Illinois Public Service Company (CIPS), submitted two service agreements, each dated October 30, 1996, establishing AIG Trading Corporation (AIG) and Morgan Stanley Capital Group Inc. (Morgan Stanley), respectively, as customers under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of October 30, 1996 for the service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon AIG, Morgan Stanley and the Illinois Commerce Commission.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Exact Power Co., Inc.

[Docket No. ER97–382–000]

Take notice that on November 5, 1996, Exact Power Co., Inc. (Exact Power), tendered for filing with the Federal Energy Regulatory Commission (Commission) Exact Power Co., Inc. FERC Rate Schedule No. 1 which permits Exact Power to make sales of capacity and energy at market-based rates.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Cinergy Services, Inc.

[Docket No. ER97–383–000]

Take notice that on November 6, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Nordic Wholesale Electric, L.L.C.

Cinergy and Nordic Wholesale Electric, L.L.C. are requesting an effective date of November 18, 1996.

Comment date: November 29, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–29655 Filed 11–19–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG96–96–000, et al.]

Termovalla S.C.A., et al. Electric Rate and Corporate Regulation Filings

November 13, 1996.

Take notice that the following filings have been made with the Commission:

1. Termovalle S.C.A. Empresa de Servicios Publico

[Docket No. EG96–96–000]

On November 1, 1996, Termovalle S.C.A. Empresa de Servicios Publico (''Termovalle''), United States office at KMR Power Corporation, Suite 902, 1000 Wilson Blvd, Arlington, VA 22209, filed with the Federal Energy Regulatory Commission an Amended Application For Determination Of Status As An Exempt Wholesale Generator pursuant to Part 365 of the Commission's Regulations.

Termovalle will directly and exclusively, develop, own and operate an electric generating facility, to be located near Cali, Colombia and sell electricity at wholesale or exclusively in markets outside of the United States. The electric generating facility will be a natural gas fired combined cycle generating unit, consisting principally of a combustion turbine and associated electric generator, a steam turbine and associated electric generator and appurtenant interconnection facilities. The facility will have a nominal generating capacity of 199 MW.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

2. Sumas Cogeneration Company, L.P.

[Docket No. EG97–13–000]

On November 4, 1996, Sumas Cogeneration Company, L.P., 335 Parkplace, Suite 110, Kirkland, Washington 98033, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The applicant is a limited partnership engaged directly and exclusively in the business of owning and operating an eligible facility located in Washington and selling electric energy at wholesale. Applicant's eligible facility consists of one 123 MW (net) cogeneration facility located in Whatcom County, Washington, in the City of Sumas.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. National Gas & Electric L.P., Enron Power Marketing, Inc., LG&E Power Marketing, Inc., Coastal Electric Services, Company, Stalwart Power Company, BTU Power Corporation, Citizens Lehman Power Sales,

[Docket No. ER90–168–029, ER94–24–016, ER94–1188–013, ER94–1450–012, ER95–1334–004, ER96–1283–002, ER96–2652–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 4, 1996, National Gas & Electric L.P. filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90–168–000.

On November 1, 1996, Enron Power Marketing, Inc. filed certain information as required by the Commission's December 2, 1993, order in Docket No. ER94–24–000.

On November 1, 1996, LG&E Power Marketing, Inc., filed certain information as required by the Commission's August 19, 1994, order in Docket No. ER94–1188–000.

On October 29, 1996, Coastal Electric Services Company filed certain information as required by the Commission's September 29, 1994, order in Docket No. ER94–1450–000.

On November 5, 1996, Stalwart Power Company filed certain information as required by the Commission's August 18, 1995, order in Docket No. ER95–1334–000.

On November 1, 1996, BTU Power Corporation filed certain information as required by the Commission's April 24, 1996, order in Docket No. ER96–1283–000.

On November 1, 1996, Citizens Lehman Power Sales filed certain information as required by the Commission's September 23, 1996, order in Docket No. ER96–2652–000.

4. Illinova Power Marketing, Inc., Energy Resource Marketing, Inc., Hinson Power Company, Coral Power, L.L.C., Multi Energies USA Inc., CPS Capital, Ltd., Power Fuels, Inc.,

[Docket No. ER94–1475–006, ER94–1580–008, ER95–1314–006, ER96–25–004, ER96–203–003, ER96–1798–001, ER96–1930–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 29, 1996 Illinova Power Marketing, Inc. filed certain information as required by the Commission's May 18, 1995, order, in Docket No. ER94–1475–000.

On October 31, 1996 Energy Resource Marketing, Inc. filed certain information as required by the Commission's September 30, 1994, order, in Docket No. ER94–1580–000.

On October 30, 1996 Hinson Power Company filed certain information as required by the Commission's August 29, 1995, order, in Docket No. ER95–1314–000.

On October 30, 1996, Coral Power, L.L.C. filed certain information as required by the Commission's December 6, 1995, order, in Docket No. ER96–25–000.

On October 15, 1996, Multi Energies USA Inc. filed certain information as required by the Commission's December 8, 1995, order, in Docket No. ER96–203–000.

On October 16, 1996, CPS Capital, Ltd. filed certain information as required by the Commission's June 27, 1996, order, in Docket No. ER96–1798–000.

On October 30, 1996, Power Fuels, Inc. filed certain information as required by the Commission's July 5, 1996, order, in Docket No. ER96–1930–000.

5. Equitable Power Services Company, Destec Power Services, Inc., AIG Trading Corporation, Stand Energy Corporation, E Prime, Inc., Wheeled Electric Power Company, WWP Resource Services, Inc.,

[Docket No. ER94–1539–011, ER94–1612–009, ER94–1691–011, ER95–362–006, ER95–12–69–004, ER96–1150–001, ER96–2408–001 (not consolidated)]

Take notice that the following information filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 29, 1996, Equitable Power Services Company filed certain information as required by the Commission's September 8, 1994, order in Docket No. ER94–1539–000.

On October 30, 1996, Destec Power Services, Inc. filed certain information as required by the Commission's January 20, 1995, order in Docket No. ER94–1612–000.

On October 30, 1996, AIG Trading Corporation Filed certain information as required by the Commission's January 19, 1995, order in Docket No. ER94–1691–000.

On October 30, 1996, Stand Energy Corporation filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–362–000.

On October 30, 1996, E Prime, Inc. filed certain information as required by the Commission's March 29, 1996, order in Docket No. ER95–1269–000.

On October 30, 1996, Wheeled Electric Power Company filed certain information as required by the Commission's April 17, 1996, order in Docket No. ER96–1150–000.

On October 30, 1996, WWP Resource Services, Inc. filed certain information as required by the Commission's September 12, 1996, order in Docket No. ER96–2408–000.

6. Englehard Power Marketing, Inc., PanEnergy Power Services, Inc., Mock Energy Services, L.P., Hartford Power Sales, L.L.C., Powertec International, L.L.C., Duke/Louis Dreyfus, L.L.C., TransAlta Enterprise Corporation

[Docket Nos. ER94–1690–010, ER95–7–011, ER95–300–010, ER95–393–010, ER96–1–004, 96–108–005, ER96–1316–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 1, 1996, Engelhard Power Marketing, Inc. filed certain information as required by the Commission's December 29, 1994, order in Docket No. ER94–1690–000.

On November 1, 1996, PanEnergy Power Services, Inc. filed certain information as required by the Commission's December 16, 1994, order in Docket No. ER95–7–000.

On November 1, 1996, Mock Energy Services, L.P. filed certain information as required by the Commission's March 16, 1995, order in Docket No. ER95–300–000.

On November 1, 1996, Hartford Power Sales, L.L.C. filed certain information as required by the Commission's February 22, 1995, order in Docket No. ER95–393–000.

On November 1, 1996, Powertec International L.L.C. filed certain information as required by the Commission's December 1, 1995, order in Docket No. ER96–1–000.

On November 1, 1996, Duke/Louis Dreyfus, L.L.C. filed certain information as required by the Commission's December 14, 1995, order in Docket No. ER96–108–000.

On November 1, 1996, TransAlta Enterprises Corporation filed certain information as required by the Commission's June 12, 1996, order in Docket No. ER96–1316–000.

7. Tenneco Energy Marketing Company, KN Marketing, Inc., IGI Resources, Inc., Cogentrix Energy Marketing, Inc., Duke Energy Marketing, Corporation, Energy Resource Management Corp., LS Power Marketing, LLC,

[Docket No. ER95–428–007, ER95–869–006, ER95–1034–005, ER95–1739–004, ER96–109–006, ER96–358–003, ER96–1947–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 30, 1996, Tenneco Energy Marketing Company filed certain information as required by the Commission's March 30, 1995, order in Docket No. ER95–428–000.

On October 29, 1996, KN Marketing, Inc. filed certain information as required by the Commission's May 26, 1995, order in Docket No. ER95–869–000.

On October 30, 1996, IGI Resources, Inc. filed certain information as required by the Commission's July 11, 1995, order in Docket No. ER95–1034–000.

On October 29, 1996, Cogentrix Energy Power Marketing, Inc. filed certain information as required by the Commission's October 13, 1995, order in Docket No. ER95–1739–000.

On October 30, 1996, Duke Energy Resource Marketing Corporation filed certain information as required by the Commission's December 14, 1995, order in Docket No. ER96–109–000.

On October 29, 1996, Energy Resource Management Corporation filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–358–000.

On October 29, 1996, LS Power Marketing, LLC filed certain information as required by the Commission's August 5, 1996, order in Docket No. ER96–1947–000.

8. IES Utilities, Inc.,

[Docket No. ER96–2774–000]

Take notice that on October 10, 1996, IES Utilities, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: November 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER97–161–000]

Take notice that on October 31, 1996, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER97–162–000]

Take notice that on October 31, 1996, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

11. Florida Power & Light Company

[Docket No. ER97–164–000]

Take notice that on October 31, 1996, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER97–165–000]

Take notice that on October 31, 1996, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER97–166–000]

Take notice that on October 31, 1996, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER97–350–000]

Take notice that on November 4, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Coral Power L.L.C. under Rate GSS.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER97–351–000]

Take notice that on November 4, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and Aquila Power Corporation under Rate TS.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Power and Light Company

[Docket No. ER97–352–000]

Take notice that on November 4, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated October 28, 1996, establishing The Power Company of America, L.P. as a point-to-point transmission customer under the terms of WP&L's Transmission Tariff.

WP&L requests an effective date of July 11, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power Corporation

[Docket No. ER97–353–000]

Take notice that on November 4, 1996, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to SCANA Energy Marketing, Inc. pursuant to its open access transmission tariff (the T–6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on November 5, 1996.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power Corporation

[Docket No. ER97–354–000]

Take notice that on November 4, 1996, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to Virginia Electric & Power Company, pursuant to its open access transmission tariff (the T–6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on November 5, 1996.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power Corporation

[Docket No. ER97–355–000]

Take notice that on November 4, 1996, Florida Power Corporation (Florida Power), filed a Supplemental Contract executed October 7, 1996 between it and the United States of America, Department of Energy (DOE). It amends a contract between Florida Power and the DOE's Southeastern Power Administration dated July 19, 1957 (Rate Schedule FPC No. 65), which provides for the sale, purchase,

wheeling and firming of power from the Jim Woodruff Project.

The Supplemental Contract provides for an increase from 16 MW to 36 MW in the amount of capacity, together with associated energy, that Florida Power will supply to SEPA when necessary to meet the project's minimum output requirements and also eliminates provisions relating to power formerly provided by Georgia Power Company. The rates and terms and conditions in the present contract are otherwise unaffected by this filing.

Florida Power requests waiver of the notice requirement in order to allow the Supplemental Contract to become effective November 5, 1996, in order to accommodate SEPA's schedule.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power Corporation

[Docket No. ER97–356–000]

Take notice that on November 4, 1996, Florida Power Corporation (FPC), tendered for filing a contract for the provision of interchange service between itself and SCANA Energy Marketing, Inc. (SCANA). The contract provides for service under Schedule J, Negotiated Interchange Service and OS, Opportunity Sales.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on November 5, 1996. Waiver is consistent with Commission policies because it will allow voluntary economic transactions to go forward.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Florida Power & Light Company

[Docket No. ER97–357–000]

Take notice that on November 4, 1996, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Reedy Creek Improvement District for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on July 9, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Citizens Utilities Company

[Docket No. ER97–358–000]

Take notice that on November 4, 1996, Citizens Utilities Company (Citizens), filed for approval a service agreement for AHA MACAV Power Service (AMPS) under Citizens' FERC Electric Tariff No. 1 and an amendment to the Construction Agreement between Citizens and AMPS, FERC Rate Schedule No. 36.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Electric Power Company

[Docket No. ER97–359–000]

Take notice that on November 4, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Appendix I to its interconnection agreement with Upper Peninsula Power Company (UPPCO). The new point of interconnection will only be closed to supply emergency energy to UPPCO at the Village of White Pine, Michigan.

Wisconsin Electric respectfully requests an effective date coincident with its filing, in order to support the possible provision of emergency energy at any time.

Copies of the filing have been served on UPPCO, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. American Energy Solutions Corp.

[Docket No. ER97–360–000]

Take notice that on November 4, 1996, American Energy Solutions, Inc. (AESI), tendered for filing pursuant to Part 35 of the Regulations under the Federal Power Act, 18 CFR Part 35, and Rules 204 and 205, of the Commission's Rules of Practice and Procedure, 18 CFR 385.204 and 385.205, a petition for waivers and blanket approvals of the Commission and for an order accepting its Electric Rate Schedule No. 1.

AESI intends to engage in electric power transactions as a marketer and a broker. In transactions where AESI sells electric power it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Potomac Electric Power Company

[Docket No. ER97–361–000]

Take notice that on November 4, 1996, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Electric Clearinghouse, Inc., NorAm Energy Services, Inc., TransCanada Power Corp., Cinergy Services, Inc., Sonat Power Marketing L.P., PECO Energy Company, AIG Trading Corporation, and Virginia Electric and Power Company. An effective date of November 1, 1996 for these service agreements, with waiver of notice, is requested.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Virginia Electric and Power Company

[Docket No. ER97–362–000]

Take notice that on November 4,1996, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with Florida Power & Light company, Midcon Power Services Corp., and LG&E Power Marketing, Inc. under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff. The LG&E Power Marketing, Inc. service agreement had previously been filed on September 5, 1996 in an unexecuted form.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and the Florida Public Service Commission.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Northern Indiana Public Service Company

[Docket No. ER97–363–000]

Take notice that on November 4, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and MidCon Power Services Corporation.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to MidCon Power Services Corporation pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service

Company has requested that the Service Agreement be allowed to become effective as of November 8, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Northern Indiana Public Service Company

[Docket No. ER97–364–000]

Take notice that on November 4, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Carolina Power & Light Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Carolina Power & Light Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company,* 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 8, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Northern Indiana Public Service Company

[Docket No. ER97–365–000]

Take notice that on November 4, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Entergy Power Marketing Corporation.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Entergy Power Marketing Corporation pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company,* 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 8, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Northern Indiana Public Service Company

[Docket No. ER97–366–000]

Take notice that on November 4, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Minnesota Power & Light Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Minnesota Power & Light Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company,* 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 8, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ES96–39–001]

Take notice that on November 7, 1996, UtiliCorp United Inc. (UtiliCorp) filed an amendment to its application in Docket No. ES96–39–000, under § 204 of the Federal Power Act. By letter order dated September 19, 1996, (76 FERC ¶ 62,209 (1996)), UtiliCorp was authorized to enter into five-year corporate guarantees in an amount of not more than $135 million no later than December 2, 1996. UtiliCorp seeks a modification of the authorization to extend the date for entering into corporate guarantees from the approved date of December 2, 1996 to January 31, 1997.

Comment date: November 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. MDU Resources Group, Inc.

[Docket No. ES97–8–000]

Take notice that on November 7, 1996, MDU Resources Group, Inc. filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term indebtedness, from time to time, in an aggregate principal amount of not more than $50 million outstanding at any one time, during the period January 1, 1997 through December 31, 1998, with a final maturity date no later than December 31, 1999.

Comment date: December 6, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–29654 Filed 11–19–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5651–7]

Wisconsin: Final Full Program Determination of Adequacy of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (Region 5).

ACTION: Notice of final full program determination of adequacy on Wisconsin's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive household hazardous waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258).

RCRA section 4005(c)(1)(C) requires the United States Environmental Protection Agency (USEPA) to determine whether States have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule governing such determinations. The USEPA has proposed a State/Tribal Implementation Rule (STIR) (61 *FR* 2584, January 26, 1996) that provides procedures by which the USEPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to final promulgation of the STIR, adequacy determinations will be made based on statutory authorities and requirements. In addition, States/Tribes may use the proposed STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR Part 258 to the extent the State/Tribal permit program allows such flexibility.

Wisconsin applied for a partial program determination of adequacy under Section 4005 of RCRA on July 27, 1992. The USEPA reviewed Wisconsin's application and made a final determination of adequacy (57 *FR* 61899, December 29, 1992) for those portions of the MSWLF permit program that were adequate to ensure compliance with the revised Federal MSWLF Criteria. Wisconsin amended its original application and applied for full program approval on September 27, 1996. The USEPA reviewed Wisconsin's amended application and today is issuing a tentative determination of adequacy for all portions of Wisconsin's MSWLF permit program. Wisconsin's amended application for full program adequacy determination is available for public review and comment. The tentative determination will become final and effective sixty (60) days following the date of this publication if no adverse comments are received.

DATES: All comments on Wisconsin's application for a full determination of adequacy must be received by the U.S. EPA Region 5 by the close of business on December 20, 1996. The determination of adequacy for Wisconsin shall be effective on January 21, 1997 unless adverse comments are received. If adverse comments are received, a second Federal Register Notice will be published describing these comments and the US EPA's responses to the comments and decision on final adequacy.

ADDRESSES: Copies of Wisconsin's application for a full determination of adequacy are available for inspection and copying from 9AM to 4PM during normal working days at the following addresses: Wisconsin Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin, 53707, Attn: Mr. Paul Huebner; and U.S.EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Ms. Susan Mooney, mail code DRP–8J. All written comments should be sent to the EPA Region 5 Office.

FOR FURTHER INFORMATION CONTACT: USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604 Attn: Ms. Susan Mooney, mailcode DRP–8J, telephone (312) 886–3585.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the USEPA promulgated revised Federal MSWLF Criteria (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the revised Federal Criteria. Subtitle D also requires in Section 4005 that the USEPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal MSWLF Criteria. To fulfill this requirement, the Agency has proposed the State/Tribal Implementation Rule (STIR). The rule specifies the requirements which State/Tribal programs must satisfy to be determined adequate.

The USEPA will review the State/Tribe's requirements to determine whether they are ''adequate'' under Section 4005(c)(1)(C) of RCRA. The USEPA interprets the requirements for States or Tribes to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to the revised Federal MSWLF Criteria. Second, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe must also provide for public participation in permit issuance and enforcement as required in Section 7004(b) of RCRA. Third, the USEPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator who fails to comply with an approved MSWLF program.

The USEPA Regions will determine whether a State/Tribe has submitted an ''adequate'' program based on the interpretation outlined above.

B. State of Wisconsin

On July 27, 1992, Wisconsin submitted an application to obtain a partial program adequacy determination for the State's municipal solid waste landfill permit program. On December 29, 1992, the USEPA published a final determination of adequacy for Wisconsin's program. Further background on the final partial program determination of adequacy appears at 57 *FR* 61899, December 29, 1992.

On September 27, 1996 Wisconsin amended its July 27, 1992 application to apply for full program approval. The amended application includes a description of the changes made to Wisconsin's MSWLF permit program since the partial program approval.

The USEPA has reviewed Wisconsin's amended application and has determined that the State's MSWLF permit program will ensure compliance with all portions of the revised Federal Criteria. Specifically, Wisconsin has adequately addressed those portions of its MSWLF permit program that were not approved in the partial determination of adequacy in December 1992. In addition to those portions of the State's MSWLF permit program that were approved on December 29, 1992, the US EPA has determined that the State's revised MSWLF permit program will ensure adequacy with the following portions of the Federal criteria:

1. Location restrictions for fault areas, seismic impact zones, and unstable areas in 40 CFR 258.13, 258.14, and 258.15.

2. Operating requirements for the exclusion of hazardous waste, explosive gas control, run-on/run-off control systems, and recordkeeping in 40 CFR 258.20, 258.23, 258.26, and 258.29.

3. Design requirements in 40 CFR 258.40(a).

4. Field filtering provisions in 40 CFR 258.53(b).

5. Detection and assessment groundwater monitoring parameters that are consistent with the revised Federal Criteria in 40 CFR 258.54 and 258.55.

6. Financial assurance requirements in 40 CFR 258.70(a).

As described in the December 29, 1992 partial program approval, Wisconsin's MSWLF permit program has the authority to issue permits that incorporate the requirements in the revised Federal MSWLF Criteria to all MSWLFs in the State. In addition, Wisconsin's permit program contains provisions for public participation, compliance monitoring, and enforcement.

The Wisconsin compliance monitoring program has the authority to obtain information from a MSWLF facility, as well as the authority to enter and inspect any MSWLF site or record pertaining to solid waste management, to determine compliance. Wisconsin has mechanisms to verify the accuracy of information submitted by a MSWLF facility to verify the sampling methods used by a MSWLF facility, and to produce evidence admissible in an enforcement proceeding. Wisconsin has the authority to conduct monitoring or testing to ensure compliance. Wisconsin inspects MSWLFs to verify and document compliance with solid waste regulations, deter violations, and provide opportunities to inform and educate the regulated community.

Wisconsin has the authority to implement the following remedies for violation of program requirements:

1. Authority to restrain a person from conducting an activity that may endanger or cause damage of human health or the environment;

2. Authority to sue an individual who is violating provisions of any statutes, regulations, orders, or permits that have been issued by the State; and

3. Authority to administratively assess penalties for violating statutes, regulations, orders, or permits.

C. Decision

After reviewing the amended application, I conclude that Wisconsin's application for full program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Wisconsin is granted a full program determination of adequacy.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the revised Federal MSWLF criteria in 40 CFR Part 258 independent of any State enforcement program. As the USEPA explained in the preamble to the revised Federal MSWLF Criteria, the USEPA expects that any owner or operator complying with provisions in a State/Tribal program approved by the USEPA should be considered to be in compliance with the revised Federal MSWLF Criteria. See 56 *FR* 50978, 50995 (October 9, 1991).

Today's action takes effect 60 days after the date of publication if no adverse comments are received.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in todays Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: October 28, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–29658 Filed 11–19–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

November 13, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0741.

Expiration Date: 10/31/99.

Title: Implementation of the Local Competition Provisions on the Telecommunications Act of 1996—CC Docket No. 96–98, Second Report and Order and Memorandum Opinion and Order.

Form No.: N/A.

Estimated Annual Burden: 202,980 total annual hours; 150.3 hours per respondent (avg.); 1,350 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: In the Second Report and Order and Memorandum Opinion and Order (Order) in CC Docket No. 96–98, the Commission adopts rules and regulations to implement the portions of the Telecommunications Act of 1996 which were enacted to open local telephone markets by eliminating legal and technical barriers to competition. The Order addresses provisions related to local exchange carriers' obligations to provide their competitors with dialing parity and nondiscriminatory access to certain services; incumbent local exchange carriers' duty to make network information disclosures; and numbering administration.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–29598 Filed 11–19–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 3554.

Name: D & S Movers, Inc.

Address: 1806 Enterprise Boulevard, West Sacramento, CA 95691.

Date Revoked: September 11, 1996.

Reason: Surrendered license voluntarily.

License Number: 2379.

Name: Fabian Forwarding Company, Inc.

Address: 125 Yellowstone Drive, Reno, NV 89512.

Date Revoked: September 20, 1996.
Reason: Failed to maintain a valid surety bond.
License Number: 3784.
Name: Fivestar Express (U.S.A.) Inc.
Address: 1120 South Maple Avenue, Montebello, CA 90640.
Date Revoked: September 11, 1996.
Reason: Failed to maintain a valid surety bond.
License Number: 3461.
Name: Gulf-Ocean Shipping Corporation.
Address: 1610 Seventh Street, League City, TX 77573.
Date Revoked: October 3, 1996.
Reason: Failed to maintain a valid surety bond.
License Number: 3614.
Name: I.C.S. Cargo Service, Inc.
Address: 10920 N.W. South River Drive, Miami, FL 33178.
Date Revoked: September 1, 1996.
Reason: Failed to maintain a valid surety bond.
License Number: 3885.
Name: Navigo International, Inc.
Address: 3103 McKinney, Houston, TX 77003.
Date Revoked: October 4, 1996.
Reason: Failed to maintain a valid surety bond.
License Number: 3915.
Name: Nu-Trans International, Inc.
Address: 3333 South Iron Street, Chicago, IL 60608.
Date Revoked: October 3, 1996.
Reason: Failed to maintain a valid surety bond.
License Number: 3827.
Name: Sterling International Forwarders, Inc.
Address: 1716 N.W. 82nd Avenue, Miami, FL 33166.
Date Revoked: September 18, 1996.
Reason: Failed to maintain a valid surety bond.
License Number: 3222.
Name: T.L. Dillon & Co., Inc.
Address: P.O. Box 19929, Charlotte, NC 28219.
Date Revoked: October 10, 1996.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 96–29633 Filed 11–19–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Worldwide Shipping & Agencies (USA), Inc., 1360 Union Hill Road, Alpharetta, GA 30201,
Officer: Christian Bekkers, President
Danielle Express Shipping, 1336 Corsino Street, Winter Garden, FL 34787,
Debbie Goordat, Sole Proprietor

Dated: November 15, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–29634 Filed 11–19–96; 8:45 am]

BILLING CODE 6730–01–M

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 December 13, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Barker Brothers, Inc., Springfield, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Middletown Bancorp, Inc., Middletown, Illinois, and thereby indirectly acquire Middletown State Bank, Middletown, Illinois, and 89 percent of the voting shares of Latham Bancorp, Inc., Latham, Illinois, and thereby indirectly acquire State Bank of Latham, Latham, Illinois.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Halpain Financial, Ltd., Dallas, Texas; to become a bank holding company by acquiring 22 percent of the voting shares of Gateway Holding Company, Inc., Dallas, Texas, and 100 percent of the voting shares of Gateway Delaware Holding Company, Inc., Wilmington, Delaware, and thereby indirectly acquire Gateway National Bank, Dallas, Texas.

In connection with this application, Gateway Holding Company, Inc., Dallas, Texas, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Gateway Delaware Holding Company, Inc., Wilmington, Delaware, and thereby indirectly acquire Gateway National Bank, Dallas, Texas.

In addition, Gateway Delaware Holding Company, Inc., Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Gateway National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, November 14, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–29600 Filed 11-19-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 1996.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mid Am, Inc., Bowling Green, Ohio; to engage *de novo* through its subsidiary, Mid Am Private Trust, National Association, Cincinnati, Ohio, in performing functions or activities of a trust company, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Southern National Corporation, Winston-Salem, North Carolina, and BB&T Financial Corporation of Virginia, Virginia Beach, Virginia; to acquire Fidelity Financial Bankshares Corporation, Richmond, Virginia, and thereby indirectly acquire Fidelity Federal Savings Bank, Richmond, Virginia, and thereby engage in operating a savings institution, pursuant to § 225.25(b)(9) of the Board's Regulation Y, and in holding limited partnership interests in funds that invest in partnerships which own and operate low income rental properties, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 14, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–29601 Filed 11-19-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 25, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Proposed procedural amendments to the Federal Reserve System Retirement Plan.
3. Proposed acquisition of automated data processing equipment within the Federal Reserve System.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

Contact Person for More Information: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 15, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–29764 Filed 11–18–96; 10:35 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0279]

Agri-Tech, Inc.; Proposal To Withdraw Approval of a New Animal Drug Application; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing an opportunity for a hearing on a proposal to withdraw approval of a new animal drug application (NADA) for Protamone-D (iodinated casein tablets), held by Agri-Tech, Inc., because the applicant has failed to submit required periodic reports.

DATES: Requests for a hearing with data, analysis, and information relied upon to justify a request for a hearing are due by December 20, 1996.

ADDRESSES: Requests for a hearing, supporting data, and other comments filed in response to this notice should be identified with Docket No. 96N–0279 and sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: An applicant is required to report periodically to the Center for Veterinary Medicine (CVM) concerning each of the applicant's approved NADA's as provided in § 510.300 (21 CFR 510.300). Agri-Tech, Inc., 4722 Broadway, Kansas City, MO 64112 (last known address), is the sponsor of NADA 13–502 which provides for oral use of Protamone-D (iodinated casein tablets) in dogs. Agri-Tech, Inc., has not submitted the required periodic reports for NADA 13–502 and has not responded to CVM's requests for submission of those reports. Letters to the firm have been returned indicating the firm is no longer at the above-listed address.

Therefore, notice is given to Agri-Tech, Inc., and to all other interested persons who may be adversely affected, that the Director, CVM, proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)) withdrawing approval of NADA 13–502 and all amendments and supplements thereto on the ground that the applicant has failed to submit the reports required under § 510.300. Upon withdrawal of NADA 13–502, the corresponding regulation (21 CFR 520.1157) will be revoked.

In accordance with the provisions of section 512 of the act and regulations issued under it (parts 510 and 514 (21 CFR parts 510 and 514)), and under authority delegated to the Director, CVM (§ 5.84 (21 CFR 5.84)), CVM hereby provides the applicant an opportunity for a hearing to show why approval of the NADA and all amendments and supplements thereto should not be withdrawn (and the corresponding regulations revoked) and an opportunity to raise, for administrative determination, all issues relating to the legal status of the application and drug products approved thereunder. Any hearing would be subject to the provisions of 21 CFR part 12.

An applicant who decides to seek a hearing shall file on or before December 20, 1996, a written notice of appearance, request for a hearing, and the data, information, and analyses relied on to justify a hearing as specified in § 514.200.

Procedures and requirements governing this notice of opportunity for a hearing, notice of appearance and request for hearing, submission of information and analysis to justify a hearing, other comments, and a grant or denial of a hearing, are contained in § 514.200.

The failure of an applicant to file a timely, written notice of appearance and request for a hearing as required by § 514.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposed action and constitutes a waiver of any contentions about the legal status of the product. In such case, the Director, CVM, under the authority delegated to him in § 5.84(a)(2), will, without further notice, enter a final order withdrawing approval of the application. Thereafter, the product may not be legally marketed, and CVM may begin appropriate regulatory action to remove it from the market. Any new animal drug product which is not the subject of an approved application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that justifies a hearing. Reports submitted to remedy the deficiencies must be complete in all respects as required by § 510.300. If it is clear that the reports submitted are not complete or that there is no genuine and substantial issue of fact that precludes the withdrawal of approval, or that the request for a hearing is not made in the required format or with the required analysis, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing. If a hearing is requested and is justified by the sponsor's response to this notice, the issues will be defined, an administrative law judge will be assigned, and a written notice of the time and place at which the hearing will begin will be issued.

All submissions pursuant to this notice shall be filed in two copies. Except for information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512(e) (21 U.S.C. 360b(e))) and under authority delegated to the Director, CVM (§ 5.84).

Dated: October 18, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–29630 Filed 11–19–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0382]

Milwhite, Inc.; Filing of Food Additive Petition (Animal Use) Hydrated Sodium Calcium Aluminosilicate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Milwhite, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydrated sodium calcium aluminosilicate as a binder for aflatoxins in feeds.

DATES: Written comments on the petitioner's environmental assessment by January 21, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry E. Ekperigin, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1724.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2230) has been filed by Milwhite, Inc., 7050 Portwest Dr., suite 190, Houston, TX 77024. The petition proposes to amend the food additive regulations in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of hydrated sodium calcium aluminosilicate as a binder for aflatoxins in feeds.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before January 21, 1997 submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's findings of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: November 1, 1996.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 96–29632 Filed 11–19–96; 8:45 am]

BILLING CODE 4160–01–F

Office of Inspector General

Program Exclusions: October 1996

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of October 1996, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS:	
ADAM, HAKKI, FT WASHINGTON, MD	11/04/96
AHMED, MOHAMED, WAUPUN, WI	11/17/96
BATISTA-PEREZ, JUANA, DANBURY, CT	10/31/96
BONDURANT, DONALD L, PINE BLUFF, AR	10/29/96
BRUCKER, WALLACE B, ODESSA, TX	10/29/96
BUSH, HELEN INEZ, CAMP PARKS DUBLIN, CA	10/29/96
CHAMBERS, LINDA GAIL, FORT WORTH, TX	10/29/96
CLEMANS, TIMOTHY C, CHANDLER, AZ	11/07/96
COOPER, FERYLE A, ST LOUIS, MO	11/17/96
DAUMY, ILEANA, MIAMI, FL	11/17/96
DILEO, DOMINIC W, UNIONTOWN, PA	11/10/96
FIRST AMERICAN HLTH CARE OF GA FORMERLY KNOWN AS ABC, BRUNSWICK, GA	11/07/96
GAMBILL, JAMES DONALD, SALYERSVILLE, KY	11/17/96
GAMBILL, KENNETH LEE, SALYERSVILLE, KY	11/17/96
GILL, JAMES ESTES, PINE BLUFF, AR	10/29/96
GILLAM, OCEALESS ANNETTE, MINNEAPOLIS, MN	11/17/96
H & M HOME FOR ALTERNATIVE LIV, SOUTHFIELD, MI	11/17/96
HAGERMAN, SANDRA, VERNON, TX	10/29/96
HALL, REYNARD L, SOUTHFIELD, MI	11/17/96
HUNTER, DAVID, TEXARKANA, TX	10/29/96
KIRSHLING, MARY M, MEQUON, WI	11/17/96
LANZA, RAMON, MIAMI, FL	11/17/96
LEBBAD, LOUIS VINCENT, RIO RANCHO, NM	10/29/96
LEMOINE, LESLIE V, BATCHELOR, LA	10/29/96
MATEUS, LUIS E, HIALEAH, FL	11/17/96
MCCULLOUGH, KIMBERLY JOYCE, PINE BLUFF, AR	10/29/96
MOMPO, VICENTE, MIAMI, FL	11/17/96
OMAR, HATIEM A, WAUPUN, WI	11/17/96
PADRON, JOHN, MIAMI, FL	11/17/96
PEREZ-MIRANDA, AZUCENA, HIALEAH, FL	10/31/96
PREWETT, MICHAEL, CULLODEN, GA	10/31/96
RELIABLE AMBULANCE SERVICE, SALYERSVILLE, KY	11/17/96
SKINNER, JANA LYNNE, WHITESBORO, TX	10/29/96
SOBERON, GLADYS, MIAMI, FL	10/31/96
SPENCER, DAVID, LITTLE ROCK, AR	10/29/96
STREET, GARY R, OLNEY, IL	11/17/96
SUPPORT SYSTEMS INTERNATIONAL, WILD ROSE, WI	11/17/96
TANNA, PETER, SILVER SPRING, MD	11/04/96
TRAN, THIEU T, LAKE CHARLES, LA	10/29/96
TRINIDAD, TITO BASCON, LEWISBURG, PA	11/10/96
WALKER, JOHN P, JOHNSTOWN, PA	11/10/96
WARE, OLA MAE, LITTLE ROCK, AR	10/29/96
WATSON, FULTON, PINE BLUFF, AR	10/29/96
WEIGELT, SHARYN ANN, FRESNO, TX	10/29/96
WILLIAMS, LUTHER RALEIGH, GRADY, AR	10/29/96
PATIENT ABUSE/NEGLECT CONVICTIONS:	
BALDASARO, ROSEMARY, BRATTLEBORO, VT	10/29/96
BERLIN, STUART MARK, WESTLAKE, CA	11/07/96
COLES, SHAYNEE M, EUCLID, OH	11/17/96
DOMINO, LINDA JEAN, BATON ROUGE, LA	10/29/96
EILAND, HAROLD G JR, CUT OFF, LA	10/29/96
FIFE, BETTY, BRENHAM, TX	10/29/96
HAMILTON, HELEN DELORES, FORT SMITH, AR	10/29/96
HARE, ANGELA R, IDABEL, OK	10/29/96
HUGHES, ELIZABETH F, BEEBE, AR	10/29/96
HURST, PATRICIA K, HORICON, WI	11/17/96
IZAT, SARAH CATHERINE, CUMBERLAND, MD	11/04/96
JACKSON, DAVID GLENN, SHELBY, NC	11/17/96

Subject city, state	Effective date
JOHNSTON, GLEN, ELDORADO, OK	10/29/96
LACY, JOHNNIE BONNER, WOODVILLE, TX	10/29/96
MCLAUGHLIN, RICHARD AUSTEN, HOUSTON, TX	10/29/96
MCRAE, MICHAEL EDWARD, DEVINE, TX	10/29/96
NEPHEW, LAVERNE DIANE, GUTHRIE, OK	10/29/96
PILE, ALVIN, BRONX, NY	11/07/96
PITTMAN, SANDRA, OSSEO, WI	11/17/96
POLK, FELECIA LANELL, STILLWATER, OK	10/29/96
SHELTON, KENNETH ONEAL, SHAWNEE, OK	10/29/96
SLATER, MARLA SUE, WALDRON, AR	10/29/96
SMITH, DEBORAH ANN SHINE, PRINCETON, LA	10/29/96
STEVENS, JAMES ROBERT JR, TUCSON, AZ	11/07/96
STROWBRIDGE, CLINTON ROBERT, MOUNTAIN HOME, AR	10/29/96
WOOLEN, LATONJA ROCHELL, MARSHALL, TX	10/29/96
CONVICTION FOR HEALTH CARE FRAUD:	
DIRENZO, ANTHONY, BENSALEM, PA	11/04/96
LEVIN, DARYL, BENSALEM, PA	11/10/96
LUDWICK, LUTHER S III, GREENSBORO, NC	11/17/96
OUIMETTE, RAY JR, TAMPA, FL	10/31/96
SANBORN, KAREN M, FAIRFIELD, ME	10/29/96
SCHREIBSTEIN, HOWARD, HUNTINGDON VALLEY, PA	11/10/96
CONTROLLED SUBSTANCE CONVICTIONS:	
ROSENBERG, ROBERT, MARTINSBURG, WV	11/04/96
LICENSE REVOCATION/SUSPENSION/SURRENDER:	
ANDERSON, SHERWOOD, EAST LYME, CT	10/29/96
BINENFELD, ROBERT, MONROE, NY	11/07/96
BONES, VIRGINIA G, WESTFIELD, MA	10/29/96
BONTEMPI, LORI A, EASHAMPTON, MA	10/29/96
BREITINGER, ERNEST ROBERT, RAVENSWOOD, WV	11/10/96
BROUSE, LAWSON F, SALEM, NH	10/29/96
BUSH, SHIRLEY, WOODBURY, CT	10/29/96
COOPER, ERIN, SUNBURY, PA	11/10/96
COTREAU, ROBERT J, MALDEN, MA	10/29/96
CRANDALL, CANDACE, UNCASVILLE, CT	10/29/96
DALE, JAMES A, E GREENVILLE, PA	11/10/96
EKELUND, LARS-GORAN C, CHAPEL HILL, NC	10/31/96
FADDEN, BRENDA R, LOWELL, MA	10/29/96
FITZSIMMONS, LORI A, MAYNARD, MA	10/29/96
FORZLEY, MARY A, FRANKLIN, NH	10/29/96
GOLDSTEIN, RONALD A, N CHELMSFORD, MA	10/29/96
GUEVARRA, PHILADELPO, SOUTHBURY, CT	10/29/96
HOEPER, EDWIN W, GOLDSBORO, NC	11/17/96
HUGHES, JEFFREY, PHOENIX, AZ	11/07/96
JACKSON, PAMELA D, DORCHESTER, MA	10/29/96
JANDL, JOYCE A, S DENNIS, MA	10/29/96
KEENAN, KATHLEEN, DANBURY, CT	10/29/96
LANEAU, LYNNE K, S WEYMOUTH, MA	10/29/96
LASSOFF, SAMUEL, NEW YORK, NY	11/07/96
LEVINE, LAURENCE E, HAMPSTEAD, NH	10/29/96
LOUDER, PATRICIA, BRIDGEPORT, CT	10/29/96
MATERDO, NOBLETO G, CHERAW, SC	10/31/96
MAZZILLI, MARIANNE, WEYMOUTH, MA	10/29/96
MCGOWAN, MAUREEN E, QUINCY, MA	10/29/96
MOYER, LAURA M, DOVER, NH	10/29/96
NELSON, RUTH M, BRIDGEWATER, MA	10/29/96
NICHOLS, MELINDA, GLOUCESTER, MA	10/29/96
ODER, FREDERIC E, GLOUCESTER, MA	10/29/96
PELUSE, CHERYL, WEST HAVEN, CT	10/29/96
PFENNING, JOHN N, RUIDOSO, NM	10/29/96
PITTS, MILTON G, TUSKEGEE, AL	11/17/96
SACKS, DAVID HYMAN, ATLANTA, GA	11/17/96
SAWYER, DENISE M, BILLERICA, MA	10/29/96
SEAMANS, MICHAEL W, PROVIDENCE, RI	10/29/96
STEVENS, MARK THOMAS, SAN DIEGO, CA	11/07/96
SULLIVAN, CLAUDETTE, MATTAPOISETT, MA	10/29/96
WYNECOFF, DEBRA RENEE, WINSTON-SALEM, NC	11/17/96
FEDERAL/STATE EXCLUSION/SUSPENSION:	
COLLIAU, PENNY LOUISE, KAUFMAN, TX	10/29/96
LANS, MARIS, CENTERVILLE, VA	11/04/96
DEFAULT ON HEAL LOAN:	
AFRANE, BARIMA A, BOLINGBROOK, IL	11/17/96
ALEXANDER, STEPHEN K, PASSAIC, NJ	11/07/96
BEAM, DAVID E, PHOENIX, AZ	11/07/96

Subject city, state	Effective date
BLEWITT, DANIEL A, MANCHESTER ENGLAND	11/07/96
BROWN, WILLIE L, ST LOUIS, MO	11/17/96
BUONASPINA, ARTHUR, STATEN ISLAND, NY	11/07/96
BURKE, MELANIE, BALTIMORE, MD	11/04/96
CALDWELL, ROBERT J, ALEXANDRIA, VA	11/10/96
CHEN, CALVIN, HONG KONG	11/07/96
CHRISTMAN, DEAN M, ROCHESTER, NY	11/07/96
ERKARD, JAMES T JR, CANTON, OH	11/17/96
ESTRADA, LORI LIPSET-HANSEN, GALESBURG, IL	11/07/96
FRYE, DAN A, OCEANSIDE, CA	11/07/96
GILLARD, STEPHEN CRAIG, DEDHAM, MA	10/29/96
HAFNER, DIANE H, REDWOOD, CA	11/07/96
HAINES, ARTHUR A, RIVER FALLS, WI	11/07/96
HAMILTON, CLARENCE A, ALTA LOMA, CA	11/07/96
HAMPTON, DUANE E, SEYMOUR, IN	11/07/96
HASSINGER, ROYANN MARIE, ORTONVILLE, MI	11/07/96
HUSAIN, MEHTAB, LEWISBURG, PA	11/10/96
JONES, HAROLD A, MILWAUKEE, WI	11/07/96
KAY-GELFOND, ALICIA E, ATLANTA, GA	10/31/96
KESSLER, EDWARD, VIRGINIA BEACH, VA	11/04/96
KING, JAMES H III, WASHINGTON, DC	11/04/96
LUONGO, MARY ANN, BAYONNE, NJ	11/07/96
MACGREGORWHITE, CHARLES W, SAN JOSE, CA	11/07/96
MANFRE, VINCENT S, N HOLLYWOOD, CA	11/07/96
MARTIN, DIANA J, LOS GATOS, CA	11/07/96
MCKINNEY, JEANETTE M, CHICAGO, IL	11/17/96
MEBANE, KAREN E, BURLINGTON, NC	10/31/96
MONICAL, WILLIAM J, CHARLOTTE, NC	10/31/96
MURPHY, MARC A, RANCHO SANTA MARGARITA, CA	11/07/96
MURPHY, MICHAEL A, ASBURY PARK, NJ	11/07/96
NOLL, MICHAEL D, CHAMBERSBURG, PA	11/10/96
ORELLANA, JOSE R, BRONX, NY	11/07/96
PELMORE, JANET C, LOUISVILLE, KY	11/17/96
PETERS, RONALD S, FISHERS, IN	11/07/96
PHAM, NGHI D, FOUNTAIN VALLEY, CA	11/07/96
RIORDAN, KENNETH P, GRANTS PASS, OR	11/07/96
SAFIR, PAULA B, LA JOLLA, CA	11/07/96
SALMON, THOMAS J JR, PALOS HEIGHTS, IL	11/17/96
SHARICK, ROGER C, LIVONIA, MI	11/07/96
SHELTON, ROBERT J, ROSEMOUNT, MN	11/17/96
SPAIGHTS, LAUREN R, NEWARK, NJ	11/07/96
SPIELMANN, MICHAEL A, VERNON ROCKVILLE, CT	10/29/96
STEINBERG, CRAIG S, VAN NUYS, CA	11/07/96
STROMAN, SAMUEL D II, WASHINGTON, DC	11/04/96
TEDFORD, WILLIAM, SILVER SPRING, MD	11/04/96
VERNON, EARL M, WAUKEGAN, IL	11/07/96
VILLIER, CARLTON SHEFFIELD, BAD AXE, MI	11/07/96
VINEGAR, BARBARA A, CINCINNATI, OH	11/17/96
WHITE, JOHN T, VIRGINIA BEACH, VA	11/04/96
WOODARD, YVETTE A, NASHVILLE, TN	11/17/96
WOODRIDGE, CHARLES ANTHONY, S HOLLAND, IL	11/07/96

Dated: November 7, 1996

William M. Libercci,

Director, Health Care Administrative Sanctions Office of Enforcement and Compliance.

[FR Doc. 96–29318 Filed 11–19–96; 8:45 am]

BILLING CODE 4150–04–P

National Institutes of Health

National Eye 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 National Eye Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Clinical Research.

Date: December 5, 1996.

Time: 9:00 a.m.

Place: National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., Bethesda, MD 20892–7164.

Contact Person: Andrew P. Mariani, Ph.D., Executive Plaza South, Room 350, 6120 Executive Blvd., Bethesda, MD 20892–7164, (301) 496–5561.

Purpose/Agenda: Review of Grant Applications.

The meeting will be closed in accordance with provisions set forth in sections 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 Program No. 93.867, Vision Research: National Institutes of Health.)

Dated: November 13, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–29667 Filed 11–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant application.

Name of SEP: Motor Learning in Individuals Post-Stroke (Teleconference).

Date: December 12, 1996.

Time: 12:00 p.m.–2:00 p.m.

Place: 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852.

Contact Person: Edgar E. Hanna, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications 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. [93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: November 13, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–29665 Filed 11–19–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; 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 National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R42 Grant (97–07).

Dates: December 2, 1996.

Time: 11:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R03 Grant (97–13).

Dates: December 2, 1996.

Time: 9:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. Yong Shin, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of F33 and R03 Grants (97–06).

Dates: December 5, 1996.

Time: 11:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. Yong Shin, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

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 No. 93.121, Oral Diseases and Disorders Research)

Dated: November 13, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–29666 Filed 11–19–96; 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 Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 19, 1996.

Time: 10:30 a.m.

Place: Renaissance Hotel, Downtown, 999 9th Street, Washington, DC 20001.

Contact Person: William H. Radcliffe, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 25, 1996.

Time: 12 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri L. Schwartzback, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 3, 1996.

Time: 11:30 a.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri L. Schwartzback, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 3, 1996.

Time: 11:30 a.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Rehana A. Chowdhury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 5, 1996.

Time: 11 a.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Lawrence E. Chaitkin, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

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.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated:

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–29808 Filed 11–18–96; 2:21 pm]

BILLING CODE 4140–01–M

Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: December 5, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4148, Telephone Conference.

Contact Person: Dr. Philip Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

Name of SEP: Biological and Physiological Sciences.

Date: December 6, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4208, Telephone Conference.

Contact Person: Dr. Anita Weinblatt, Scientific Review Administrator, 6701 Rockledge Drive, Room 4208, Bethesda, Maryland 20892, (301) 435–1224.

Name of SEP: Biological and Physiological Sciences.

Date: December 9, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4208, Telephone Conference.

Contact Person: Dr. Anita Weinblatt, Scientific Review Administrator, 6701 Rockledge Drive, Room 4208, Bethesda, Maryland 20892, (301) 435–1224.

Name of SEP: Biological and Physiological Sciences.

Date: December 9, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 5196, Telephone Conference.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Biological and Physiological Sciences.

Date: December 11, 1996.

Time: 8:30 a.m.

Place: NIH, Rockledge 2, Room 5204, Telephone Conference.

Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, Maryland 20892, (301) 435–1259.

Name of SEP: Biological and Physiological Sciences.

Date: December 11, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4148, Telephone Conference.

Contact Person: Dr. Philip Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

The meetings will be closed in accordance with the provisions set forth in sections 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: November 13, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–29668 Filed 11–19–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–822113

Applicant: Richard Pickard, Miami Beach, FL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–822208

Applicant: Jo-Ann C. Ferre, Carolina, PR

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–822206

Applicant: Herman Ferre Roig, Carolina, PR

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–822209

Applicant: Johnny N. Cavazos, Brownsville, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–822247

Applicant: Denver Zoological Gardens, Denver, CO

The applicant requests a permit to import one female captive-born snow leopard (*Uncia uncia*) from Calgary Zoo, Alberta, Canada for the purpose of enhancement of the species through captive-breeding.

PRT–739682

Applicant: The New York Blood Center, New York, NY

The applicant requests reissuance of a permit for import of up to 3000 blood and 400 liver tissue samples taken from wild and captive-born chimpanzee (*Pan troglodytes*) in Liberia for the purpose of enhancement of the survival of the species through scientific research.

PRT–822037

Applicant: David Jessup, Fair Oaks, CA

The applicant requests a permit to re-export blood samples taken from wild black rhinoceros (*Diceros bicornis*) in Kenya, to the Institute for Zoo Animals and Wildlife Biology in Berlin, Germany for disease screening to enhance the survival of the species.

PRT–822244

Applicant: Teri Embery, Bartlesvillew, OK

The applicant requests a permit for the import of one captive-born female leopard cat (*Prionailurus b. bengalensis*) from Jungle Cat World, Ontario, Canada for the purpose of enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for

a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 15, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–29664 Filed 11–19–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Pinoleville Indian Community of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed certain lands in Mendocino County, California, as an addition to the reservation of the Pinoleville Indian Community of California on November 1, 1996. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Chief, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: On November 1, 1996, by proclamation issued pursuant to the Act of June 18, 1934, (48 Stat. 986; 25 U.S.C. 467), the following-described tract of land, was proclaimed to be an Indian Reservation for the exclusive use of Indians entitled by enrollment or tribal membership to reside at such reservation.

Mendocino County, California

Being a portion of Parcel 1, as shown on that map filed in Map Case 2, Drawer 1, Page 74, Mendocino County Records:

Beginning at the Southeast corner of the said Parcel 1; thence North 09°28′20″ West along the East line of the said Parcel 1, a distance of 242.55 feet; thence North 01°43′20″ West along the said East line, a distance of 103.13 feet; thence South 88°16′40″ West, 185.41 feet; thence North 01°43′20″ West, 40 feet; thence South 88°16′40″ West, 140.94 feet to the West line of said Parcel 1; thence South 01°00′00″ East along the said West line, a distance of 367.13 feet to the Southwest corner of said Parcel 1; thence South 88°30′00″ East along the South line of said Parcel 1, a distance of 330.44 feet to the point of beginning.

Title to the above described land is conveyed subject to any valid existing easements for public roads, highways, public utilities, pipelines, and any other valid easements or rights of way now of record.

Dated: November 1, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–29652 Filed 11–19–96; 8:45 am]

BILLING CODE 4310–W7–P

Bureau of Land Management

[AK–931–1430–01; A–046709]

Conformance to Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides official publication of the surveyed description for the VORTAC Site at King Salmon, Alaska. The site was withdrawn by Public Land Order No. 2713, for the protection of air navigation facilities being operated and maintained by the Federal Aviation Administration. The plat was officially filed in the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on December 4, 1995. The VORTAC Site at King Salmon, currently represented as Tract 37, within the dependent resurvey of sections 5 and 8 of T. 17 S., R. 45 W., Seward Meridian, Alaska, containing 91.81 acres, represents the parcel previously described as follows:

Beginning at a point for corner No. 1, from which the center of the VORTAC antenna, located at latitude 58°43′31.35″ N., and longitude 156°44′59.95″ W., bears east 1000 feet distant, thence;
North 1000 feet to corner No. 2;
East 2000 feet to corner No. 3;
South 2000 feet to corner No. 4;
West 2000 feet to corner No. 5;
North 1000 feet to corner No. 1, the point of beginning.

The area described contained approximately 92 acres.

ADDRESSES: Inquiries about this land should be sent to the Alaska State Office, Bureau of Land Management, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, BLM Alaska State Office, 907–271–5477.

Dated: November 12, 1996.

Gene R. Terland,

Resources Group Administrator, Division of Lands, Minerals, and Resources.

[FR Doc. 96–29641 Filed 11–19–96; 8:45 am]

BILLING CODE 4310–JA–P

National Park Service

Draft General Management Plan/Draft Environmental Impact Statement, Cape Cod National Seashore, MA

AGENCY: National Park Service, Interior.

ACTION: Extension of Public Review Period of the Draft Environmental Impact Statement for the Draft General Management Plan.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, this notice announces the extension of the public review period for the draft environmental impact statement (DEIS) for the Draft General Management Plan (DGMP) for Cape Cod National Seashore, Barnstable County, Massachusetts. In accordance with the National Environmental Policy Act of 1969, the environmental impact statement was prepared to assess the impacts of implementing the general management plan.

This Draft Environmental Impact Statement for the Draft General Management Plan presents a proposal and two alternatives strategies for guiding future management of Cape Cod National Seashore and balancing resource protection and public use. The major subject areas are natural and cultural resources, public use, nonfederal lands, and park management and operations.

DATES: The DGMP and DEIS was made available for public review on August 19, 1996. The initial 75-day review period has previously been extended by 30 days to November 30, 1996. This notice extends the comment period by 31 additional days to December 31, 1996.

SUPPLEMENTARY INFORMATION: Comments on the DGMP and the DEIS shall be submitted to: Ms. Maria Burks, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663, (508) 349–3785.

Dated: November 14, 1996.

Maria Burks,

Superintendent, Cape Cod National Seashore.

[FR Doc. 96–29672 Filed 11–19–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Availability of Final Environmental Impact Statement for Elwha River Ecosystem Restoration Implementation, Olympic National Park, Washington

SUMMARY: This notice announces the availability of a final environmental impact statement (FEIS) for the implementation of the Elwha River Ecosystem Restoration in Olympic National Park, Washington. The FEIS presents the proposed action and alternatives for removing the Elwha and Glines Canyon dams and restoration of the Elwha River ecosystem and its native anadromous fisheries. The proposed action calls for removal of both dams and river erosion of trapped sediments downstream. The proposed action accomplishes the Secretary of the Interior's objectives, as directed by Public Law 102–495, the Elwha River Ecosystem and Fisheries Restoration Act of 1992, to restore the river's ecosystem and its native anadromous fisheries. This implementation FEIS is connected to the first, programmatic EIS, which was completed in June 1995. The programmatic EIS determined that dam removal was required to fully restore the Elwha River ecosystem and native anadromous fisheries.

The draft environmental impact statement (DEIS) for this action was released for public review on April 26, 1996, (Federal Register, Vol. 61, No. 82) and the public comment period closed on June 25, 1996. Both the DEIS and FEIS analyze the proposed action and alternatives for removing the Elwha and Glines Canyon dams and restoring the Elwha River ecosystem. The alternatives include No Action, i.e., retaining the dams in place; the River Erosion Alternative, i.e., removing both dams and allowing sediment to be eroded naturally by the river; and the Dredge and Slurry Alternative, i.e., removing both dams and using suction dredges mounted on barges to slurry fine-grained sediment (silt and clay) through a pipeline to the Strait of Juan de Fuca.

Major impact topics assessed for the proposed action and the alternatives include natural and cultural resources and other factors such as socioeconomics, public health and safety, water quality and traffic concerns.

The FEIS contains letters received from agencies and organizations during the public comment period and responses to all substantive comments are contained in a question and answer format. A summary of comments received during public workshops on the DEIS is also contained in the FEIS.

The DEIS and FEIS have been completed by the National Park Service in cooperation with the U.S. Fish and Wildlife Service, Bureau of Reclamation, Bureau of Indian Affairs, Army Corps of Engineers, and the Lower Elwha Klallam Tribe.

SUPPLEMENTARY INFORMATION: The no-action period on this FEIS will expire 30 days after the Environmental Protection Agency has published a notice of availability of the FEIS in the Federal Register. A limited number of copies of the FEIS are available on request by calling Lisa Hilt at 360–452–4501, ext. 264. All who submitted substantive comments on the Draft EIS will receive a copy of the FEIS. In addition, public reading copies of the FEIS will be available for review at the following locations: Office of Public Affairs, National Park Service, Department of Interior, 18 and C streets NW., Washington, DC 20240, Telephone: 202–208–6843; Olympic National Park, National Park Service, 600 E. Park Avenue, Port Angeles, WA 98362, Telephone: 206–452–4501; North Olympic Library System, Port Angeles Branch, 207 S. Lincoln Street, Port Angeles, WA 98362, Telephone: 206–452–9253; Government Documents, Seattle Public Library, 1000 4th Avenue, Seattle, WA 98104–1193, Telephone: 206–386–4686; Government Publications, Suzzallo Library, University of Washington, Seattle, WA 98195, Telephone: 206–543–1937; Columbia/Cascades Systems Support Office, National Park Service, 909 First Avenue, Seattle, WA 98104–1060, Telephone: 206–220–4154. For further information contact: Dr. Brian Winter, Elwha Project Coordinator, Olympic National Park, 600 E. Park Avenue, Port Angeles, WA 98362, Telephone: 360–452–0302.

Dated: October 30, 1996.

William C. Walters,

Deputy Field Director, Pacific West Area, National Park Service.

[FR Doc. 96–29675 Filed 11–19–96; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of a loan to the Government of Tunisia (''Borrower'') as part of USAID's development assistance program. The proceeds of this loan will be used to finance environmental infrastructure and services for the benefit of low-income families in Tunisia. At this time, the Government of Tunisia has authorized USAID to request proposals from eligible lenders for a loan under this program of $10 Million U.S. Dollars (US$10,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project numbers are indicated below:

Government of Tunisia

Project No: 664–HG–V

Housing Guaranty Loan No.: 664–HG–013 A01.

Amount: US$10,000,000.

Attention: Mr. Moncef CHAFFAR, Directeur Général des Finances Exterieures, Banque Centrale de Tunisie, Tunis, Tunisia, Telex Nos.: BANCENT 15375, 13311, 13308, Telefax No.: 216–1–340–615 (preferred communication), Telephone Nos.: 216–1–340–588, 254–000.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by *Tuesday, December 3, 1996, 12:00 noon Eastern Daylight Standard Time.* Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Scott Dobberstein or Ms. Monia Ben Khalifa, Regional Housing and Urban Development Office, USAID/NENA, USAID/Tunisia, c/o American Embassy, Tunis, Tunisia (Street address: 144, Avenue de la Liberté, Tunis, Tunisia), Telex No.: 14182 USAID TN, Telefax No.: 216–1–782–464 (preferred communication), Telephone No.: 216–1–781–308 or 784–375

Mr. Peter Pirnie, Financial Advisor, Address: U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 409, SA–18, Washington, DC 20523–1822. Telex No.: 892703 AID WSA, Telefax No.: 703/875–4639 or 875–4384 (preferred communication), Telephone No.: 703/875–4300 or 875–4510

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $10 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. (During grace

period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of fixed and variable rates are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 6.75% U.S. Treasury Bond due August 15, 2026. Such rate is to be set at the time of acceptance. Interest to be payable semi-annually in arrears on a 30/360 day basis.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to prepay, refinance and/or convert the loan to a fixed rate of interest. The variable rate should be adjusted weekly. Interest to be payable semi-annually in arrears on a 365/365 actual days basis.

(5) *Prepayment:*

(a) Offers should include any options for prepayment and mention prepayment premiums, if any.

(b) Federal statutes governing the activities of USAID require that the proceeds of USAID-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, USAID reserves the right, among its other rights and remedies, to accelerate the loan at par. It should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration.

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees, Paying and Transfer Agent fees, and out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to approval by USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the ''Act'').

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Ms. Viviann Gary, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, Washington, DC 20523–1822, Fax Nos: 703/875–4384 or 875–4639, Telephone: 703/875–4300.

Dated: November 15, 1996.

Carolyn Karr,

Acting Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 96–29700 Filed 11–19–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review, Petition for Nonimmigrant Worker.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on August 9, 1996 at 61 FR 41653, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until December 20, 1996. This process is conducted in accordance with 5 CFR 1320.10.

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, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Overview of the information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Petition for Nonimmigrant Worker.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–129, Adjudication Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit.

(5) An estimate of the total number of respondents and the amount of time

estimated for an average respondent to respond: 281,580 respondents at 1 hour and 55 minutes (1.91) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 537,818 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 15, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–29663 Filed 11–19–96; 8:45 am]

BILLING CODE 4410–18–M

[INS No. 1804–96]

Immigration and Naturalization Service User Fee Advisory Committee: Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee holding meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and time: December 4, 1996, at 1:00 p.m.

Place: The Capital Hilton, 16th and K Streets, N.W., Washington, D.C. 22036–5794, telephone number: (202) 639–5716.

Status: Open. Fourteenth meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspectional services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received at least five (5) days prior to the meeting by the contact person will be considered for discussion at the meeting.

Contact person: Donna Kay Barnes, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, room 4064, 425 I Street, N.W., Washington, D.C. 20536, telephone number (202) 616–7488 or fax number (202) 514–8345.

Dated: November 15, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–29814 Filed 11–18–96; 3:07 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–92]

Canadian Standards Association

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Expansion of Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the Canadian Standards Association application for expansion of its recognition as an NRTL under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Canadian Standards Association (CSA) previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition of its Rexdale (Toronto) facility as a Nationally Recognized Testing Laboratory (see 57 FR 23429, 6/3/92; amended 57 FR 48804, 10/28/92), and was so recognized (see 57 FR 61452, 12/24/92); made application for expansion of the recognition of its Rexdale facility (see 58 FR 64973, 12/10/93), and was so recognized (see 59 FR 5447, 2/4/94); subsequently made application for inclusion of its Pointe-Claire, Richmond, Edmonton, Moncton, and Winnipeg facilities in the recognition of its Rexdale facility as an NRTL (see 59 FR 10173, 3/3/94), and was so recognized (see 59 FR 40602, 8/9/94); made application for expansion of its recognition (see 59 FR 63383, 12/8/94, and was so recognized (see 60 FR 15595, dated 3/24/95). CSA applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory for programs and procedures, which was published in the Federal Register on July 12, 1996 (61 FR 36763). No comments were received concerning this request for expansion.

Notice is hereby given that CSA's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the programs and procedures listed below.

Copies of all pertinent documents (Docket No. NRTL–2–92) are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

The addresses of the laboratories covered by this application are:

Canadian Standards Association, Rexdale (Toronto) Facility, 178 Rexdale Boulevard, Rexdale, Ontario M9W 1R3, Canada.

Canadian Standards Association, Pointe-Claire (Montreal) Facility, 865 Ellingham Street, Pointe-Claire, Quebec H9R 5E8, Canada.

Canadian Standards Association, Richmond (Vancouver) Facility, 13799 Commerce Parkway, Richmond, British Columbia V6V 2N9, Canada.

Canadian Standards Association, Edmonton Facility, 1707–94th Street, Edmonton, Alberta T6N 1E6, Canada.
Canadian Standards Association, Moncton Facility, 40 Rooney Cresent, Moncton, New Brunswick E1E 4M3, Canada.
Canadian Standards Association, Winnipeg Facility, 50 Paramount Road, Winnipeg, Manitoba R2X 2W3, Canada.

Final Decision and Order

Based upon the details of the Canadian Standards Association's original application for recognition, its requests for expansion, the original and renewal on-site assessments, and all of the programs that it has utilized for many years in testing and certifying products in its Product Certification Program (under its Canadian accreditation), and the fact that the controls for the various programs had already been established to enable it to test and certify products under the programs and procedures which it has requested, OSHA finds that the Canadian Standards Association has met the requirements of 29 CFR 1910.7 for expansion of its recognition to utilize the specific programs and procedures noted below in testing and certifying products.

Pursuant to the authority in 29 CFR 1910.7, CSA's recognition is hereby expanded to include the eight programs and procedures cited below, subject to the conditions listed below.

Expansion of Recognition—Programs and Procedures

1. Acceptance of testing data from independent organizations, other than NRTLs.
2. Acceptance of product evaluations from independent organizations, other than NRTLs.
3. Acceptance of witnessed testing data.
4. Acceptance of testing data from non-independent organizations.
5. Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).
6. Acceptance of continued certification following minor modifications by the client.
7. Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.
8. Acceptance of services other than testing or evaluation performed by subcontractors or agents.

The Canadian Standards Association must also abide by the following conditions of the expansion of its recognition, in addition to those already required by 29 CFR 1910.7;

This recognition does not apply to any aspect of any CSA program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to CSA's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CSA has reason to doubt the efficacy of any test standards it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CSA shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CSA agrees that it will allow no representation that is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

CSA shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

CSA will continue to meet the requirements for recognition in all areas where it has been recognized; and

CSA will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on November 20, 1996 and will be valid until December 24, 1997, (a period of five years from the date of the original recognition, December 24, 1992), unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, D.C. this 12th day of November, 1996.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 96–29627 Filed 11–19–96; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–1–89 & NRTL–2–88]

Inchcape Testing Services NA, Inc. (ETL Testing Laboratories, Inc. & Dash, Straus & Goodhue, Inc.)

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Expansion of Current Recognition as a Nationally Recognized Testing Laboratory; Notice of Name Change of ETL Testing Laboratories, Inc. (ETL); and Voluntary Termination of Recognition of Dash, Straus & Goodhue, Inc. (DS&G).

SUMMARY: This notice announces the Agency's final decision on the ETL application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7. In addition, the notice reflects a name change resulting from the acquisition by Inchcape Testing Services of ETL and DS&G. Finally, this notice announces the voluntary termination of recognition of Dash, Straus & Goodhue, Inc.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION:

A. Background

ETL Testing Laboratories, Inc. was acquired by Inchcape, plc, and became part of Inchcape Inspection and Testing Services, U.S.A., Inc. (IITS), a Delaware corporation on August 1, 1988. On April 26, 1988, DS&G applied for recognition as a Nationally Recognized Testing Laboratory (NRTL) and was so recognized on June 16, 1989 (see 54 FR 25643). ETL applied for NRTL recognition on May 12, 1988, and was so recognized on September 13, 1989 (see 54 FR 37845). DS&G was acquired by IITS on March 1, 1991. The DS&G location became ETL Testing Laboratories, Inc., DS&G Safety Division, functioning as a testing laboratory for ETL. DS&G also continued to retain its NRTL recognition and the capability of issuing its own certification mark. In March of 1993, ETL and other Inchcape owned laboratories came under the umbrella heading of Inchcape Testing Services. There was no change, however, to ETL's ownership or legal identity. DS&G requested renewal of its recognition as an NRTL on September 8, 1993. This request was iterated by letter dated May 18, 1995 from DS&G's president. On October 4, 1996, Inchcape Testing

Services NA, Inc. sent a letter to OSHA concerning the omission of several standards from the August 9, 1996 notice that were identified in ETL's request for expansion of its recognition (see FR 41659). By letters dated October 14, 1996, Inchcape formally requested (1) OSHA adjust its records to reflect a name change to Inchcape Testing Services NA, Inc. (ITS) for ETL, DS&G, and Warnock Hersey, Inc., and (2) the voluntary withdrawal of DS&G from OSHA's Program.

B. Notice of Final Decision

1. Acknowledgment of Name Change. In response to the request by ITS, OSHA hereby acknowledges the name change as discussed above.

2. Voluntary Termination of Recognition. The termination of recognition of DS&G, as requested by the corporate secretary of ITS is hereby granted. OSHA also is aware that all services previously offered under DS&G at the Boxborough, MA location will continue to be offered through ITS's ETL listing, labeling and follow-up service program.

3. Interim Approval Subject to Review. Five standards (indicated below) which were requested by ITS in its scope expansion application were, for various reasons and through no fault of ITS, not included in the Federal Register notice of August 9, 1996. Nonetheless, OSHA is expanding its recognition to include these standards on an interim basis. In the meantime, interested parties will have 60 days to comment on this interim expansion. Following this time period, if comments are received, OSHA will determine whether additional procedures are necessary.

4. Expansion of Scope of Recognition. ETL previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition as a nationally Recognized Testing Laboratory (see 54 FR 8411, 2/28/89), and was so recognized (see FR 37845, 9/13/89); made application for expansion of its recognition (see 55 FR 43229, 10/26/90), and was so recognized (see 55 FR 51971, 12/18/90; see also correction, 56 FR 2953, 1/25/91); made application for expansion of its recognition (see 57 FR 54422, 11/18/92), and was so recognized (see 58 FR 37749, 7/13/93; see also correction, 58 FR 47001, 9/3/93). ETL applied for expansion of its recognition as a Nationally Recognized Testing Laboratory for equipment or materials, pursuant to 29 CFR 1910.7, which was published in the Federal Register on August 9, 1996 (61 FR 41659). No comments were received concerning this request for expansion.

Notice is hereby given that ITS's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the 161 test standards (equipment and material) listed below.

Copies of all pertinent documents (Docket Nos. NRTL–2–88 and NRTL–1–89) are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

The addresses of the concerned laboratories are:

3933 U.S. Route 11, P.O. Box 2040, Cortland, New York 13045

4317–A Park Drive, NW., Norcross, Georgia 30093

260 East Grand Avenue, #38, South San Francisco, California 94080

Final Decision and Order

Based upon the facts found as part of ITS's original recognition, including details of necessary test equipment, procedures, and special apparatus or facilities needed, adequate of the staff, the application, amendments, and documentation submitted by the applicant, previous expansions of its recognition, the application and documentation submitted by the applicant, the OSHA staff finding including the original On-Site Review Report, as well as the evaluation of the current request, OSHA finds that ITS has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, ITS's recognition is hereby expanded to include the 161 additional test standards (product categories) cited below, subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following 161 additional test standards for the testing and certification of equipment or materials included within the scope of these standards.

ITS has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/ISA S12.13—Performance Requirements for Combustible Gas Detectors
ASTM E152—Method of Fire Test of Door Assemblies
ASTM E163—Standard Methods of Fire Tests of Window Assemblies
ANSI/EEE C37.13—Low Voltage AC Power Circuit Breakers Used in Enclosures
ANSI/EEE C37.14—Low Voltage DC Power Circuit Breakers Used in Enclosures
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
UL 6—Rigid Metal Conduit
UL 13—Power-Limited Circuit Cables
ANSI/UL 17—Vent or Chimney Connector Dampers for Oil-Fired Appliances
ANSI/UL 21—LP-Gas Hose
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL 25—Meters for Flammable and Combustible Liquids and LP Gas
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 69—Electric-Fence Controllers
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
UL 104—Elevator Door Locking Devices and Contacts
UL 136—Pressure Cookers
ANSI/UL 150—Antenna Rotators
ANSI/UL 154—Carbon-Dioxide Fire Extinguisher
ANSI/UL 183—Manufactured Wiring Systems
UL 201—Standard for Garage Equipment
ANSI/UL 209—Cellular Metal Floor Raceways and Fittings
ANSI/UL 224—Extruded insulating Tubing
ANSI/UL 294—Access Control System Units
ANSI/UL 296A—Waste Oil-Burning Air-Heating Appliances
ANSI/UL 299—Dry Chemical Fire Extinguisher
ANSI/UL 307A—Liquid Fuel-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
UL 330—Hose and Hose Assemblies for Dispensing Gasoline
ANSI/UL 343—Pumps for Oil-Burning Appliances
ANSI/UL 355—Cord Reels
ANSI/UL 360—Liquid-Tight Flexible Steel Conduit
ANSI/UL 363—Knife Switches
ANSI/UL 365—Police Station Connected Burglar Alarm Units and Systems

UL 407—Manifolds for Compressed Gases
ANSI/UL 414—Meter Sockets
ANSI/UL 443—Steel Auxiliary Tanks for Oil-Burner Fuel
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire-Protection Service
ANSI/UL 486B—Wire Connectors for Use with Aluminum and/or Copper Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486E—Equipment Wiring Terminals for Use with Aluminum and/or Cooper Conductors
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
UL 497—Protectors for Paired Conductor Communications Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
UL 508C—Power Conversion Equipment
ANSI/UL 512—Fuseholders
ANSI/UL 525—Flame Arresters for Use on Vents of Storage Tanks for Petroleum Oil and Gasoline
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 558—Industrial Trucks, Internal Combustion Engineer-Powered
UL 567—Pipe Connectors for Flammable and Combustible Liquids and LP Gas
ANSI/UL 583—Electric-Battery-Powered Industrial Trucks
ANSI/UL 603—Power Supplies for Use with Burglar-Alarm Systems
ANSI/UL 606—Linings and Screens for Use with Burglar-Alarm Systems
ANSI/UL 626—2½ Gallon Stored-Pressure, Water-Type Fire Extinguisher
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 634—Connectors and Switches for Use with Burglar-Alarm Systems
ANSI/UL 641—Low-Temperature Venting Systems, Type L
ANSI/UL 644—Container Assemblies for LP-Gas
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial Dry-Cleaning Machines (Type IV)
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 711—Rating and Fire Testing of Fire Extinguishers
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
UL 745–1—Portable Electric Tools
UL 745–2–1—Particular Requirements of Drills
UL 745–2–2—Particular Requirements for Screwdrivers and Impact Wrenches
UL 745–2–3—Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
UL 745–2–4—Particular Requirements for Sanders
UL 745–2–5—Particular Requirements for Circular Saws and Circular Knives
UL 745–2–6—Particular Requirements for Hammers
UL 745–2–8—Particular Requirements for Shears and Nibblers
UL 745–2–9—Particular Requirements for Tappers
UL 745–2–11—Particular Requirements for Reciprocating Saws
UL 745–2–12—Particular Requirements for Concrete Vibrators
UL 745–2–14—Particular Requirements for Planers
UL 745–2–17—Particular Requirements for Routers and Trimmers
UL 745–2–30—Particular Requirements for Staplers
UL 745–2–31—Particular Requirements for Diamond Core Drills
UL 745–2–32—Particular Requirements for Magnetic Drill Presses
UL 745–2–33—Particular Requirements for Portable Bandsaws
UL 745–2–34—Particular Requirements for Strapping Tools
UL 745–2–35—Particular Requirements for Drain Cleaners
UL 745–2–36—Particular Requirements for Hand Motor Tools
UL 745–2–37—Particular Requirements for Plate Jointers
ANSI/UL 797—Electrical Metallic Tubing
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 826—Household Electric Clocks
ANSI/UL 827—Central-Stations for Watchman, Fire-Alarm, and Supervisory Services
UL 842—Valves for Flammable Liquids
UL 858A—Safety-Related Solid-State Controls for Household Electric Ranges
ANSI/UL 864—Control Units for Fire-Protective Signaling Systems
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 884—Underfloor Raceways and Fittings
ANSI/UL 964—Electrically Heated Bedding
ANSI/UL 977—Fuse Power-Circuit Devices
ANSI/UL 983—Surveillance Camera Units
UL 991—Safety-Related Controls Employing Solid-State Devices
UL 1072—Medium Voltage Cables
UL 1075—Gas Fired Cooling Appliances for Recreational Vehicles
ANSI/UL 1076—Proprietary Burglar Alarm Units and Systems
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electrical Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
ANSI/UL 1238—Control Equipment for Use with Flammable Liquid Dispensing Devices
ANSI/UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1278—Movable and Wall- or Ceiling- Hung Electric Room Heaters
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
ANSI/UL 1316—Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products
UL 1323—Scaffold Hoists
ANSI/UL 1413—High-Voltage Components for Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1424—Cables for Power-Limited Fire-Protective-Signaling Circuits
UL 1437—Electrical Analog Instruments—Panel Board Types
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
ANSI/UL 1480—Speakers for Fire Protective Signaling Systems
ANSI/UL 1481—Power Supplies for Fire Protective Signaling Systems
UL 1492—Audio-Video Products and Accessories
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear

UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1577—Optical Isolaters
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1638—Visual Signaling Appliances
UL 1640—Portable Power Distribution Units
ANSI/UL 1662—Electric Chain Saws
UL 1664—Immersion-Detection Circuit-Interrupters
UL 1676—Discharge Path Resistors
UL 1690—Data-Processing Cables
ANSI/UL 1711—Amplifiers for Fire Protective Signaling Systems
UL 1738—Venting Systems for Gas-Burning Appliances, Categories II, III, and IV
UL 1795—Hydromassage Bathtubs
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1993—Self-Ballasted Lamps and Lamp Adapters
UL 1994—Low-Level Path Marking and Lighting Systems
UL 1996—Duct Heaters
UL 2021—Fixed and Location-Dedicated Electric Room Heaters
UL 2044—Commercial Closed Circuit Television Equipment
UL 2601–1—Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3044—Surveillance Closed Circuit Television Equipment
UL 3101–1—Electrical Equipment for Laboratory Use; Part 1: General
UL 3111–1—Electrical Measuring and Test Equipment, Part 1: General

The five standards for which ITS has been recognized on an interim basis are:

ANSI/UL 773—Plug-In, Locking Type Photocontrols for Use with Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 1673—Electric Space Heating Cables
UL 2097—Double Insulation Systems for Use in Electronic Equipment
UL 6500—Audio/Visual and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

ITS must also abide by the following conditions of the expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any ITS program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to ITS's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ITS has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ITS shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ITS agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ITS shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

ITS will continue to meet the requirements for recognition in all areas where it has been recognized; and

ITS will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

The last day for interested parties to submit written comments on the interim recognition of ITS for the five aforementioned test standards is January 21, 1997.

Send comments to: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor—Room N3653, 200 Constitution Avenue, NW, Washington, D.C. 20210.

EFFECTIVE DATE: This recognition will become effective on November 20, 1996 and will be valid until November 22, 2001, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 12th day of November 1996.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 96–29626 Filed 11–19–96; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–1–88]

MET Laboratories, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTIONS: Notice of: (1) Renewal of Recognition as a Nationally Recognized Testing Laboratory; and (2) Expansion of Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on MET Laboratories, Inc. for: (1) renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7; and (2) expansion as a NRTL under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

MET Laboratories, Inc. (MET) previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 53 FR 49258 12/6/88), and was so recognized (see 54 FR 21136, 5/16/89). MET applied for: (1) renewal; and (2) expansion of its current recognition as a Nationally Recognized Testing Laboratory for the programs and procedures, and equipment or materials, pursuant to 29 CFR 1910.7, which was published in the Federal Register on August 6, 1996 (61 FR 41661). No comments were received concerning these requests.

Notice is hereby given that MET's recognition as a Nationally Recognized Testing Laboratory has been: (1) renewed; and (2) expanded to include the programs and procedures and the 12 test standards (equipment and material) listed below.

Copies of all pertinent documents (Docket No. NRTL–1–88) are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

The address of the laboratory covered by this application is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

Final Decision and Order.

Based upon the facts found in the complete application file, including details of necessary test equipment, procedures, and special apparatus or facilities needed, adequacy of the staff,

the application, amendments, and documentation submitted by the applicant, the OSHA staff finding including the original On-Site Review Report, previous audits, and the evaluation of the current requests, OSHA finds that MET Laboratories, Inc., has met the requirements of 29 CFR 1910.7 for: (1) Renewal of its recognition; and (2) expansion of its present recognition to test and certify certain equipment or materials as well as to utilize specific programs and procedures.

Pursuant to the authority in 29 CFR 1910.7, WL's recognition is hereby: (1) renewed; and (2) expanded to include (a) the 12 additional test standards (product categories) and (b) the eight programs and procedures cited below, subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following 12 additional test standards for the testing and certification of equipment or materials included within the scope of these standards.

Renewal of NRTL Recognition

Appendix A to 29 CFR 1910.7 stipulates that the initial period of recognition of a NRTL is five years and that a NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. MET was recognized as a NRTL on May 16, 1989, and applied for a renewal of its recognition on August 17, 1993, within the time allotted, and has complied with all of the requirements of 29 CFR 1910.7 for renewal of its recognition as a Nationally Recognized Testing Laboratory.

Expansion of Recognition—Test Standards

MET has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

UL 416—Refrigerated Medical Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 751—Vending Machines
ANSI/UL 923—Microwave Cooking Appliances
UL 1492—Audio-Video Products and Accessories
UL 1604—Electrical Equipment for Use In Class I and II, Division 2, and Class III Hazardous (Classified) Locations
ANSI/UL 1638—Visual Signaling Appliances—Private Mode Emergency and General Utility Signaling
UL 1950—Safety of Information Technology Equipment, Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2601–1—Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1—Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1—Electrical Measuring and Test Equipment; Part 1: General Requirements

Expansion of Recognition—Programs and Procedures

1. Acceptance of testing data from independent organizations, other than NRTLs.
2. Acceptance of product evaluations from independent organizations, other than NRTLs.
3. Acceptance of witnessed testing data.
4. Acceptance of testing data from non-independent organizations.
5. Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).
6. Acceptance of continued certification following minor modifications by the client.
7. Acceptance of product evaluations from organizations that function as part of the International Electronical Commission Certification Body (IEC-CB) Scheme.
8. Acceptance of services other than testing or evaluation performed by subcontractors or agents.

MET Laboratories, Inc. must also abide by the following conditions of the expansion of its recognition, in addition to these already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any MET Laboratories, Inc. program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to MET's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If MET has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

MET shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, MET agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

MET shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

MET will continue to meet the requirements for recognition in all areas where it has been recognized; and

MET will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This renewal and recognition will become effective on November 20, 1996 and will be valid until November 22, 2001 (a period of five years from the date of the renewal of this recognition), unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 12th day of November, 1996.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 96–29629 Filed 11–19–96; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–1–93]

Wyle Laboratories

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Expansion of Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the Wyle Laboratories application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Wyle Laboratories (WL) previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 59 FR 783, 1/6/94), and was so recognized (see 59 FR 37509, 7/22/94). WL applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory for programs and procedures, and equipment or materials, pursuant to 29 CFR 1910.7, which was published in the Federal Register on July 12, 1996 (61 FR 36764). No comments were received concerning this request for expansion.

Notice is hereby given that WL's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the programs and procedures and the 96 test standards (equipment and material) listed below.

Copies of all pertinent documents (Docket No. NRTL–1–93) are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

The address of the laboratory covered by this application is: Wyle Laboratories, 7800 Highway 20 West, Huntsville, Alabama 35807.

Final Decision and Order

Based upon the facts found as part of Wyle Laboratories' original recognition, including details of necessary test equipment, procedures, and special apparatus or facilities needed, adequacy of the staff, the application, amendments, and documentation submitted by the applicant, the OSHA staff finding including the original On-Site Review Report, as well as the evaluation of the current request, OSHA finds that Wyle Laboratories has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify equipment or materials as well as to utilize specific programs and procedures.

Pursuant to the authority in 29 CFR 1910.7, WL's recognition is hereby expanded to include (1) the 96 additional test standards (product categories) and (2) the eight programs and procedures cited below, subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following 96 additional test standards for the testing and certification of equipment or materials included within the scope of these standards.

WL has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

Expansion of Recognition—Test Standards

ANSI/UL 8—Foam Fire Extinguishers
ANSI/UL 20—General-Use Snap Switches
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 92—Fire Extinguisher and Booster Hose
UL 98—Enclosed and Dead-Front Switches
ANSI/UL 154—Carbon Dioxide Fire Extinguishers
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 299—Dry Chemical Fire Extinguishers
ANSI/UL 363—Knife Switches
ANSI/UL 393—Indicating Pressure Gauges for Fire Protection Service
ANSI/UL 429—Electrically Operated Valves
UL 444—Communications Cables
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 507—Electric Fans
ANSI/UL 510—Insulating Tape
ANSI/UL 512—Fuseholders
ANSI/UL 539—Single and Multiple Station Heat Detectors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 626—2½ Gallon Stored Pressure Water Type Fire Extinguishers
ANSI/UL 711—Rating and Fire Testing of Fire Extinguishers
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1004—Electric Motors
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1018—Electric Aquarium Equipment
UL 1022—Line Isolated Monitors
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
ANSI/UL 1058—Halogenated Agent Extinguishing System Units
UL 1059—Terminal Blocks
UL 1066—Low-Voltage AC and DC Power Circuit Breakers Used in Enclosures

ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1091—Butterfly Valves for Fire Protection Service
ANSI/UL 1093—Halogenated Agent Fire Extinguishers
ANSI/UL 1096—Electric Central Air-Hearing Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
UL 1254—Pre-Engineered Dry Chemical Extinguishing Systems Units
ANSI/UL 1283—Electromagnetic-Interference Filer
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
UL 1424—Cables for Power-Limited Fire-Protective-Signaling Circuits
ANSI/UL 1429—Pullout Switches
UL 1437—Electrical Analog Instruments, Panelboard Types
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1474—Adjustable Drop Nipples for Sprinkler Systems
ANSI/UL 1481—Power Supplies for Fire Protective Signaling Systems
UL 1486—Quick Opening Devices for Dry Pipe Valves for Fire-Protection Service
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1577—Optical Isolators
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1664—Immersion-Detection Circuit-Interrupters
UL 1673—Electric Space Heating Cables
UL 1682—Plugs, Receptacles, and Cable Connectors, of the Pin and Sleeve Type
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1995—Heating and Cooling Equipment
UL 2006—Halon 1211 Recovery/Recharge Equipment

Expansion of Recognition—Programs and Procedures

1. Acceptance of testing data from independent organizations, other than NRTLs.

2. Acceptance of product evaluations from independent organizations, other than NRTLs.

3. Acceptance of witnessed testing data.

4. Acceptance of testing data from non-independent organizations.

5. Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

6. Acceptance of continued certification following minor modifications by the client.

7. Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

8. Acceptance of services other than testing or evaluation performed by subcontractors or agents.

Wyle Laboratories must also abide by the following conditions of the expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any Wyle Laboratory program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to WL's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary.

If WL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

WL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, WL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

WL shall inform OSHA as soon as possible, in writing, or any change of ownership or key personnel, including details;

WL will continue to meet the requirements for recognition in all areas where it has been recognized; and

WL will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on November 20, 1996 and will be valid until July 22, 1999, (five years from the date of the original recognition, July 22, 1994), unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 12th day of November 1996.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 96–29628 Filed 11–19–96; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

November 14, 1996.

TIME AND DATE: 10:00 a.m., Thursday, November 21, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *McClanahan* v. *Wellmore Coal Corp.*, Docket No. VA 95–9–D (Issues include whether substantial evidence supports the judge's determinations that a truck driver's complaints about a mine operator's minimum per trip haulage requirements were not based on a good faith belief that hauling such an amount was hazardous and that the truck driver's complaints about dumping filtercake into slurry basins lost their protected status because the operator adequately addressed those complaints.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

TIME AND DATE: 1:00 p.m., Thursday, November 21, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. *McClanahan* v. *Wellmore Coal Corp.*, Docket No. VA 95–9–D (*See* oral argument listing, *supra*, for issues).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629 / (202) 708–9300

for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 96–29841 Filed 11–18–96; 4:03 pm]

BILLING CODE 6735–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda: Sunshine Act Meeting

Item #1

—TIME AND DATE: 9:00 a.m., Tuesday, November 26, 1996.

—PLACE: The Managing Director's Conference Room, Rm. 6430—6th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

—STATUS: Closed to the Public Under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED: 6740—Opinion and Order: Administrator v. Slikker, Docket SE–14082; disposition of respondent's appeal.

Items #2 and #3

—TIME: 9:30 a.m., Tuesday, November 26, 1996.

—PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

—STATUS: Open.

MATTERS TO BE DISCUSSED:

6609B—Aviation Accident Report: In-Flight Loss of Propeller Blade, Forced Landing and Collision With Terrain, Atlantic Southeast Airlines, Inc., Flight 529, Embraer EMB–120RT, Carrollton, Georgia, August 21, 1995.

6746—Marine Accident/Summary Report: Capsizing of Questar Motorboat and Drowning of Operator, South of Shelter Island, Juneau, Alaska, August 21, 1994.

NEWS MEDIA CONTACT: *Telephone: (202) 314–6100.*

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 314–6065.

Dated: November 15, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–29775 Filed 11–18–96; 11:13 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219–OLA; ASLBP No. 96–717–02–OLA]

General Public Utility Nuclear Corporation, (Oyster Creek Nuclear Generating Station); Notice of Hearing (Application To Approve Technical Specification Change)

November 14, 1996.

On May 8, 1996, the NRC staff announced in the Federal Register (1) a proposed ''no significant hazards consideration'' finding regarding an April 15, 1996 request by licensee General Public Utility Nuclear Corporation (GPUN) to revise Technical Specification 5.3.1.B for the Oyster Creek Nuclear Generating Station (OCNGS); and (2) an opportunity for a hearing on that GPUN license amendment application. (61 FR 20,842, 20,842–43, 20,848.) The then-current technical specification prohibited the handling of a load greater in weight than one spent fuel assembly over irradiated fuel in the spent fuel pool. The then-proposed technical specification change was intended to facilitate the off load of spent fuel from the OCNGS spent fuel pool to the OCNGS independent spent fuel storage installation (ISFSI) by permitting the shield plug for a dry shielded canister (DSC) and associated lifting hardware to be moved over irradiated fuel in the DSC while the DSC is submerged in the spent fuel pool preparatory to being secured with the shield plug, lifting from the pool, and transporting to the onsite ISFSI.

Acting on the hearing offering, on June 6, 1996, pro se petitioners Nuclear Information and Resource Service (NIRS), Oyster Creek Nuclear Watch (OCNW), and the Citizens Awareness Network (CAN) filed a timely hearing request and petition to intervene seeking to challenge the proposed technical specification change. On June 13, 1996, the Commission referred the petitioners' hearing request to the Atomic Safety and Licensing Board Panel for the appointment of a presiding officer to conduct any necessary proceedings. On June 17, 1996, the Chief Administrative Judge of the Panel appointed this Atomic Safety and Licensing Board to act on the Commission's referral. (61 FR 31,964.) The Board consists of Dr. Charles N. Kelber, Dr. Peter S. Lam, and G. Paul Bollwerk, III, who serves as Chairman of the Board.

After receiving additional filings from the participants on the issues of the petitioners' standing and the admissibility of their single joint contention, on August 7, 1996, the Board held a prehearing conference during which petitioner NIRS, GPUN, and the staff made further presentations addressing those matters. On October 25, 1996, the Board issued a memorandum and order in which it ruled that (1) petitioners NIRS and OCNW had established representational standing as of right; (2) petitioner CAN had failed to show either that it is entitled to standing as of right or that is should be afforded discretionary standing, but nonetheless would be permitted to participate as an amicus curiae; and (3) petitioners NIRS and OCNW had put forth an admissible legal contention regarding the validity of the proposed technical specification revision under the agency's ''defense-in-depth'' policy. The Board thus granted the hearing request of petitioners NIRS and OCNW. (*See* LBP–96–23, 44 NRC ____ (Oct. 25, 1996).) Thereafter, on November 7, 1996, the staff made a finding that the proposed technical specification change involves ''no significant hazards consideration'' and issued the requested license amendment.

Please take notice that a hearing will be conducted in this proceeding. This hearing will be governed by the formal hearing procedures set forth in 10 CFR Part 2, Subpart G (10 CFR 2.700–.790).

During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 CFR 2.755, and may hold additional prehearing conferences pursuant to 10 CFR 2.752. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing, which may be held pursuant to 10 CFR 2.750–.751. Notice of such sessions will be published in the Federal Register and/or made available to the public at the NRC Public Document Rooms.

In accordance with 10 CFR 2.715(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issue in this proceeding. These statements do not constitute evidence, but may assist the Board and/or parties in the definition of the issue being considered. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Docketing and Service Branch. A copy of the statement also should be served on the Chairman of the Atomic Safety and Licensing Board. The Board will decide at a later date whether to entertain oral limited appearance statements.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. 20555; and at the NRC Local Public Document Room at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Issued in Rockville, Maryland, on November 14, 1996.

For the Atomic Safety and Licensing Board.

G. Paul Bollwerk, III,

Chairman, Administrative Judge.

[FR Doc. 96–29674 Filed 11–19–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 5–7, 1996, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Monday, November 27, 1995 (60 FR 58393).

Thursday, December 5, 1996

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:45 a.m.: Proposed Standard Review Plan (SRP) Sections and Regulatory Guides Associated with Risk-Informed, Performance-Based Regulation (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed SRP Sections and regulatory guides associated with risk-informed, performance-based regulation, and related matters.

Representatives of the nuclear industry will participate, as appropriate.

11:00 a.m.–12:30 p.m.: NRC Research Program on Instrumentation and Control Systems (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the ongoing and proposed research activities in the area of instrumentation and control systems.

Representatives of the nuclear industry will participate, as appropriate.

1:30 p.m.–3:30 p.m.: Plant Aging Research Program (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the ongoing and proposed research activities associated with plant aging.

Representatives of the nuclear industry will participate, as appropriate.

3:45 p.m.–5:15 p.m.: Human Performance Program Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding ongoing and proposed activities associated with the NRC Human Performance Program Plan.

Representatives of the nuclear industry will participate, as appropriate.

5:30 p.m.–7:15 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. It may also discuss a proposed ACRS report to Congress on the NRC Safety Research Program.

Friday, December 6, 1996

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:15 a.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss the following items for meeting with the NRC Commissioners:

- Digital Instrumentation and Control Systems.
- Office of Nuclear Regulatory Research Plan for Upgrading NRC Thermal-Hydraulic Codes.
- Risk-Informed, Performance-Based Regulation and Related Matters.
- Potential Use of IPE/IPEEE Results to Compare the Risk of the Current Population of Plants with the Safety Goals.
- Use of Safety Goals on a Plant-Specific Basis.
- Use of RULENET in the Regulatory Process.

9:30 a.m.–11:00 a.m.: Meeting with the NRC Commissioners, Commissioners Conference Room, One White Flint North (Open)—The Committee will meet with the NRC Commissioners to discuss the matters identified above.

11:15 a.m.–11:45 a.m.: Future ACRS Activities (Open)—The Committee will discuss recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

11:45 a.m.–12:15 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to ACRS.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

1:30 p.m.–2:30 p.m.: NRC Emergency Response Program (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the modifications to the NRC Emergency Response Program.

2:30 p.m.–2:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including the EDO response to the October 21, 1996 ACRS report on Thermal-Hydraulics Research Plan.

2:45 p.m.–3:15 p.m.: Election of Officers for CY 1997 (Open)—The Committee will elect Chairman and Vice-Chairman for the ACRS and Member-at-Large for the Planning and Procedures Subcommittee.

3:30 p.m.–7:15 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting. It may also discuss a proposed ACRS report to Congress on the NRC Safety Research Program.

Saturday, December 7, 1996

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting. It may also discuss a proposed ACRS report to Congress on the NRC Safety Research Program.

12:30 p.m.–1:30 p.m.: Strategic Planning (Open)—The Committee will continue its discussion of items of significant importance to NRC, including rebaselining of the Committee activities for FY 1997.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1996 (61 FR 51310). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained

by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EST.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672 or ftp.fedworld. These documents and the meeting agenda are also available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: November 14, 1996.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–29669 Filed 11–19–96; 8:45 am]

BILLING CODE 7590–01–P

Final Report of the NRC-Agreement State Working Group To Evaluate Control and Accountability of Licensed Devices

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission is announcing the completion and availability of NUREG–1551, ''Final Report of the NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices.''

ADDRESSES: Copies of NUREG–1551 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. A copy of the document is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street NW, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Lubinski, Mail Stop TWFN 8–I8, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7868.

SUPPLEMENTARY INFORMATION: On June 20, 1995, the Commission approved the formation of a working group consisting of representatives from Agreement States and from the Nuclear Regulatory Commission to evaluate control over, and licensees' accountability for, specific- and general-licensed devices. The purpose of this notice is to inform the public that the final report of the Working Group, that was completed and filed in a memorandum dated July 2, 1996, is being issued as NUREG–1551, ''Final Report of the NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices.'' This report is being made available to interested members of the public.

Dated at Rockville, Maryland, this 15th day of November, 1996.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–29670 Filed 11–19–96; 8:45 am]

BILLING CODE 7590–01–P

Standard Review Plan for Sealed Source and Device Evaluations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission is announcing the completion and availability of NUREG–1550, ''Standard Review Plan for Applications for Sealed Source and Device Evaluations and Registrations.''

ADDRESSES: Copies of NUREG–1550 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. A copy of the document is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street NW, Washington, DC, 20555–0001.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Lubinski, Mail Stop TWFN 8–I8, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7868.

SUPPLEMENTARY INFORMATION: The NRC has prepared NUREG–1550, ''Standard Review Plan for Applications for Sealed Source and Device Evaluations and Registrations,'' to provide the reviewer of a request for a sealed source or device safety evaluation with the information and materials necessary to make a determination that the product is acceptable for licensing purposes. It provides the reviewer with a listing of the applicable regulations and industry standards, policies affecting evaluation and registration, certain administrative procedures to be followed, and information on how to perform the evaluation and write the registration certificate. Applicants for sealed source or device safety evaluations may find the document useful in preparing their applications. The standard review plan will be revised periodically, as appropriate, to accommodate comments and to reflect new information and experience. The document is being made available to interested members of the public.

Dated at Rockville, Maryland, this 14 day of November, 1996.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–29671 Filed 11–19–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Order No. 1139; Docket No. A97–4]

Cuyama, CA 93214 (J. McGowan, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued November 14, 1996.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III

Docket Number: A97–4.

Name of Affected Post Office: Cuyama, California 93214.

Name(s) of Petitioner(s): J. McGowan.

Type of Determination: Closing.

Date of Filing of Appeal Papers: November 8, 1996.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by November 22, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

November 8, 1996—Filing of Appeal letter

November 14, 1996—Commission Notice and Order of Filing of Appeal

December 3, 1996—Last day of filing of petitions to intervene [see 39 C.F.R. 3001.111(b)]

December 13, 1996—Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. 3001.115(a) and (b)]

January 2, 1997—Postal Service's Answering Brief [see 39 C.F.R. 3001.115(c)]

January 17, 1997—Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. 3001.115(d)]

January 24, 1997—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]

March 8, 1997—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 96–29635 Filed 11–19–96; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22333; 811–7191]

The Shawmut Funds; Notice of Application

November 13, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The Shawmut Funds.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 29, 1996. Applicant has agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 9, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Federated Investors Tower, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Staff Attorney, at (202) 942–0552, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. On August 24, 1992, applicant, an open-end investment company organized as a Massachusetts business trust, filed a Notification of Registration on Form N–8A and a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective on December 1, 1992, and applicant's initial public offering commenced on December 14, 1992.

2. Applicant consists of eleven separate portfolios: Shawmut Prime Money Market Fund (''Prime Money Fund''); Shawmut Connecticut Municipal Money Market Fund (''Connecticut Money Fund''); Shawmut Massachusetts Municipal Money Market Fund (''Massachusetts Money Fund''); Shawmut Limited Term Income Fund (''Limited Term Fund''); Shawmut Intermediate Government Income Fund (''Intermediate Government Fund''); Shawmut Fixed Income Fund (''Fixed Income Fund''); Shawmut Connecticut Intermediate Municipal Income Fund (''Connecticut Intermediate Fund''); Shawmut Massachusetts Intermediate Municipal Income Fund (''Massachusetts Intermediate Fund''); Shawmut Growth and Income Equity Fund (''Growth and Income Fund''); Shawmut Growth Equity Fund (''Growth Equity Fund''); and Shawmut Small Capitalization Equity Fund (''Small Cap Fund''). All of the Funds except Massachusetts Money Fund and Connecticut Intermediate Fund consist of two classes of shares: Trust Shares and Investment Shares. Massachusetts Money Fund and Connecticut Intermediate Fund each have one undesignated class of shares.

3. On August 23, 1995, applicant's Board of Trustees (''Board'') approved a reorganization plan whereby corresponding portfolios of The Galaxy Fund would acquire all of applicant's assets in exchange for shares of The Galaxy Fund to be distributed *pro rata* by applicant to its shareholders in complete liquidation and dissolution of applicant (''Reorganization''). A registration statement on form N–14 relating to the reorganization was filed by The Galaxy Fund with the SEC on August 21, 1995. Applicant states that the primary reason for the Reorganization was the merger between Shawmut National Corporation (''Shawmut''), the parent of applicant's investment adviser, Shawmut Bank, N.A. (''Shawmut Adviser''), and Fleet Financial Group, Inc. (''Fleet''), the parent of The Galaxy Fund's investment adviser, Fleet Investment Advisors Inc.

(''Galaxy Adviser''). The Board noted that the investment advisory contract between applicant and the Shawmut Adviser would be terminated and that the Shawmut Adviser and the Galaxy Adviser would become affiliated persons as a consequence of the Reorganization. Accordingly, the Board determined such reorganization was in the best interests of applicant's shareholders.

4. Applicant states that the Reorganization was undertaken in compliance with rule 17a–8. In addition to determining that the Reorganization was in the best interests of applicant's shareholders, the Board also determined that the interests of existing shareholders of applicant would not be diluted as a result of the sales of applicant's net assets to The Galaxy Fund.

5. On September 8, 1995, preliminary copies of a combined proxy/prospectus were filed with the SEC. On September 29, 1995, a definitive proxy/prospectus was transmitted to the SEC and subsequently mailed to applicant's shareholders. At a special meeting of applicant's shareholders on October 30, 1995, applicant's shareholders approved the reorganization plan.

6. On December 4, 1995, the properties and assets of each of applicant's portfolios were valued and subsequently conveyed to a corresponding portfolio of The Galaxy Fund. Applicant's shareholders received Trust Shares or Retail Shares, respectively, in the corresponding portfolio of The Galaxy Fund equal in value to their Trust Shares or Investment Shares, respectively, in complete liquidation of applicant. No brokerage commissions were paid as a result of the above-mentioned conveyance.

7. Pursuant to the reorganization, four of The Galaxy Fund portfolios, Connecticut Municipal Money Market Fund, Massachusetts Municipal Money Market Fund, Growth and Income Fund, and Small Cap Value Fund had nominal assets and liabilities before the reorganization and were designed to continue investment operations of applicant's Connecticut Money Fund, Massachusetts Money Fund, Growth and Income Fund, and Small Cap Fund.

8. Applicant's remaining seven portfolios transferred substantially all of their assets and known liabilities to the remaining portfolios of The Galaxy Funds as follows: Prime Money Fund, Limited Term Fund, Fixed Income Fund, Intermediate Government Fund, Connecticut Intermediate Fund, Massachusetts Intermediate Fund, and Growth Equity Fund, respectively, transferred into Money Market Fund, Short-Term Bond Fund, Corporate Bond Fund, Intermediate Government, Income Fund, Connecticut Municipal Bond Fund, Massachusetts Municipal Bond Fund, and Equity Growth Fund, respectively.[1]

9. Expenses of the reorganization were borne by one or both of Shawmut and Fleet.

10. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged, nor proposes to engage, in any business activities other than those necessary for the winding-up of its affairs.

11. Applicant continues to exist as a business trust under the laws of the Commonwealth of Massachusetts. Applicant represents that it will terminate its existence upon receipt of notice and order from the Commission that is has ceased to be an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29615 Filed 11–19–96; 8:45 am]

BILLING CODE 8010–01–M

[1] As of the date of the reorganization, the Corporate Bond Fund had issued only Trust Shares. Therefore, holders of both Trust Shares and Investment Shares of the Fixed Income Fund received Trust Shares of the Corporate Bond Fund. Applicant states that the fee/load structure of the Trust Shares of the Corporate Bond Fund is lower than that of the Investment Shares of the Fixed Income Fund. Applicant thus believes that the holders of Investment Shares will benefit from receiving the Trust Shares.

[Release No. 34–37945; File No. SR–Amex–96–32]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 To Proposed Rule Change by the American Stock Exchange, Inc., To Amend the Firm Facilitation Exemption

November 3, 1996.

I. Introduction

On September 10, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its firm facilitation exemption.

Notice of the proposed rule change appeared in the Federal Register on September 26, 1996.[3] No comments were received on the proposed rule change. The Exchange subsequently filed Amendment No. 1 to the proposed rule change on November 4, 1996.[4] This order approves the Amex's proposal, as amended.

II. Background and Description

In May of this year, the Exchange received Commission approval to expand the firm facilitation exemption[5] from position and exercise limits to all non-multiply-listed Exchange option classes.[6] Currently, only a member firm who facilitates and executes an order for its own customer[7] may qualify for a firm facilitation exemption.

The Amex is proposing to amend the firm facilitation exemption in two ways. First, a member firm who facilitates its own customer whose account it carries, whether the firm executes the order itself or gives the order to an independent broker for execution may qualify for the exemption. Second, the facilitation exemption will be expanded to include member firms who facilitate another member's customer order. Such customer order must be for execution only against the member firm's proprietary account. Further, unlike a member firm that facilitates its own customer, the resulting position will not be carried by the facilitating member firm.[8]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37706 (September 20, 1996), 61 FR 50524 (September 26, 1996).

[4] In Amendment No. 1, the Amex revised the proposed rule language of Commentary .10 to Exchange Rule 904 and Commentary .02 to Exchange Rule 904C so that a member firm who receives a customer order for execution only against the member firm's proprietary account may qualify for the facilitation exemption. *See* letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities Amex, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated November 4, 1996 (''Amendment No. 1'').

[5] The Amex notes that a facilitation trade is a transaction that involves crossing an order of a member firm's public customer with an order from the member firm's proprietary account.

[6] *See* Securities Exchange Act Release No. 37179 (May 8, 1996), 61 FR 24520 (May 15, 1996) (approval order for File No. SR–Amex–96–11).

[7] The Amex defines a customer order as one that is entered, cleared, in which the resulting position is carried with the firm.

[8] The Commission notes that any solicitation of a member by another member or customer to facilitate a customer order must comply with the relevant Exchange rules concerning solicited transactions.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[9] Specifically, the Commission believes that by allowing member firms an exemption from position limits to facilitate large customer orders, whether they are firms who accept customer orders for execution only against the member firm's proprietary account, or they are firms who carry their own customers' accounts and positions, the depth and liquidity of the market will be enhanced in a manner consistent with the protection of investors and the public interest. Further, permitting a member firm who facilitates its own customer order to qualify for the exemption whether it executes the order itself or gives it to an independent broker for execution should provide firms with flexibility in handling such orders while still requiring compliance with the rule's requirements.

The Commission believes that the Amex's proposal to amend its firm facilitation exemption will accommodate the needs of investors as well as market participants without substantially increasing concerns regarding the potential for manipulation and other trading abuses. The Commission also believes that the proposed rule change will further enhance the potential depth and liquidity of the options market as well as the underlying markets by providing Exchange members greater flexibility in executing large customer orders. Moreover, the Commission is relying on the absence of discernible manipulation problems under the Amex's current firm facilitation exemption as an indicator that the proposal is appropriate.

In addition, the Amex's existing safeguards that apply to the current facilitation exemption will continue to serve to minimize any potential disruption or manipulation concerns. First, the facilitation firm must receive approval from the Exchange prior to executing facilitating trades. Second, a facilitation firm must, within five business days after the execution of a facilitation exemption order, hedge all exempt options positions that have not previously been liquidated, and furnish to the Exchange documentation reflecting the resulting hedging positions. In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own options and stock positions or their equivalent in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. In addition, a facilitation firm is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. The Commission believes that these requirements will help to ensure that the facilitation exemption will not have an undue market impact on the options or on any underlying stock positions.

Third, the facilitation firm is required to promptly provide to the Exchange any information or documents requested concerning the exempted options positions and the positions hedging them, as well as to promptly notify the Exchange of any material change in the exempted options position or the hedge.

Fourth, neither the member's nor the customer's order may be contingent on ''all or none'' or ''fill or kill'' instructions, and the orders may not be executed until Exchange Rule 950(d), Commentary .02 (crossing order) procedures have been satisfied and market participants have been given a reasonable time to participate in the order.

Fifth, the facilitation firm may not increase the exempted option position once it is closed, unless approval from the Amex is again received pursuant to a reapplication.

Lastly, violation of any of these provisions, absent reasonable justification or excuse, will result in the withdrawal of the facilitation exemption and may form the basis for subsequent denial of an application for a facilitation exemption.

In summary, the Commission continues to believe that the safeguards built into the facilitation exemptive process will serve to minimize the potential for disruption and manipulation concerns, while at the same time benefiting market participants by allowing member firms greater flexibility to facilitate large customer orders. The Commission also notes that the facilitation exemption will be monitored in the same manner, whether the facilitation is done by the member firm for its own customer and executed by the firm itself or given to an independent broker for execution, or whether the facilitation is done by another member firm willing to facilitate the order of another member firm's customer. Further, as noted above, any firm solicitation to facilitate a customer order must comply with the Amex's solicitation rules as well as with the Amex's facilitation and crossing rules. Lastly, the Commission believes that the Amex has adequate surveillance procedures to surveil for compliance with the rule's requirements. Based on these reasons, the Commission believes that it is appropriate for the Amex to amend its firm facilitation exemption.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, because the revised rule language contained in Amendment No. 1 only serves to clarify the Exchange's original intent, no new regulatory concerns are raised. In addition, the Amex's rule proposal was subject to a full notice and comment period, and no comments were received. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex–96–32 and should be submitted by [insert date 21 days from date of publication].

IV. Conclusion

For the foregoing reasons, the Commission finds that the Amex's proposal to amend its firm facilitation exemption is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR-Amex–96–32), as amended, is approved.

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] 15 U.S.C. § 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29611 Filed 11–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37947; File No. SR–CHX–96–26]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change Relating to Enhanced SuperMAX and Timed Enhanced SuperMAX

November 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on October 9, 1996, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change and an amendment[2] to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 of the Act[3] the Exchange requests permanent approval of its Enhanced SuperMAX and Timed Enhanced SuperMAX pilot program, located in subsections (e) and (f) of Rule 37 of Article XX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 22, 1995, the Commission approved a proposed rule change of the CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[4] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

On July 27, 1995, the Commission approved a proposed rule change of the CHX that implemented two options available under this new rule.[5] These two new options, Enhanced SuperMAX and Timed Enhanced SuperMAX were approved on a pilot basis until July 31, 1996. The Commission extended the pilot program until December 31, 1996 and requested that the CHX provide a report to the Commission, by August 31, 1996,[6] describing its experience with the pilot program. On August 30, 1996, the CHX submitted the report.

The purpose of the proposed rule change is to request permanent approval of the pilot program. As stated above, the two options available in the pilot program are Enhanced SuperMAX and Timed Enhanced SuperMAX. Enhanced SuperMAX is merely a reactivation of the Exchange's Enhanced SuperMAX program, a program originally approved by the Commission on a pilot basis in 1991.[7] The proposed Enhanced SuperMAX program differs from the original pilot program approved in 1991 in that it is available starting at 8:45 a.m. instead of 9:00 a.m. This program also differs from the Exchange's SuperMAX program in that under this program, certain orders are ''stopped'' at the consolidated best bid or offer and are executed with reference to the *next* primary market sale instead of the previous primary market sale. Timed Enhanced SuperMAX is a slight variation on the Enhanced SuperMAX program. It executes orders in the same manner as the Enhanced SuperMAX program except that if there are no executions in the primary market after the order has been stopped for a designated time period, the order is executed at the stopped price at the end of such period. Such period, known as a time out period, is pre-selected by a specialist on a stock-by-stock basis based on the size of the order, may be changed by a specialist no more frequently than once a month, and may be no less than 30 seconds.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 15 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] On November 8, 1996 the CHX submitted an amendment (''Amendment No. 1'') to the proposed rule change. Letter from David Rusoff, Esq., Foley & Lardner, to Janet W. Russell-Hunter, Special Counsel, Division of Market Regulation, Commission, dated November 7, 1996. In Amendment No. 1, the CHX replaced the text of the proposed rule change originally filed with rule text changed to reflect previously inadvertently omitted language.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007.

[5] *See* Securities Exchange Act Release No. 36027 (July 27, 1995), 60 FR 39465.

[6] *See* Securities Exchange Act Release No. 37491 (July 29, 1996), 61 FR 40690.

[7] *See* Securities Exchange Act Release No. 30058 (December 10, 1991), 56 FR 65765.

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–96–26 and should be submitted by December 11, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29614 Filed 11–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37944; International Series Release No. 1027; File No. SR–PHLX–96–45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Minimum Transaction Size for Customized Foreign Currency Options

November 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] Notice is hereby given that on November 1, 1996, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 of the Act,[2] proposes to amend Exchange Rule 1069(a) to revise the minimum opening and closing transaction size and responsive quotation size for customized foreign currency options from 100 to 50 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

On November 1, 1994, the Commission approved the Exchange's proposal to trade customized foreign currency options.[3] Users now have the ability to customize the strike price and quotation method and choose any underlying and base currency combination out of all Exchange listed currencies including the U.S. dollar. The product was introduced to attract institutional customers who like the flexibility and variety offered in the over-the-counter market but would prefer the benefits attributed to an exchange auction market to hedge their exchange rate risks.

The Exchange originally instituted a 300 contract minimum opening transaction size pursuant to Rule 1069(a)(6). A number of mid-sized corporations and institutions then told the Exchange that the contract value was too large for their purposes. They believed that customized currency options would fill a market need for them, but that the opening transaction size was prohibitive. The Exchange, thus, determined to reduce the transaction size in stages. In March of 1995, the Exchange reduced the size of an opening transaction to 200 contracts[4] and then reduced it further to 100 contracts in August of that year.[5] That size, however, still remains too large for a significant segment of medium sized corporations, especially those that are located in Canada and the Pacific basin. Those companies would like the opportunity to hedge their currency risk using an exchange traded customized option contract in a cost-effective manner. Therefore, the Exchange now proposed to reduce the minimum opening transaction size to 50 contracts which would still allow for an average minimum transaction value of between $2 and $3 million as shown below.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720.

[4] Securities Exchange Act Release No. 35464 (March 9, 1995), 60 FR 14043.

[5] Securities Exchange Act Release No. 36176 (August 31, 1995), 60 FR 46879.

Currency	Exchange rate [6]	Contract size	Underlying contract value (dollars)	Value of 100 contracts (dollars)	Value of 50 contracts (dollars)
Australian dollar	0.878200	50,000	43,910	4,391,000	2,195,500
Canadian dollar	0.823000	50,000	41,150	4,115,000	2,057,500
Swiss franc	0.889700	62,500	55,606	5,560,625	2,780,312
German mark	0.727600	62,500	45,475	4,547,500	2,273,750
French franc	0.215100	250,000	53,775	5,377,500	2,688,750
British pound	1.741600	31,250	56,602	5,660,200	2,830,100
Japanese yen	0.008999	6,250,000	56,244	5,624,375	2,812,188
ECU	1.391600	62,500	86,975	4,115,000	2,057,500
Italian lira	0.0007309	50,000,000	36,547	3,654,704	2,812,188
Spanish peseta	0.007779	5,000,000	38,895	3,889,500	1,944,750
Averages				5,151,790	2,575,895

[6] As of October 11, 1996, assuming that the U.S. dollar is the base currency.

The minimum size of the closing transaction and the minimum responsive quote size obligation would also be reduced from 100 contracts to the lesser of 50 contracts or the remaining contracts.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by opening up the market to smaller institutional and corporate users who are currently priced out of the market yet still keeping the entry requirements high enough to discourage smaller less sophisticated users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PHLX–96–45 and should be submitted by December 11, 1996.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–29612 Filed 11–19–96; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

The Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection listed below requires extension of the current OMB approval:

1. Employer Classification Update—0960–0262. The information on form SSA–L378 is needed by the Social Security Administration in situations where an employer submits an SS–4, Employer Identification Form, with incomplete or missing information. The data from the SSA–L378 is used, in conjunction with tax return data, for program planning, revenue estimates and employment studies. The respondents are employers with 11 or more employees.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 3,750 hours.

2. Appointment of Representative—0960–0527. The information collected on form SSA–1696 is used by the Social Security Administration to verify the applicant's appointment of a representative. It allows SSA to inform the representative of items which affect the applicant's claim. The respondents are applicants who notify SSA that they have appointed a person to represent them and such representatives when claiming a right or benefit.

Number of Respondents: 475,737.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 72,290 hours.

3. Information About Joint Checking/Savings Account—0960–0461. The information collected on form SSA–2574 by the Social Security Administration is used to determine whether a joint bank account should be counted as a resource of an SSI claimant or applicant in determining eligibility for SSI. The respondents are applicants for and recipients of SSI payments and individuals who are joint owners of financial accounts with SSI applicants.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 23,333 hours.

4. Report to the United States Social Security Administration; Report to the United States Social Security Administration By Person Receiving Benefits for A Child or for An Adult Unable to Handle Funds—0960–0049. The information collected on forms SSA–7161 and SSA–7162 is needed to determine continuing entitlement to Social Security Benefits and the proper benefit amount for beneficiaries living outside the United States. The information is used to prevent underpayments or overpayments of Benefits.

	SSA–7161	SSA–7162
Number of Respondents	50,000	225,000.
Frequency of Response	Annually	Annually/Biennially.
Average Burden Per Response	15 minutes	5 minutes.
Estimated Annual Burden	12,500 hours	18,750 hours.

5. Certificate of Election for Reduced Spouse's Benefits—0960–0398. A qualified spouse, age 62 to 64, can elect to receive a reduced Social Security benefit by completing a form SSA–25. The information collected on the form is used by the Social Security Administration to pay a reduced Social Security benefit. The respondents are qualified spouses of Social Security beneficiaries who are entitled to reduced Social Security benefits.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 1,000 hours.

6. Reporting Events—SSI; 0960–0128. The information collected on form SSA–8150–EV by the Social Security Administration is used to determine eligibility and correct payment amounts for SSI payments. The respondents are SSI applicants and recipients.

Number of respondents: 43,600.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 3,633 hours.

7. Personal Earnings and Benefit Estimate Statement (PEBES)—Identity Verification Survey—0960–NEW. The Social Security Administration (SSA) is conducting a survey to verify the identity and address of individuals who request their PEBES by means of the form SSA–7004–SM, Request for Earnings and Benefit Statement and through the Internet. The information is needed to determine the number of invalid requests for PEBES using the SSA–7004–SM compared to the number of invalid PEBES requests using the Internet. The information will be used in the evaluation of whether to adopt the Internet as an appropriate vehicle to obtain PEBES requests. The respondents are a sample of PEBES requestors whose identity and address could not be verified through other means.

Number of Respondents: 300.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 25 hours.

Social Security Administration

To receive a copy of the form(s) or clearance package(s), call the SSA Reports Clearance Officer on (410) 965–4125 or write to her at the address listed below. Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Agency Information Collection Activities: Submission for OMB Review; Comment Request.

The information collections listed below, which were published in the Federal Register on September 20, 1996 have been submitted to OMB.

1. Employer Report of Special Wage Payments—0960–NEW. The information collected on form SSA–131 will be used by the Social Security Administration to verify wage information in order to prevent earnings-related overpayments or to avoid erroneous withholding of Benefits. The respondents are employers who need to report an event which requires special wage payment verification.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 33,333 hours.

2. Quickstart Enrollment Form—0960–NEW. The information is needed by the Social Security Administration to facilitate electronic transmission of data for direct deposit of funds to a payee's account. The respondents are Social Security and SSI recipients requesting direct deposit and their financial institutions.

Number of Respondents: 3,950,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 329,167 hours.

OMB Desk Officer: Laura Oliven.

SSA Reports Clearance Officer: Judith T. Hasche.

Social Security Administration

To receive a copy of the form(s) or clearance package(s), call the SSA Reports Clearance Officer on (410) 965–4125 or write to her at the address listed below under SSA. Written comments and recommendations regarding these information collections should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA) Social Security Administration, DCFAM, Attn: Judith T. Hasche, SSA

Reports Clearance Officer, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: November 12, 1996.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–29548 Filed 11–19–96; 8:45 am]

BILLING CODE 4190–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Functional Advisory Committee for Standards (IFAC 2)

AGENCY: Office of the United States Trade Representative

ACTION: Notice of meeting.

SUMMARY: The Industry Functional Advisory Committee for Standards (IFAC 2) will hold a meeting on December 3, 1996, from 9:30 a.m. to 12:30 p.m. The meeting will be open to the public from 9:30 a.m. to 10:20 a.m. and closed to the public from 10:20 a.m. to 12:30 p.m.

DATES: The meeting is scheduled for December 3, 1996, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce in Room 1414, located at 14th Street and Constitution Avenue, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Jim Sanford, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–3682 or Suzanna Kang, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The IFAC 2 will hold a meeting on December 3, 1996 from 9:30 a.m. to 12:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 10:20 a.m. to 12:30 p.m. The meeting will be open to the public and press from 9:30 a.m. to 10:20 a.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Phyllis Shearer Jones,

Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 96–29645 Filed 11–19–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for approval of a two information collections requesting reinstatement, with change, of a previously approved collection for which approval has expired and one information collection requesting reinstatement, without change, of a previously approved collection for which approval has expired. The ICRs describes the nature of the information collection and its expected burden.

The Federal Register Notice soliciting comments on following collections of information was published on July 12, 1996 [FR 61, page 36777–36778].

DATES: Comments must be submitted on or before December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Edward Kosek, (202) 366–2590, and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

1. Title: Motor Vehicle Importation

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Control Number: 2127–0002.

Form Numbers: Form HS–7 and Form HS–474.

Affected Public: Registered Importers of vehicles or parties with contracts with Registered Importers.

Abstract: A motor vehicle which does not conform to applicable Federal Motor Vehicle Safety Standards (FMVSSs) is statutorily required to be refused admission into the United States, except under certain circumstances. (49 U.S.C. 30141 et seq.) NHTSA may authorize importation of nonconforming vehicles upon specified terms and conditions (include the furnishing of bond) to ensure that any such vehicle will be brought into conformity with all applicable FMVSSs or will be exported out of or abandoned to the United States at no cost.

Before importing a nonconforming vehicle, a Registered Importer must fill out Form HS–7 Declaration and Form HS–474 Bond Conformance that requires posting bond to ensure the vehicle will be brought into conformance with all applicable FMVSSs.

Need for the Information and Proposed Use: If NHTSA could not collect the information needed for the import program, it could not fulfill its statutory obligation to monitor importation of nonconforming motor vehicles and motor vehicle equipment into the United States. NHTSA has used and uses the information to monitor noncomplying vehicles presented for importation into the United States, to ascertain whether the vehicles are actually brought into conformance with the FMVSSs, and to determine the validity of the statements under which the vehicles were entered into the United States.

Annual Estimated Burden: The total estimated annual burden is 16,600 hours.

2. Title: Child Restraint Systems.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Control Number: 2127–0511.

Form Number: N/A.

Affected Public: NHTSA estimates that 15 manufacturers of child safety seats and restraints offer their products for sale in the United States.

Abstract: NHTSA has issued Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, which specifies requirements for restraint systems used to protect infants and young children in motor vehicle and aircraft accidents. Standard No. 213 requires that manufacturers provide labels and other printed information to ensure correct use of the restraint systems. Manufacturers of child restraint systems must also provide

registration cards for completion and return by purchasers of child restraints, and keep names and addresses of child restraint system owners. These actions are necessary to facilitate contacting the owners in the event of a safety recall campaign.

Need for the Information and Proposed Use: NHTSA requires labeling information to ensure that child seat owners have important safety information. The information currently provided on or with the restraint includes instructions on correct use of the restraint, and recommendations as to which children are suitable for the restraint. Without this information, the effectiveness of child restraints could be greatly diminished.

The child restraint registration information enables manufacturers to directly contact child restraint owners to notify them of safety recalls. This better ensures that owners will hear about a recall and will remedy the safety problem with their restraints.

Annual Estimated Burden: The total estimated annual burden is 153,000 hours.

3. Title: Production System for Mandatory Installation of Air Bags In All Passenger Cars and Light Trucks.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Control Number: 2127–0535.

Form Number: N/A.

Affected Public: NHTSA anticipates that no more than 23 vehicle manufacturers will be affected by the reporting requirements. NHTSA does not believe any of these 23 manufacturers is a small business (i.e., one that employs less than 500 persons) since each manufacturer employs more than 500 persons. Manufacturers of passenger cars must file one report. Similarly, manufacturers of light trucks, small buses, and multipurpose passenger vehicles must file one report.

Abstract: NHTSA must ensure that motor vehicle manufacturers comply with a new provision in the 1991 Intermodal Surface Transportation Efficiency Act requiring that 95 percent of all new passenger cars manufactured on or after September 1, 1996 but before September 1, 1997 shall be equipped with inflatable restraints accompanied by lap/shoulder safety belts for both front outboard seating positions, and 100 percent thereafter. Similarly, 80 percent of all new light trucks, small buses, and multipurpose passenger vehicles manufactured on or after September 1, 1997 but before September 1, 1998 shall be so equipped, and 100 percent thereafter.

Need for the information and proposed use: In order to ensure manufacturers are complying with the 1991 statute, NHTSA needs reports from manufacturers of new passenger cars and new light trucks, small buses, and multipurpose passenger vehicles. For each report, the manufacturer will provide (in addition to administrative necessities such as identity, address) numerical information from which NHTSA will be able to determine whether a manufacturer complies with the percentage phase-in requirements. The required numerical information will include the total number of each vehicle type manufactured during the production year that are equipped with air bags, and the total number of each vehicle type produced.

Annual Estimated Burden: The total estimated annual burden is 828 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department—s estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 14, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–29681 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Approval of Noise Compatibility Program, Chattanooga Metropolitan (Lovell Field) Airport, Chattanooga, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Chattanooga Metropolitan (Lovell Field) Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On March 27, 1996, the FAA determined that the noise exposure maps submitted by the Chattanooga Metropolitan Airport Authority under Part 150 were in compliance with applicable requirements. On September 23, 1996, the Administrator approved the Chattanooga Metropolitan (Lovell Field) Airport nose compatibility program. All of the recommendations of the program were approved in full or in part.

EFFECTIVE DATE: The effective date of the FAA's approval of the Chattanooga Metropolitan (Lovell Field) Airport noise compatibility program is September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Federal Aviation Administration. Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301; Telephone 901–544–3495. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTAL INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Chattanooga Metropolitan (Lovell Field) Airport, effective September 23, 1996.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Memphis, Tennessee.

The Chattanooga Metropolitan (Lovell Field) Airport Authority submitted to the FAA on February 13, 1996, the noise exposure maps, descriptions, and other documentation produced during the FAR Part 150 supplemental noise compatibility planning study conducted from November 1992 through October 1995. The Chattanooga Metropolitan (Lovell Field) Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 27, 1996. Notice of this determination was published in the Federal Register on April 8, 1996.

The Chattanooga Metropolitan (Lovell Field) Airport FAR Part 150 Study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 1997. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 27, 1996, and was required by provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such a program.

The submitted program contained 15 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 23, 1996.

Approval for Part 150 was granted, in total or in part, for all of the proposed measures. Land Use measures include soundproofing, land acquisition voluntary within the DNL 65, voluntary acquisition immediately outside the DNL 65 if partial acquisition of a community/subdivision would disrupt community cohesion or produce other detrimental environmental results and construction of a sound barrier in which a significant number of homeowners opt to remain in the area of land acquisition in the Pine Grove Estates-Portview Hills subdivision.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 23, 1996. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Chattanooga Metropolitan Airport Authority.

Issued in Memphis, Tennessee, November 13, 1996.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 96–29682 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: City of Issaquah, King County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the Southeast Issaquah Bypass project in the City of Issaquah, King County, Washington.

FOR FURTHER INFORMATION CONTACT: Gene K. Fong, Division Administrator, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington 98501, telephone (360) 753–9413; Jerry W. Alb, Director, Environmental Services, Washington State Department of Transportation, 310 Maple Park East, PO Box 47331, Olympia, Washington 98504–7331, telephone (360) 705–7480; or Ann DeFee, Project Manager, Department of Public Works, City of Issaquah, PO Box 1307, Issaquah, Washington 98027, telephone (206) 557–2571.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT) and the City of Issaquah will prepare an environmental impact statement (EIS) for a new bypass arterial approximately 2.4 km (1.5 mile) long, intending to connect I–90 in the vicinity of the Sunset Interchange, with Issaquah-Hobart Road. The Southeast Issaquah Bypass would be located along an alignment which will be selected as part of the EIS process. It is anticipated the alignment will likely be similar to one of several alternative alignments defined in previous feasibility studies completed for the project.

The bypass arterial is planned to be a two-way road that would provide through-lanes and turn-lane channelization at main intersections. The road may be urban or rural in section, or a combination thereof, with features such as bicycle lanes, curb, gutter, sidewalk, stormwater management, water quality treatment, retaining walls, bridges, landscaping, highway signs, lighting, and signalization as determined appropriate during the EIS and design studies.

Alternatives under consideration include: a No-Action Alternative and at least two roadway alignment alternatives (generally within, but not restricted to, a previously identified corridor). The corridor broadens in width at the south end and may include more than two locations and geometric

configurations for the intersection with Issaquah-Hobart Road. Reasonable alternatives identified during the scoping process will also be evaluated. Analysis will focus on identifying impacts and mitigation measures, and providing information appropriate to choosing a preferred alignment alternative from among the alternatives identified through the scoping and public involvement process.

The EIS will identify direct, secondary and cumulative impacts associated with the roadway alternatives under consideration. The EIS will also address other cumulative impacts, taking into consideration two separate but related projects which are currently in the preliminary design phase, and are undergoing separate environmental review: (1) The proposed South Sammamish Plateau Access Road (South SPAR) and Sunset Interchange modification project, and (2) the proposed North Sammamish Plateau Access Road (North SPAR).

The South SPAR and Sunset Interchange modification project would connect the Sunset Interchange with a major east-west arterial in the southwestern portion of the Grand Ridge Development area and modify the existing partial interchange, which presently provides only a west bound off-ramp and east on-ramp, to a full interchange that provides for all traffic movements to and from I–90. It is sponsored by the Washington State Department of Transportation, City of Issaquah, King County, and two private developers (Grand Ridge Ltd. Partnership and Glacier Ridge Ltd. Partnership). It is being addressed in a separate project-specific EIS written in accordance with the National Environmental Policy Act (NEPA).

The North SPAR project would connect the proposed South SPAR with the existing intersection of Issaquah-Pine Lake Road Southeast and Issaquah-Fall City Road Southeast. The North SPAR project is a King County-sponsored project separate from the Sunset Interchange/South SPAR project, with its own logical termini and independent utility. It will be addressed in a separate project-specific EIS written in accordance with the Washington State Environmental Policy Act (SEPA).

Relevant information about various environmental issues related to both the Sunset Interchange/South SPAR EIS and the North SPAR EIS will be incorporated into the Southeast Issaquah Bypass EIS to address secondary and cumulative impacts.

The purpose of the proposed Southeast Issaquah Bypass project is to provide arterial access to I–90 in the vicinity of the Sunset Interchange for Issaquah traffic and Hobart area traffic; to provide a bypass of the City of Issaquah Central Business District, thereby reducing Issaquah congestion; to support adopted City and Region comprehensive land use plans and their fulfillment, which today are suffering from violations of level of transportation concurrency standards; and to satisfy all of the above purposes in a multimodal context with improved auto, transit, bicycle, and pedestrian access to existing and future land uses.

Environmental issues of concern to be addressed in the EIS include transportation; air quality; noise; land use and social elements; wetlands; biological resources (wildlife and vegetation); fisheries resources; water quality (surface and ground water); floodplains; hazardous materials; historic, archaeological and cultural resources; waterways and hydrological systems (surface and groundwater quantity); soils and topography; geologic hazards; energy; and visual impacts. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, appropriate Native American tribes, and to private organizations and citizens who have expressed, or are known to have, an interest in this proposal. An agency scoping meeting will be held on December 9, 1996 from 1:30 p.m. to 3:30 p.m. at the City of Issaquah's Council Chambers, 135 East Sunset Way, Issaquah, Washington. A public scoping meeting will be held on December 9, 1996 from 5:00 p.m. to 8:00 p.m. at Issaquah High School Commons, 700 Second Avenue SE, Issaquah, Washington. The public and all affected agencies will be invited to attend the meetings. Public notice will be given of the time and place of the meetings.

To assure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments are invited from all interested parties. Comments and suggestions concerning this proposed action and the EIS should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program)

Issued on November 8, 1996.

José M. Miranda,

Environmental Program Manager, Olympia, WA.

[FR Doc. 96–29602 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket MSP–004]

Alaska Cargo Transport, Inc.; Application Pursuant to Section 656 of the Merchant Marine Act, 1936, as Amended (Act)

Alaska Cargo Transport, Inc. (Alaska Cargo), by application received October 31, 1996, and supplemented November 7, 1996, applied under Section 651, Subtitle B, of the Act for participation in the Maritime Security Program (MSP). In support of its application Alaska Cargo submitted information pertaining to its level of service as required by section 656 of the Act. Applicants who wish to receive MSP payments must describe their level of service as provided for in section 656. Pursuant to section 656 of the Act, the Maritime Administration must determine Alaska Cargo's level of noncontiguous domestic trade service should it become party to an MSP operating agreement.

In support of its request, Alaska Cargo described its level of noncontiguous domestic trade service to Alaska, including vessels, capacities and itineraries for the 12-month period ending July 1, 1992 in Exhibit 1. The voyages listed under ''Voy #'' beginning with the number ''9'' are voyages whereby Alaska Cargo provided service under a space charter arrangement with Samson Tug & Barge. The voyages beginning with an ''A'' or a ''C'' are with vessels owned or chartered by Alaska Cargo.

Alaska Cargo described its level of noncontiguous domestic trade service to Hawaii, including vessels, capacities and itineraries for the 12-month period ending August 9, 1995 in Exhibit 2.

EXHIBIT 1.— ALASKA CARGO TRANSPORT, INC.

[A voyage recap servicing the Alaska Railbelt and adjacent areas one year prior to July 1, 1992]

Depart	Arr	Voy#	Tug	Barge	TEU cap	Itinerary
6/8/91	7/2/91	9113	Powhatan	Annahootz	565	SEA/SEW/SEA

EXHIBIT 1.— ALASKA CARGO TRANSPORT, INC.—Continued

[A voyage recap servicing the Alaska Railbelt and adjacent areas one year prior to July 1, 1992]

Depart	Arr	Voy#	Tug	Barge	TEU cap	Itinerary
6/15/91	7/10/91	9114	Phillip Foss	ZB 285	585	SEA/SEW/SEA
6/21/91	7/10/91	9115	Mariner	ZB 280	585	SEA/SEW/SEA
6/28/91	8/6/91	9116	Sidney Foss	ZB 286	585	SEA/SEW/SEA
7/14/91	8/12/91	C591	Marine Explorer	JI 281	585	SEA/ANCH/SEA
7/5/91	8/5/91	9117	Powhatan	Annahootz	585	SEA/SEW/SEA
7/12/91	8/12/91	9118	Agness Foss	ZB 284	585	SEA/SEW/SEA
7/19/91	8/16/91	9119	Mariner	ZB 280	585	SEA/SEW/SEA
7/27/91	9/3/91	9120	Phillip Foss	ZB 284	585	SEA/SEW/SEA
8/9/91	9/28/91	9122	Sidney Foss	ZB 286	585	SEA/SEW/SEA
8/15/91	9/6/91	C691	Marine Explorer	JI 281	585	SEA/ANCH/SEW/SEA
8/23/91	9/29/91	9124	Agness Foss	ZB 284	585	SEA/SEW/SEA
9/6/91	10/25/91	9125	Phillip Foss	Fairweather	650	SEA/SEW/SEA
9/13/91	10/5/91	C791	Hawaiian Victory	JI 333	650	SEA/ANCH/SEA
9/20/91	10/25/91	9126	Agness Foss	Annahootz	560	SEA/SEW/SEA
10/4/91	11/7/91	9127	Sidney Foss	ZB 284	585	SEA/SEW/SEA
10/11/91	11/2/91	C891	Marine Explorer	ZB 280	585	SEA/SEW/SEA
10/18/91	11/15/91	9128	Daniel Foss	ZB 286	585	SEA/SEW/SEA
11/1/91	12/3/91	9129	Agness Foss	Fairweather	650	SEA/SEW/SEA
11/15/91	12/15/91	9130	Sidney Foss	ZB 284	585	SEA/SEW/SEA
12/27/91	1/29/92	9133	Sidney Foss	ZB 284	585	SEA/SEW/SEA
1/24/92	3/8/92	9202	Agness Foss	Fairweather	650	SEA/SEW/SEA
2/21/92	3/22/92	9204	Phillip Foss	ZB 286	585	SEA/SEW/SEA
3/8/92	4/11/92	9205	Agness Foss	ZB 284	585	SEA/SEW/SEA
3/20/92	4/11/92	A192	Hawaiian Victory	PT	650	SEA/ANCH/SEA
4/10/92	5/10/92	A292	Marine Explorer	JI 281	585	SEA/ANC/WIND BAY/ CAMAS/SEA
4/21/92	5/20/92	A392	Ocean Victory	PT	650	SEA/VALD/ANC/AFOG/ WAUNA/SEA
5/18/92	6/16/92	A492	Marine Explorer	JI 281	585	SEA/ANC/AFOG/WAUNA/ SEA
6/14/92	7/15/92	A592	Alaskan Victory	JI 340	780	SEA/ANC/AFOG/CAMAS/ SEA
Total Annual TEU's					17505	

PT=Pacific Trader.

EXHIBIT 2.—ALASKA CARGO TRANSPORT, INC.

[A voyage recap servicing Hawaii and adjacent areas one year prior to August 9, 1995]

Depart	Arr	Voy#	Tug	Barge	TEU cap	Itinerary
7/20/94	8/16/94	H994	Marine Commander	JI 333	650	SEA/HONO/SEA
8/9/94	9/12/94	H1094	Manfred Nystrom	JI 340–2	780	SEA/HONO/KAHALUI/ HILO/SEA
8/23/94	2/5/95	G0194	Hawaiian Victory	JI 333	650	SEA/HONO/GUAM/OKI-NAWA/YOKO/VOST/ YOKO/HOLMSK/YOKO/ VOST/GUAM/SEA
8/31/94	10/17/94	H1194	Marine Commander	PT	650	SEA/HONO/MIDWAY/ HONO/SEA
9/21/94	10/23/94	H1294	Manfred Nystrom	JI 340–2	780	SEA/HONO/NAWILIWILI/ RAINIER/SEA
10/13/94	11/19/94	H1394	Alaskan Victory	ZB 303	700	SEA/HONO/SEA
11/2/94	12/15/94	H1494	Manfred Nystrom	JI 340–2	780	SEA/KAWAIHE/HONO/ HILO/ KAHALUI/RAIN/ SEA
11/23/94	1/13/95	H1594	Alaskan Victory	ZB 303	700	SEA/HONO/MIDWAY/ HONO/SEA
12/19/94	2/2/95	H1694A	Manfred Nystrom	JI 340–2	780	SEA/HONO/PT ALLEN/ KAHALUI/RAINIER/SEA
12/28/94	1/29/95	H1694B	Molanai	PT	650	SEA/HONO
1/9/95	2/8/95	H0195	Alaskan Victory	AP	650	SEA/HONO
2/9/95	4/24/95	G0294	Alaskan Victory	PT	650	HONO/GUAM/HONO/KO-DIAK/AFOGNAK/SEA
2/12/95	3/5/95	H0195	Marine Commander	AP	650	HONO/MIDWAY/SEA
2/9/95	3/11/95	H0295	Snohomish	JI 340–2	780	SEA/HONO/KAHALUI/ RAINIER/SEA
3/1/95	4/1/95	H0395	Mogul	JI 333	650	SEA/HONO/SEA

EXHIBIT 2.—ALASKA CARGO TRANSPORT, INC.—Continued

[A voyage recap servicing Hawaii and adjacent areas one year prior to August 9, 1995]

Depart	Arr	Voy#	Tug	Barge	TEU cap	Itinerary
3/23/95	5/4/95	H0495	Manfred Nystrom	JI 340–2	780	SEA/RAIN/HONO/PR AL/KAHALUI/HONO/RAIN/SEA
4/12/95	5/29/95	H0595	Geronimo	JI 333	650	SEA/HONO/JOHNSTON ISL./HONO/SEA
5/2/95	5/31/95	H0695	Dauntless	Juneau	760	SEA/HONO/SEA
5/23/95	6/25/95	H0795	Manfred Nystrom	JI 340–2	780	SEA/HONO/KAHALUI/RAINIER/SEA
6/13/95	7/12/95	H0895	Marine Commander	ZB 303	760	SEA/HONO/SEA
7/5/95	8/6/95	H0995	Manfred Nystrom	JI 340–2	780	SEA/HONO/PT. ALLEN/SEA
7/17/95	9/16/95	H0995B	Hawaiian Victory	AT	650	SEA/HONO/MIDWAY/J. ISL./HONO/SEA
7/25/95	8/26/95	H1095	Oregon	PT	650	SEA/HONO/SEA
1/22/95	6/22/95	T0195	Enforcer	AT	650	SEA/HONO/TAIWAN/GUAM/MIDWAY/SEA
Total Annualized TEU's.					16960	

AT=Alaska Trader.
PT=Pacific Trader.

Any person, firm or corporation having any interest in the application for section 656 consent and desiring to submit comments concerning Alaska Cargo's request must by 5:00 PM December 20, 1996, file comments in triplicate to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

By Order of the Maritime Administrator.

Dated: November 15, 1996.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96–29679 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–81–P

[Docket MSP–005]

Sea-Trader Co.; Notice of Application Pursuant to Section 656 of the Merchant Marine Act, 1936, as Amended (Act)

Sea-Trader Co. (Sea-Trader), by application received October 18, 1996, and supplemented November 6, 1996, applied under Section 651, Subtitle B, of the Act for participation in the Maritime Security Program (MSP). In support of its application Sea-Trader submitted information pertaining to its level of noncontiguous domestic trade service. Pursuant to section 656 of the Act, the Maritime Administration must determine Sea-Trader's level of noncontiguous domestic trade service should it become party to a MSP operating agreement.

In support of its request, Sea-Trader described the level of service of its affiliated company Northland Services, Inc. (Northland) in noncontiguous domestic trade service. Sea-Trader noted that with respect to Northland's seasonal tug/barge service to all points in Northwestern Alaska, in the one-year period prior to July 1, 1992, the carrying capacity and the number of sailings to the ports of primarily Anchorage, Naknek, Bethel, Dillingham, Dutch Harbor and Nome were as follows in table 1:

TABLE 1.—NORTHLAND SERVICES, INC., SEASONAL SERVICE

[A voyage recap of tug/barge services to all points in Northwestern Alaska one year prior to July 1, 1992]

Sailing date	Barge	Teu cap	Itinerary
7/91	BANDON	180	Seattle, Anch., Naknek, Bethel, Dill'ham, Dutch Harbor and Nome.
8/91	KENAI TRADER	432	Seattle, Anch., Naknek, Bethel, Dill'ham, Dutch Harbor and Nome.
9/91	FOSS 343	550	Seattle, Anch., Naknek, Bethel, Dill'ham, Dutch Harbor and Nome.
3/92	POLAR TRADER	210	Seattle, Anch., Naknek, Bethel, Dill'ham, Dutch Harbor and Nome.
4/92	FOSS 343	550	Seattle, Anch., Naknek, Bethel, Dill'ham, Dutch Harbor and Nome.
4/92	SOUTHEAST TRADER	210	Seattle, Anch., Naknek, Bethel, Dill'ham, Dutch Harbor and Nome.
5/92	FOSS 343	550	Seattle, Anch., Naknek, Bethel, Dill'ham, Dutch Harbor and Nome.
5/92	KENAI TRADER	432	Seattle, Anch., Naknek, Bethel, Dill'ham, Dutch Harbor and Nome.
6/92	FOSS 343	550	Seattle, Anch., Naknek, Bethel, Dill'ham, Dutch Harbor and Nome.

TABLE 1.—NORTHLAND SERVICES, INC., SEASONAL SERVICE—Continued

[A voyage recap of tug/barge services to all points in Northwestern Alaska one year prior to July 1, 1992]

Sailing date	Barge	Teu cap	Itinerary
6/92	BARANOF TRADER	210	Seattle, Anch., Naknek, Bethel, Dill'ham, Dutch Harbor and Nome.

Sea-Trader further noted that the tonnage shipped on these ten voyages approximates 60,000 tons per year (the tonnage shipped in 1992 was approximately 45,000 tons).

Northland ships in excess of 100,000 tons of cargo per year in its Southeast Alaska service. For a list of all the vessels utilized by Northland in its Southeastern Alaska, far North Alaska and Eastern Russia services table 2 was provided as follows.

TABLE 2.—Northland Services, Inc., Vessel List

Vessel name	Specific type	Flag of registry	Owned/leased	Period of charter	Area of operation
M/V POLAR STAR, Off. No. 281729	Ocean Tug	U.S.	Leased	Yearly	Puget Sound & Alaska.
M/V TAURUS, Off. No. 571411	Ocean Tug	U.S.	Leased	Yearly	Puget Sound & Alaska.
M/V POLAR WIND, Off. No. 565506	Ocean Tug	U.S.	Owned	Puget Sound & Alaska.	
M/V POLAR WOLF, Off. No. 266460	Ocean Tug	U.S.	Owned	Puget Sound & Alaska.	
M/V LEONARD M, Off. No. 252290	Ocean Tug	U.S.	Leased	Yearly	Puget Sound & Alaska.
M/V GENE DUNLAP, Off. No. 540227	Ocean Tug	U.S.	Leased	Yearly	Puget Sound & Alaska.
M/V L.T. CAMPBELL, Off. No. 510653	Ocean Tug	U.S.	Leased	Yearly	Puget Sound & Alaska.
M/V SEA TRADER, Off. No. 573519	Ocean Freighter	U.S.	Leased	Yearly	Puget Sound, Japan, Russia & Alaska.
M/V POLAR VENTURE, Off. No. 571565	Ocean Freighter	U.S.	Owned	Puget Sound & Alaska.	
S/B POLAR TRADER, Off. No. 589397	Dry Cargo Barge	U.S.	Leased	Yearly	Puget Sound & Alaska.
S/B BANDON, Off. No. 284042	Dry Cargo Barge	U.S.	Owned	Puget Sound & Alaska.	
S/B ZPC–401, Off. No. 607224	Dry Cargo/Oil Barge	U.S.	Leased	Yearly	Puget Sound & Alaska.
S/B KVICHAK TRADER, Off. No. 538528	Dry Cargo/ Oil Barge	U.S.	Leased	Yearly	Puget Sound & Alaska.
S/B BARANOF TRADER, Off. No. 635398	Dry Cargo Barge	U.S.	Leased	Yearly	Puget Sound & Alaska.
S/B NB165, Off. No. 277984	Dry Cargo Barge	U.S.	Owned	Alaska..	
S/B NB200, Off. No. 279630	Dry Cargo Barge	U.S.	Owned	Alaska..	
S/B SOUTHEAST TRADER, Off. No. 601253	Dry Cargo Barge	U.S.	Leased	Yearly	Puget Sound & Alaska.
S/B NUSHAGAK TRADER, Off. No. 566207	Dry Cargo Barge	U.S.	Owned	Puget Sound & Alaska.	
S/B KENAI TRADER, Off. No. 645500	Dry Cargo Barge	U.S.	Leased	Yearly	Puget Sound & Alaska.
S/B NAKNEK TRADER, Off. No. 647441	Dry Cargo Barge	U.S.	Leased	Yearly	Puget Sound & Alaska.
S/B BRISTOL BAY TRADER, Off. No. 647441	Dry Cargo Barge	U.S.	Owned	Puget Sound & Alaska.	

OTHER VESSELS OWNED BY NORTHLAND SERVICES, INC.

Vessel name	Type	Size	Age
POLAR BEAVER	Tugboat	45 ft	1945
POLAR SCOUT	Tugboat	39 ft	1964
POLAR CUB	Tugboat	44 ft	1945
POLAR FOX	Tugboat	55 ft	1968
NB 150	Barge	150 ft×48 ft	1967
BRISTOL BAY TRADER	Barge	300 ft×90 ft	1984

Sea-Trader noted that the only other vessel operated by Northland prior to August 9, 1995 was the SEA TRADER. The maximum carrying capacity of the SEA TRADER is 164 TEU (116 TEU at 11.5 mt/TEU) and 1204 light tons. The number of sailings and ports called by the SEA TRADER for the one-year period prior to August 9, 1995 is set forth in Table 3.

TABLE 3.—NORTHLAND SERVICES, INC., FOR VESSEL SEA TRADER

[A voyage recap of noncontiguous domestic trade service for one year prior to August 9, 1995]

Depart	Capacity	Itinerary
1/12/95	164 TEU and 1204 LT	ST.PAUL/ST.GEO./DUTCH HARBOR/ST.GEO./DUTCH HARBOR.
1/18/95	164 TEU and 1204 LT	ST.PAUL/DUTCH HARBOR.
1/20/95	164 TEU and 1204 LT	ST.PAUL/ST.GEO.
1/29/95	164 TEU and 1204 LT	ST.PAUL/DUTCH HARBOR/ST.GEO./DUTCH HARBOR.
2/4/95	164 TEU and 1204 LT	ST.PAUL/DUTCH HARBOR/ST.GEO.
2/8/95	164 TEU and 1204 LT	ST.PAUL/DUTCH HARBOR/ST.GEO.
2/14/95	164 TEU and 1204 LT	ST.PAUL/DUTCH HARBOR/SITKA/ST.GEO.
2/26/95	164 TEU and 1204 LT	ST.PAUL/DUTCH HARBOR/TANAGA BAY/DUTCH HARBOR.
3/7/95	164 TEU and 1204 LT	ST.PAUL/DUTCH HARBOR/ST.GEO.
3/12/95	164 TEU and 1204 LT	ST.PAUL/KODIAK/KETCHIKAN/SEATTLE/PETRO,RU5/12/95
6/10/95	164 TEU and 1204 LT	DUTCH HARBOR/NAKNEK/TOMAKOMAI,JA/PETRO,RU.
7/16/95	164 TEU and 1204 LT	DUTCH HARBOR/KETCHUKAN/SEATTLE.
9/3/95	164 TEU and 1204 LT	DUTCH HARBOR/KORSAKOV/PETROSAKH REFINERY/ KORSAKOV.

With respect to Northland's scheduled service to Southeastern Alaska for the one-year period prior to July 1, 1992, the vessels and their carrying capacity were as follows in table 4.

TABLE 4.—NORTHLAND SERVICES, INC., SCHEDULED SERVICE

[A voyage recap of tug/barge services to all points in Southeastern Alaska one year prior to July 1, 1992]

Frequency	Sailings per year	Barge	TEU cap
2 weeks	26	NUSHAGAK TRADER	336
2 weeks	26	KWIGAK TRADER	320

Any person, firm or corporation having any interest in the application for section 656 consent and desiring to submit comments concerning Sea-Trader's request must by 5:00 PM December 20, 1996 (30 days after the date of publication) file comments in triplicate to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

By Order of the Maritime Administrator.

Dated: November 15, 1996.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96–29697 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–81–P

Research and Special Programs Administration

[Notice No. 96–23]

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report on the results of the nineteenth session of the United Nation's Committee of Experts on the Transport of Dangerous Goods (UNCOE) and to discuss the work program for U.S. participation in meetings of the UN Committee of Experts on the Transport of Dangerous Goods and its Sub-Committees during the 1997–1998 biennium.

DATES: The public meeting will be held December 17, 1996 at 9:30 a.m.

ADDRESSES: Room 8236–8240, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to (1) review the outcome of the nineteenth session of the UNCOE held from December 2–11, 1996 in Geneva Switzerland and the progress made in completing the 1995–1996 work program (2) to begin preparation for U.S. participation in meetings of the UN Committee of Experts on the Transport of Dangerous Goods and its Sub-Committees during the 1997–1998 biennium. Topics to be covered during the public meeting include matters related to amendments adopted in the tenth revised edition of the UN Recommendations on the Transport of Dangerous Goods, restructuring the UN Recommendations into a model rule, criteria for environmentally hazardous substances, review of intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for bulk and non-bulk packagings used to transport hazardous materials, requirements for inhalation toxicity materials, infectious substance requirements and international harmonization of classification criteria and labeling.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the nineteenth session of the UNCOE may be obtained from RSPA or be downloaded from the Internet at http://info.itu.ch/itudoc/un/editrans/dgdb/dgsubco.html. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board or through the ''Other Web Sites of Interest'' link on the Office of Hazardous Materials Safety's homepage (http://cti1.volpe.dot.gov/ohm) on the Internet. Documents may also be ordered by contacting RSPA's

Dockets Unit (202–366–5046). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5:00 p.m. Central time. For information on the Office of Hazardous Materials Safety's Homepage contact Kevin Coburn at 202–366–4555.

Issued in Washington, DC, on November 11, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–29678 Filed 11–19–96; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 96–52

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 Revenue Procedure 96–52, Acceptance Agents (IRB 1996–48).

DATES: Written comments should be received on or before Janauary 21, 1997, 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: Acceptance Agents.

OMB Number: 1545–1499.

Revenue Procedure Number: Revenue Procedure 96–52.

Abstract: Revenue Procedure 96–52 describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with the Internal Revenue Service.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal government.

Estimated Number of Respondents: 12,825.

Estimated Time Per Respondent: 3 hours, 12 minutes.

Estimated Total Annual Burden Hours: 41,006.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–29662 Filed 11–19–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: None assigned.

Title and Form Number: State Application for Interment Allowance Under 38 U.S.C., Chapter 23, VA Form 21–530a.

Type of Review: New collection.

Need and Uses: The information is requested under the authority of Title 38 U.S.C., 2303, which authorizes payment to a State of the sum of $150 as a plot or interment allowance for the burial of an eligible veteran in a cemetery owned by that State and used solely for the interment of persons eligible for burial in a national cemetery.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: October 31, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–29617 Filed 11–19–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0066.

Title and Form Number: Request to Employer for Employment Information in Connection with Claim for Disability Benefits, VA Form 29–459.

Type of Review: Reinstatement, without change, of a previously approved collection for which OMB approval has expired.

Need and Uses: The form will be used to request employment information in connection with a claim for disability insurance benefits.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 862 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,167.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: October 31, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–29618 Filed 11–19–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0198.

Title and Form Number: Application for Annual Clothing Allowance, VA Form 21–8678.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to gather the necessary information to determine if the veteran has established entitlement to a clothing allowance payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,120 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,720.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: October 31, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–29619 Filed 11–19–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0399.

Title and Form Number: Student Beneficiary Report—REPS, VA Form 21–8938.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to verify that an individual who is receiving the REPS (Restored Entitlement Program for Survivors) benefits based on schoolchild status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. The form is released each March and sent to all student beneficiaries. If the form were not used, payments would continue to be made to ineligible payees and substantial overpayments would result.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,767 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 5,300.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. DO not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the

OMB Desk Officer on or before December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: October 31, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–29620 Filed 11–19–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0251.

Title and Form Number: Request to Lender for Status of Loan Account—LCS, VA Form 26–8778.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to collect information from the servicer and it serves as a code sheet to input data in the automated Liquidation and Claims System (LCS). The form is computer-generated and sent directly to the servicer of the loan. The servicer completes its portion and sends the form to the VA regional officer having responsibility for the loan. Upon receipt of the form, the VBA takes whatever action is necessary to properly service the loan.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 29,167 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 175,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. DO not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: October 31, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–29621 Filed 11–19–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0104.

Title and Form Number: Report of Accidental Injury in Support of Claim for Compensation or Benefits, VA Form 21–4176.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used in support of claims for disability benefits based on a disability which is the result of an accident. The information given by the veteran is used as a source to gather specific data regarding the accident and to afford the veteran an opportunity to provide information from his or her own knowledge regarding the accident.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion

Estimated Number of Respondents: 4,400.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: October 31, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–29622 Filed 11–19–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0379.

Title and Form Number: Work-Study Time Record (Student Services), VA Form 22–8690.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information is used to ensure that the amount of benefits payable to the student who is pursuing work-study is correct. Without the information, the VBA would not have a basis upon which to make payment.

Affected Public: State, Local or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Annual Burden: 12,975 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 51,900.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department

of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: October 31, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–29623 Filed 11–19–96; 8:45 am]

BILLING CODE 8320–01–P

federal register

Wednesday
November 20, 1996

Part II

Environmental Protection Agency

40 CFR Part 75

Acid Rain Program; Continuous Emission Monitoring Rule Technical Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[FRL–5650–7]

RIN 2060–AF58

Acid Rain Program; Continuous Emission Monitoring Rule Technical Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Title IV of the Clean Air Act (CAA or the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The Acid Rain Program and the provisions in today's final rule benefit the environment by preventing the serious, adverse effects of acidic deposition on natural resources, ecosystems, materials, visibility, and public health. The program does this by setting emissions limitations to reduce acidic deposition precursor emissions. On January 11, 1993, the Agency promulgated final rules, including the final continuous emission monitoring (CEM) rule under title IV. On May 17, 1995, the Agency published a direct final rule to make the implementation of the program simpler. Furthermore, on May 17, 1995 the Agency published an interim final rule and took comment on the provisions in the interim final rule.

In this final rule, EPA is amending certain provisions of the CEM regulations in response to public comments received on the direct final and interim final rules. These amendments will streamline the rule and increase implementation flexibility for the affected industry.

DATES: Effective Date. This final rule shall become effective on December 20, 1996.

Incorporation by Reference. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 20, 1996.

ADDRESSES: Docket No. A–94–16, containing supporting information used in developing the final rule, is available for public inspection and copying at the following address: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The docket is located in Room M–1500, Waterside Mall (ground floor) and may be inspected from 8:30 a.m. to noon, and from 1 to 3 p.m., Monday through Friday. Copies of information in the docket may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Jennifer Macedonia, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, telephone number (202) 233–9180.

SUPPLEMENTARY INFORMATION: The EPA is revising the CEM provisions as a final rule because the Agency has already taken comment on the provisions that are being revised. The information in this preamble is organized as follows:

I. Regulated Entities
II. Background and Summary of the Final Rule
III. Rationale
A. Revising the Daily Assessment Procedures Set Forth in the Interim Final Rule
1. Unit Operation During Daily Calibration Error Tests
2. Unit Operation During Daily Flow Monitor Interference Checks
3. Quality Assurance of Data Following Daily Calibration Error Tests
4. Quality Assurance of Data Following Daily Flow Interference Checks
5. Summary of Structure and Regulatory Changes to Section 2 of Appendix B
B. Revising the Monitoring Methods for Units with SO_2 CEMS During Hours When the Unit is Only Burning Gaseous Fuels
1. SO_2 Monitoring During Combustion of Gas for Units with SO_2 CEMS
2. SO_2 Concentration Missing Data During Gas Combustion
C. Clarifying the Procedures for Performing Cycle Time Tests
D. Revising the Reporting of Scrubber Parameters and Missing Data for Add-on Emission Controls
E. Clarifying the Procedures Dealing with the Use of Method 9 Instead of Continuous Opacity Monitors on Bypass Stacks
F. Addressing Minor Comments on the Direct Final Rule
1. Use of AGA Report No. 7
2. Provisions for Reporting and Monitoring of Subtracted Emissions at a Common Stack
3. Heat Input Apportionment at Common Stacks
4. Recertification of Opacity Monitoring Systems
G. Addressing Comments on RATA Notifications
IV. Impact Analyses
A. Executive Order 12866
B. Unfunded Mandates Act
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Small Business Regulatory Enforcement Fairness Act

I. Regulated Entities

Entities potentially regulated by this action are fossil fuel-fired utility boilers and turbines that serve a generator which generates electricity for sale. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Electric Utility Boilers and Turbines.

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, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in §§ 72.6, 72.7 and 72.8 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.

II. Background and Summary of the Final Rule

Title IV of the Act requires the EPA to establish an Acid Rain Program to reduce the adverse effects of acidic deposition. On January 11, 1993, the Agency promulgated final rules implementing the program, including the General Provisions of the Permits Regulation and the CEM rule (58 FR 3590–3766). Technical corrections were published on June 23, 1993 (58 FR 34126) and July 30, 1993 (58 FR 40746–40752). A notice of direct final rulemaking and a notice of interim final rulemaking making further changes to the regulations were published on May 17, 1995 (60 FR 26510 and 60 FR 26560, respectively). There are several provisions in the interim final rule that will expire on January 1, 1997. Therefore, this final rule addresses these provisions that will expire, reaffirms several provisions of the interim final rule that are not changing and revises sections of the interim final rule based on comments. The final rule also modifies a few provisions of the direct final rule on which the Agency received comments.

The issues addressed by this final rule are: (1) Revising the daily assessment procedures set forth in the interim final rule, (2) revising the monitoring methods for units with sulfur dioxide (SO_2) continuous emission monitoring systems (CEMS) during hours when the unit is only burning gaseous fuels, (3) clarifying the procedures for performing

cycle time tests (appendix A, section 6.4), (4) revising the reporting of scrubber parameter ranges in the monitoring plan, (5) clarifying the procedures dealing with the use of Reference Method 9 instead of continuous opacity monitoring systems (COMS) on bypass stacks, (6) addressing minor comments on the direct final rule and (7) addressing comments on RATA notifications.

This final rule addresses the following sections. Section 75.6, ''Incorporation by reference,'' is revised to incorporate the American Gas Association (AGA) ''AGA Report Number 7.'' This change is being made in response to comments received on the direct final rule and petitions received and approved by the Agency to use ''AGA Report Number 7.''

Sections 75.11 (e) and (g), ''Specific provisions for monitoring SO_2 emissions (SO_2 and flow monitors),'' as established by the interim final rule, expire on January 1, 1997. The provisions in § 75.11(a) were suspended from July 17, 1995 through December 31, 1996. In this final rule, §§ 75.11 (a), (d), and (e) are being revised and § 75.11(g) is being removed based on comments on the interim final rule.

Section 75.16, ''Special provisions for monitoring emissions from common, bypass and multiple stacks for SO_2 emissions and heat input determinations,'' § 75.18, ''Specific provisions for monitoring emissions from common and bypass stacks for opacity,'' and § 75.20, ''Certification and recertification requirements,'' are being revised in response to comments received on the direct final rule.

Section 75.21(f), ''Quality assurance and quality control requirements,'' as established by the interim final rule, expires January 1, 1997. The provisions in § 75.21(a) were suspended from July 17, 1995 through December 31, 1996. In this final rule, § 75.21(a) is revised and § 75.21(f) is deleted based on comments on the interim final rule. Section 75.21(d), ''Notification for periodic relative accuracy test audits,'' is added based on comments received on the direct final rule.

Section 75.30(d), ''General provisions,'' is revised based on comments received on this section from the interim final rule. Section 75.30(e) remains in effect from the interim final rule with no changes.

Section 75.32(a)(4), ''Determination of monitoring data availability for standard missing data procedure,'' as established by the interim final rule, expires January 1, 1997. The provisions in § 75.32(a)(3) were suspended from July 17, 1995 through December 31, 1996. In this final rule, § 75.32(a)(3) is revised and § 75.32(a)(4) is deleted based on comments on the interim final rule.

Sections 75.34 (a), (b), (c), and (d), ''Units with add-on emission controls,'' § 75.53(d), ''Monitoring plan,'' §§ 75.55 (b) and (e), ''General recordkeeping provisions for specific situations,'' §§ 75.56 (a), (c), and (d), ''Certification, quality assurance and quality control record provisions,'' and § 75.66(f), ''Petitions to the Administrator,'' are revised based on comments on the interim final rule. Section 75.61(a)(5), ''Periodic relative accuracy test audits,'' is added based on comments received on the direct final rule. Sections 75.64 and 75.66(e) remain in effect from the interim final rule with no changes.

Sections 6.3.3 and 6.3.4 in appendix A of part 75, ''Pollutant concentration monitor and CO_2 or O_2 monitor 7-day calibration error test'' and ''Flow monitor 7-day calibration error test,'' respectively, as established by the interim final rule, expire January 1, 1997. The provisions in sections 6.3.1 and 6.3.2 of appendix A were suspended from July 17, 1995 through December 31, 1996. In this final rule, sections 6.3.1 and 6.3.2 of appendix A are deleted, section 6.3.3 is revised, and sections 6.3.3 and 6.3.4 of appendix A of the interim final rule are redesignated as sections 6.3.1 and 6.3.2.

Section 6.4.1 of appendix A, ''Cycle time test,'' as established by the interim final rule, expires January 1, 1997. The provisions in section 6.4 of appendix A were suspended from July 17, 1995 through December 31, 1995. In this final rule, section 6.4 of appendix A is revised and section 6.4.1 of appendix A is deleted based on comments on the interim final rule.

Appendix B to part 75 is amended by adding section 1.6, ''Parametric monitoring for units with add-on emission controls''. This addition is based on comments received on the interim final rule.

Section 2.1.7 of appendix B, ''Daily assessments,'' as established by the interim final rule, expires January 1, 1997. The provisions in section 2.1 of appendix B were suspended from July 17, 1995 through December 31, 1995. In this final rule, sections 2.1 and 2.1.1 of appendix B are revised, sections 2.1.1.1 and 2.1.1.2 are added, section 2.1.2 is deleted, section 2.1.3 is redesignated as section 2.1.2, the new section 2.1.2 is revised, sections 2.1.4 and 2.1.5 are redesignated as sections 2.1.3 and 2.1.4, respectively; sections 2.1.5, 2.1.5.1 and 2.1.5.2 are added, and section 2.1.7 of appendix B is deleted based on comments on the interim final rule.

Appendix D of part 75, ''Optional SO_2 emissions data protocol for gas-fired and oil-fired units,'' is amended by revising section 2.1.5.1 based on comments on the direct final rule.

Section 7 of appendix F of part 75, ''Procedures for SO_2 mass emissions at units with SO_2 continuous emission monitoring systems during the combustion of gaseous fuel,'' is revised based on comments received on the interim final rule.

III. Rationale

A. Revising the Daily Assessment Procedures Set Forth in the Interim Final Rule

This section addresses several issues related to the frequency of performing daily assessments (i.e., daily calibration error tests and flow interference checks) for the purpose of quality assuring data from CEMS and flow monitoring systems. Based on comments received on the May 17, 1995 interim final rule, section 2 of appendix B is revised in today's rule with respect to four main issues. The first issue deals with unit operation during daily calibration error tests of gas and flow monitoring systems and is discussed in section A.1 below. The second issue deals with unit operation during interference checks of flow monitoring systems and is addressed in section A.2 below. The third issue deals with quality assurance of data with respect to daily calibration error tests and is described in section A.3 below. The final issue deals with quality assurance of data with respect to daily flow interference checks and is discussed in section A.4 below. In addition, the structural and regulatory changes that have been made to section 2 of appendix B are described in detail in section A.5 below.

1. Unit Operation During Daily Calibration Error Tests

Background: This issue is related to the daily calibration error tests required for CEMS and flow monitoring systems under section 2 of appendix B of part 75. The following provisions of the January 11, 1993 final rule required the affected unit to be operating during daily calibration error tests: section 2.1.1 of appendix B and sections 6.1 and 6.3.2 of appendix A. The May 17, 1995 interim final rule reaffirmed, both in the preamble at 60 FR 26564–65 and in section 2.1.7 of appendix B, the requirement to perform daily calibration error tests of gas monitors and flow monitors while the unit is operating.

Calibration error tests are required to be performed while the unit is operating because readings from the CEMS and flow monitoring systems are affected by temperature and pressure conditions

(See Docket A–96–16, Item II–D–39, Log of telephone conversation between Jon Konings, WEPCo, and M. Sheppard, EPA, on EPA's calibration error test policy, April 13, 1994.) Section 6.3.1 of appendix A of the January 11, 1993 final rule and section 6.3.3 of appendix A of the May 17, 1995 interim final rule both affirm that the calibration error test of a CEMS is to be a test of the entire monitoring system, not just a test of the analyzer. At least a portion of the sampling interface of a CEMS is directly exposed to stack conditions. Since there is a significant variation in stack temperature and pressure, depending on whether or not the unit is in operation, CEMS readings can vary accordingly. Therefore, to ensure accurate CEMS measurements, calibration error tests should be performed under the same or similar conditions as when emission data are collected by the CEMS.

Issue: During the public comment period for the interim final rule, some commenters raised concerns about the requirement to perform daily calibration error tests while the unit is operating. (See Docket A–94–16, Items V–D–04, V–D–07, V–D–09, V–D–11, V–D–13, V–D–14, and V–D–15.) Commenters mentioned that monitoring technologies exist which are capable of minimizing the effects of pressure and temperature regardless of unit operation. Therefore, for some monitoring systems, calibration error test results should not be affected by the operation or non-operation of the unit. The commenters requested that, to assist them in meeting the part 75 quality assurance requirements, and to minimize the loss of concentration and flow data, EPA allow daily calibration error tests to be performed while the unit is not operating. Some commenters provided data showing a history of successful off-line calibrations. Other commenters mentioned specific monitoring technologies capable of performing valid off-line calibration error tests (e.g., fully extractive systems with measurement on a dry basis, and dilution extractive systems with heated probes and pressure compensation).

J.A. Jahnke, PhD, an authority on CEM technology, identified the following technologies which, if used properly, could minimize the effects of temperature and pressure: (1) fully extractive dry systems in which the calibration gas is not injected prior to an external probe filter, (2) ex-situ dilution systems with an accurate pressure compensation algorithm, and (3) in-stack dilution systems with a heated probe maintained at constant temperature and with accurate pressure compensation. (See Docket A–94–16, Item II–C–7, ''Further comments on Continuous Emission Monitoring (CEM) System Calibration Error Checks for Unit Off-line/On-line Conditions,'' J.A. Jahnke, PhD, Source Technology Associates.)

Response: The EPA agrees with the commenters that some types of CEMS are capable of minimizing the effects of temperature and pressure upon the CEMS measurements, and are therefore capable of performing a valid calibration error test while the unit is not operating. However, there are also CEMS and flow monitoring systems in use which clearly do not have this capability. For example, in-situ electro-optical systems can experience alignment problems when used on a hot stack after being calibrated on a cold stack. Also, a dilution probe system without a probe heater and without temperature and pressure compensation can underestimate pollutant concentrations in hot flue gas after being calibrated off-line. In addition, the effectiveness of some monitoring system technologies varies with the specific installation or with the ambient conditions. For instance, temperature and pressure compensation algorithms are often site-specific and may be difficult to apply properly; or a dilution extractive system with a probe heater may only be able to perform valid off-line calibrations during the warmer spring and summer months. Therefore, in some instances, using the results of an off-line calibration error test to validate data from a monitoring system could result in an underestimation of emissions. (See Docket A–94–16, Item II–C–7, ''Further comments on Continuous Emission Monitoring (CEM) System Calibration Error Checks for Unit Off-line/On-line Conditions,'' J.A. Jahnke, PhD, Source Technology Associates; Item II–C–8, EPRI, 1994; and Item II–D–94, Phone log between Margaret Sheppard and City of Hamilton.)

The EPA agrees with the conclusions of Dr. Jahnke and several of the commenters, that in some instances, off-line calibration error tests may be appropriate to provide affected units more flexibility in meeting the quality assurance testing requirements of appendix B of part 75. The EPA also agrees with the commenters who stated that more flexibility would be especially helpful to small peaking units that operate infrequently and routinely alternate between operation and non-operation. Therefore, section 2.1.1.2 of appendix B of today's rule allows limited use of off-line calibration error tests to validate CEM data.

Section 2.1.1.1 of appendix B of today's rule retains the requirement that on-line calibration error tests must be done for all monitoring systems. However, to give owners or operators greater flexibility in complying with the quality assurance requirements of part 75, an exception has been provided in section 2.1.1.2 of appendix B, which allows some off-line calibrations to be done. The Agency has decided not to allow the unqualified use of off-line calibration error tests for the following reasons: (a) accurate monitoring system temperature corrections may not be possible for units that undergo large swings in temperature, e.g., cycling (peaking) units; (b) for dilution systems (even with heaters), inaccurate readings may occur if the dilution air flow does not reach equilibrium with stack temperature; and (c) temperature correction equations may be site-specific and therefore, may not be applied correctly. (See Docket A–94–16, Item II–C–8, ''Pressure and Temperature Effects in Dilution Extractive Continuous Emission Monitoring Systems,'' EPRI TR–104700, December 1994.)

In developing the final off-line calibration error test provision, EPA considered two implementation approaches: (1) a technology-specific approach that would allow certain monitoring technologies to perform off-line calibration error tests to validate data; and (2) a performance-based approach, in which any monitoring system that passed a performance test would be allowed to use occasional off-line calibration error tests to validate data.

Although some monitoring technologies may be capable of performing valid off-line calibration error tests, EPA has several concerns regarding a technology-specific approach. First, the effectiveness of many monitoring system technologies is site-specific (e.g., temperature and pressure compensation algorithms, heated dilution probes). Therefore, a global endorsement of a particular technology is not prudent. Second, a technology-specific approach may not cover all possible candidate monitoring systems, and thus may not be equitable to all monitoring system vendors. Finally, because monitoring technologies change over time, frequent rule revisions would be needed to ensure continued fairness to the CEMS vendors. For these reasons, EPA decided against a technology-specific approach.

The EPA concluded that a performance-based approach would better ensure a ''level playing field'' for all monitoring technologies by establishing a demonstration which could be attempted by any candidate

monitoring system capable of compensating for the effects of temperature and pressure. Occasional off-line calibration error tests for data validation would then be allowed for any monitoring system that successfully performed the demonstration. Frequent rule revisions would not be required with a performance-based approach because it can accommodate changing technology.

For these reasons, today's rule allows occasional off-line calibration error tests to be used for data validation, for any monitoring system that passes a one-time performance test designed to demonstrate the validity of an off-line calibration error test. The performance test, referred to as the ''Off-line Calibration Demonstration,'' is found at section 2.1.1.2 of appendix B of today's rule. The demonstration requires a candidate monitoring system to pass a calibration error test while the unit is not operating and then, within 26 clock hours, to pass a calibration error test while the unit is operating. Both of these calibration error tests must meet the performance specification in section 3.1 of appendix A. The EPA selected the 26 clock hours separation time between the calibration error tests to be consistent with the usual length of time of prospective data validation from a calibration error test. Routine calibration adjustments are allowed following the off-line calibration error test; these adjustments must be toward the true calibration gas or reference signal value.

The performance demonstration is not intended to establish unqualified equivalence between off-line and on-line calibration error tests, but rather to screen out monitoring systems that are clearly incapable of performing a valid calibration error test while the unit is not operating. The EPA remains concerned that even if a monitoring system has passed the off-line calibration demonstration, it may be miscalibrated based on an off-line calibration and subsequently it may underestimate emissions. In that instance, the CEMS would most likely fail the next on-line calibration. The EPA considered incorporating a proposal by one commenter to address this concern. The proposal would have required retrospective invalidation of data whenever an on-line calibration error test is failed following an off-line calibration. However, EPA did not incorporate this suggestion because of the complexity of programming, for both utilities and the EPA, involved in implementing retrospective invalidation. Instead, EPA may propose additional limitations on the use of off-line calibration error tests in a future rulemaking to ensure that off-line calibrations are only performed where appropriate. This will give the public opportunity to comment on the additional provisions.

Whenever possible, calibration error tests should be scheduled and performed while the unit is operating. If a unit operates infrequently (i.e., a peaking unit or a cycling unit) consideration should be given to scheduling automatic calibration at a time the unit is most likely to be operating. The provisions in today's rule allowing some off-line calibration error tests are meant to provide additional flexibility in special circumstances and thus minimize the need to use missing data routines. Off-line calibration error tests are not intended to replace on-line calibration error tests. Therefore, section 2.1.1.2 of appendix B of today's rule requires that an on-line calibration error test be performed within 26 unit operating hours of any off-line calibration error test used to validate data. If, for a particular CEMS or flow monitoring system, an on-line calibration error test is not performed within 26 unit operating hours of an off-line calibration error test used to validate data, section 2.1.3.1 of appendix B requires missing data to be substituted beginning in the 27th unit operating hour. To allow time for these new missing data requirements to be incorporated in data acquisition and handling system (DAHS) software, the new missing data requirements become effective on January 1, 1999. Prior to January 1. 1999, the owner or operator may elect to comply with the new missing data requirements.

Although today's rule allows off-line daily calibration error tests in specific circumstances, the Agency is retaining the requirement in sections 6.3.1 and 6.3.2 of appendix A for the initial 7-day calibration error test of pollutant and diluent monitoring systems and flow monitoring systems to be performed while the unit is operating. The EPA has decided to retain the requirement to perform the 7-day calibration error test on-line for two reasons. First, the 7-day calibration error test must only be performed for the initial certification of a monitoring system and occasionally for recertification; the test is not part of the periodic quality assurance requirements in appendix B. Second, for the reasons stated previously, the Agency considers on-line calibration error tests to have a higher probability of indicating the true accuracy of the monitoring system.

2. Unit Operation During Daily Flow Monitor Interference Checks

Background: The January 11, 1993 final rule did not specifically address the issue of unit operation during daily interference checks of flow monitors. However, section 2.1.7 of appendix B of the May 17, 1995 interim final rule required all daily assessments, including flow monitoring system interference checks, to be performed while the unit is operating. The requirement to perform daily assessments while the unit is operating was promulgated so that the test would be performed under the same conditions as when emissions measurements are recorded.

Issue: No comments were received on the issue of unit operation during daily flow interference checks.

Response: Because no comments were received on this issue, the provision requiring flow monitoring system interference checks to be performed on-line is adopted as final. Section 2.1.7 of appendix B has been removed from today's rule. The requirement to perform on-line flow interference checks has been moved to section 2.1.3.

3. Quality Assurance of Data Following Daily Calibration Error Tests

Background: Section 2.1 of appendix B of the January 11, 1993 final rule (incorporated unchanged into the May 17, 1995 interim final rule) required daily assessments of monitoring system accuracy, such as calibration error tests and flow interference checks, to be performed during each day in which a unit combusts any fuel (i.e. each operating day) or, for a monitoring system on a bypass stack or duct, during each day that emissions pass through the bypass stack or duct. In addition, section 2.1.1 of appendix B of the January 11, 1993 final rule stated that pollutant concentration and carbon dioxide (CO_2) or oxygen (O_2) monitors were required to conduct calibration error checks, to the extent practicable, approximately 24 hours apart.

In March 1995, EPA published a policy in Update #5 of the ''Acid Rain Program Policy Manual''. (See Docket A–94–16, Item II–D–95) which interprets sections 2.1 and 2.1.1 of appendix B. The policy (which is outlined in the answer to Question 10.13) states that ''a passed calibration test prospectively validates data for that monitoring system beginning with the hour in which the test is passed for 26 clock hours''. This policy allows a 2-hour grace period beyond a 24-hour ''day'' as an interpretation of the provision in section 2.1.1 of appendix B

to perform the tests ''approximately 24 hours apart''. The policy includes a ''grace'' period of up to 8 clock hours for data validation during start-up events. The start-up grace period was included as part of the interpretation of the daily calibration provisions in response to utility concerns that if a unit is shut down or in an unstable start-up condition when a daily calibration error test is due, it might be impossible to perform a valid daily calibration for several hours, until stable temperature and pressure conditions are achieved.

The preamble to the May 17, 1995 interim final rule discussed quality assurance of data following daily calibration error tests at 60 FR 26564. Section 2.1.7 of appendix B was added in the May 17, 1995 interim final rule to address the situation in which a unit discontinues operation or the use of the bypass stack or duct is discontinued prior to the performance of a daily calibration error test; the new section added flexibility for that situation so that data from the monitoring system are considered quality-assured prospectively for up to 24 consecutive clock hours following a successful daily test. However, the May 17, 1995 interim final rule did not provide for an 8-hour start-up grace period.

Issue: During the public comment period for the interim final rule, EPA received comments on the added section 2.1.7 of appendix B. One commenter declared that section 2.1.7 of appendix B may require units, particularly peaking units, to operate unnecessarily and at higher load levels than they would otherwise operate. The commenter stated that this will result in unnecessary emissions, contrary to the intent of the law and proposed a solution to provide a grace period that excuses calibrations for start-up situations. (See Docket A–94–16, Item V–D–11). Another commenter expressed concern that section 2.1.7 of appendix B provided a validation period of only 24 hours and did not allow for an 8-hour grace period. The commenter urged EPA to incorporate the language from Question 10.13 in the ''Acid Rain Program Policy Manual'' into the final rule provisions. (See Docket A–94–16, Item V–D–17). Similarly, other commenters expressed support for the more flexible approach provided in the manual as it allows for quality assurance of data under more real-life operating scenarios. (See Docket A–94–16, Item V–D–07). The commenters requested that the rule be revised to be consistent with the data validation policy in Question 10.13 of the manual. (See Docket A–94–16, Items V–D–13, V–D–15.)

Response: The EPA agrees with the commenters that requiring a unit to operate and produce emissions solely for the purpose of performing a test on time does not meet the intent of the regulation. In addition, EPA agrees that a prospective data validation period of 26 clock hours and a start-up grace period of 8 clock hours provides additional flexibility to units, particularly peaking and cycling units, in order to meet the requirements to perform daily assessments. Therefore, today's rule revises section 2 of appendix B as described in the summary in section A.5 below to incorporate the 26-hour validation period and 8-hour start-up grace period for daily assessments. For monitoring systems that have passed the Off-line Calibration Demonstration, the 8-hour grace period does not apply if an off-line calibration error test has been performed since the last on-line calibration error test.

4. Quality Assurance of Data Following Daily Flow Interference Checks

Background: Section 2.1 of appendix B of the January 11, 1993 final rule (incorporated unchanged into the May 17, 1995 interim final rule) addressed the requirements for daily assessments of monitoring system accuracy, such as daily calibration error tests for gas and flow monitoring systems and daily interference checks for flow monitoring systems.

Section 2.1.7 of appendix B, entitled ''Daily Assessments,'' was added in the May 17, 1995 interim final rule to address the situation where a unit discontinues operation or where the use of the bypass stack or duct is discontinued prior to the performance of a daily assessment. However, the rule language mentions only the daily calibration error test, not the flow monitor interference check.

In November 1995, EPA published an answer in Update #7 of the ''Acid Rain Program Policy Manual.'' (See Docket A–94–16, Item II–D–97) which interprets sections 2.1 and 2.1.7 of appendix B. The answer to Question 10.18 states that the data validation policy for daily calibration error tests also applies to daily interference checks for flow monitors.

Issue: A commenter requested that the interim final rule be revised so that the prospective data validation policy for daily calibration error tests, proposed in section 2.1.7 of appendix B and Question 10.13 in the ''Acid Rain Program Policy Manual,'' be extended to include daily flow monitor interference checks as well. (See Docket A–94–16, Item V–D–18).

Response: The EPA agrees with the commenter that the prospective data validation policy for daily flow interference checks should be consistent with the provision for daily calibration error tests. In fact, the original intent was for section 2.1.7 of appendix B of the interim final rule to apply to all daily assessments, both calibration error tests and flow interference checks. Therefore, today's rule revises section 2 of appendix B, as described in the summary in section A.5 below, to incorporate the 26-hour validation period and 8-hour start-up grace period for all daily assessments, including flow monitor interference checks.

5. Summary of Structure and Regulatory Changes to Section 2 of Appendix B

In order to incorporate revisions to section 2 of appendix B, some of the subsections are structured differently in today's rule than in the May 17, 1995 interim final rule and the January 11, 1993 final rule. First, section 2.1.2, which addresses daily calibration error tests for flow monitoring systems, is removed, and section 2.1.1 is revised to address daily calibration error tests for both gas concentration and flow monitoring systems. Secondly, sections 2.1, 2.1.1, and 2.1.3 of appendix B of the interim final rule are revised by removing the requirement to perform daily assessments every unit operating day. Instead, the new sections 2.1.3 and 2.1.3.1 of today's rule describe the 26-hour prospective data validation from a passed daily assessment and the invalidation of data resulting when a daily assessment is not performed. Also, the new section 2.1.3.2 in today's rule describes the 8-hour start-up grace period for daily assessments. Third, section 2.1.3 of the interim final rule is redesignated as section 2.1.2 in today's rule; the new section 2.1.2 is also revised to add the requirement to perform flow interference checks on-line (previously in section 2.1.7) and to remove the requirement to perform flow interference checks every unit operating day. Instead, the provisions for quality assuring data with respect to daily flow interference checks are addressed with the requirements for all daily assessments in the new sections 2.1.5, 2.1.5.1, and 2.1.5.2 of today's rule. Fourth, sections 2.1.4 and 2.1.5 are redesignated as sections 2.1.3 and 2.1.4, respectively. Finally, section 2.1.7 of appendix B of the interim final rule is removed. The provisions for unit operation during tests and prospective validation following tests which were addressed in section 2.1.7 are now addressed in sections 2.1.1.1, 2.1.1.2, 2.1.2, 2.1.5, 2.1.5.1, and 2.1.5.2. Section

2.1.1.1 addresses the basic requirement to perform daily calibration error tests on-line; section 2.1.1.2 addresses the exception that allows some daily calibration error tests to be performed off-line.

B. Revising the Monitoring Methods for Units With SO_2 CEMS During Hours When the Unit is Only Burning Gaseous Fuels

1. Determination of SO_2 Mass Emissions During Combustion of Gaseous Fuel, for Units With SO_2 CEMS

Background: All of the coal-fired units, many of the oil-fired units, and some of the gas-fired units subject to part 75 requirements currently use an SO_2 CEMS and a flow monitoring system to account for their SO_2 mass emissions. By definition, affected gas-fired units with SO_2 CEMS must derive at least 90 percent of their heat input from the combustion of gaseous fuel. (See definition of ''gas-fired'' in 40 CFR 72.2.) Generally, the fuel is pipeline natural gas. Many of the coal and oil-fired units with SO_2 CEMS derive their heat input exclusively from coal or oil; however, a significant number of the coal and oil-fired units with SO_2 CEMS also combust natural gas (or other gaseous fuel with a sulfur content no greater than natural gas), either as backup fuel or solely during unit startup. Natural gas has a very low sulfur content and will produce extremely low SO_2 concentrations when combusted alone. Typically, SO_2 concentrations from the combustion of natural gas will range from about 0 to 5 parts per million (ppm) for ''sweetened'' pipeline natural gas to about 20 to 30 ppm for ''sour'' natural gas.

It is difficult for most SO_2 monitors to accurately measure the low SO_2 concentrations associated with the combustion of natural gas. It is also difficult to quality-assure SO_2 monitoring data at such low concentrations. Protocol 1 calibration gases at these low concentrations are either not available or are very expensive, and relative accuracy test audits (RATAs) of the SO_2 monitor are of questionable value because gas-fired SO_2 concentrations are generally at, near or below the limit of detectability of both the CEMS and the reference method.

Issue: Sections 75.11(a) and 75.11(d) of the January 11, 1993 final rule required owners or operators of coal-fired units and allowed owners or operators of oil-fired and gas-fired units to account for SO_2 emissions using an SO_2 monitoring system. No conditions were placed upon the use of the SO_2 monitor, either for coal-fired, oil-fired or gas-fired units. No distinction was made between SO_2 monitoring during the combustion of gaseous fuel and SO_2 monitoring during hours in which higher-sulfur fuel such as coal or oil is combusted. In the preamble to the May 17, 1995 interim final rule, however, EPA expressed concern about the difficulty of obtaining accurate, quality-assured SO_2 emission data from an SO_2 CEMS when natural gas is combusted. (See 60 FR 26561.) The Agency decided that it was inappropriate to use an SO_2 CEMS during hours in which only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) is combusted in an affected unit. Therefore, under § 75.11(e) of the interim final rule, beginning on January 1, 1997, owners or operators of affected units with SO_2 CEMS would no longer be permitted to use an SO_2 CEMS to account for SO_2 emissions during gas-fired hours. Instead, SO_2 emissions during gas-fired hours were to be determined in one of two ways: (1) by certifying and quality-assuring an excepted monitoring system in accordance with appendix D of part 75; or (2) for pipeline natural gas combustion, by using the heat input derived from flow monitor and diluent monitor measurements, in conjunction with the default emission rate of 0.0006 pounds per million British thermal unit (lb/mmBtu) for pipeline natural gas, from EPA publication AP–42. (See ''Compilation of Air Pollutant Emission Factors: Stationary Point and Area Sources,'' volume I, fourth edition, Office of Air Quality Planning and Standards, September 1985.) Either of these two compliance options requires additional programming of the DAHS.

The May 17, 1995 interim final rule also amended the quality assurance provisions of § 75.21 to be consistent with the two proposed SO_2 compliance options for gas-fired hours. Owners or operators were exempted from daily calibration assessments of the SO_2 monitoring system on any day when only gas was burned in the affected unit, and from quarterly linearity tests of the SO_2 monitoring system in quarters when only gas was fired. Also, ''gas-only'' quarters were not to be counted toward determination of the next RATA deadline for the SO_2 monitoring system, but a RATA of the monitoring system was still required at least once every 2 years.

Several commenters objected to the provisions in § 75.11(e) of the interim final rule, arguing that the requirements were too complex and costly to implement because of the additional DAHS programming and did not provide any environmental benefit. (See Docket A–94–16, Items V–D–01, V–D–02, V–D–07, V–D–09, V–D–13 and V–D–16.) A number of commenters also indicated that the requirements were especially burdensome to coal and oil-fired units in which natural gas is burned only during unit startup. (See Docket A–94–16, Items V–D–01, V–D–02, V–D–07, V–D–13, V–D–15 and V–D–18).

Several commenters submitted data to demonstrate the ''de minimis'' nature of gas-fired SO_2 emissions during unit startups. (See Docket A–94–16, Items V–D–01, V–D–08 and V–D–16.) One commenter provided calculations to show that the SO_2 concentration during gas-fired startup events is, typically, 2 ppm or less when pipeline natural gas is burned. (See Docket A–94–16, Item V–D–08). A second commenter's data indicate that historically only about 0.20 tons per year (tpy) of SO_2 have been emitted from his four affected coal-fired units during gas-fired startup events. (See Docket A–94–16, Item V–D–16). A third commenter used the default emission factor for SO_2 to estimate that about 0.005 tpy of SO_2 are emitted from his affected facility during gas-fired startups. The third commenter also provided a cost estimate of approximately $10,000 for that same facility to reprogram the DAHS to comply with the requirements of the interim final rule. (See Docket A–94–16, Item V–D–01).

Several commenters recommended that, in addition to the two SO_2 compliance options for gas-fired hours presented in the May 17, 1995 interim final rule, EPA should, in the final rule, reinstate the use of an SO_2 monitoring system and a flow monitoring system as a third compliance option. (See Docket A–94–16, Items V–D–07, V–D–09, V–D–16 and V–D–17.) One commenter suggested that EPA could place certain restrictions and conditions on the use of the SO_2 monitor during gas-fired hours, rather than excluding its use. (See Docket A–94–16, Item V–D–17). Another commenter stated that for gas-firing, EPA could require the use of a calibration gas with a concentration of 0.0 percent of span for the daily calibration error tests, to verify that the monitoring system can accurately read SO_2 concentrations at or near zero ppm. (See Docket A–94–16, Item V–D–09). Another commenter, attempting to address EPA's concern about the ability of an SO_2 monitor to accurately read the low SO_2 concentrations associated with natural gas firing, submitted 328 hours of data recorded by his SO_2 monitoring system during gas-fired hours. The data

appear to substantiate that an SO_2 monitor can detect variations in SO_2 concentration, even at very low ppm levels; most of the measured concentrations were between 1 and 5 ppm, with occasional readings above 10 ppm. The commenter also compared the SO_2 emissions measured by the CEMS in the 328-hour period to the emissions that would have been reported if the default emission factor for pipeline natural gas plus the CEMS-based heat input had been used. The emissions measured by the SO_2 monitor were found to be significantly higher than the emissions predicted by the default emission factor. (See Docket A–94–16, Item V–D–16). Another commenter recommended that EPA consider specifying some type of ''default'' SO_2 concentration, perhaps based on the maximum sulfur content of pipeline natural gas, to be used when reporting data from an SO_2 CEMS during gas-fired hours. (See Docket A–94–16, Item IV–D–13.) For example, whenever the CEMS recorded an hourly average below the default value, the default value would be reported for that hour. Finally, one commenter requested that EPA add a qualifying statement to the exemption from the requirement to perform daily calibration error tests and linearity tests of SO_2 monitors during ''gas only'' days and ''gas only'' calendar quarters. The qualifying statement would affirm that SO_2 monitors which ''* * * meet the applicable performance specification for a daily calibration error test or quarterly linearity check while firing natural gas only, do not require a subsequent re-test should the unit change from firing only gaseous fuel to a nongaseous fuel within the respective daily or quarterly timeframe * * *'' In other words, the owner or operator may, at his discretion, continue to perform calibration error tests and linearity tests when natural gas is combusted, to keep the SO_2 monitor ready for use. The results of such tests would be considered valid. The commenter recommended that this statement be added to the rule to address two unanticipated situations that might ''trigger'' the SO_2 monitor quality assurance requirements: (1) when gas is combusted for most of a day, but peak electrical demand necessitates the co-firing of oil and gas; and (2) when natural gas is the primary fuel burned during a quarter, but emergency electrical demand necessitates that some oil be burned. (See Docket A–94–16, Item V–D–28).

Response: The Agency has reconsidered the provisions of the May 17, 1995 interim final rule in view of the comments received and has decided to allow three SO_2 compliance options, rather than two, for units with SO_2 CEMS during hours in which only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) is burned. These options are set forth in § 75.11(e) of today's rule.

The first two compliance options for hours in which the unit combusts only natural gas or gaseous fuel with a sulfur content no greater than natural gas are located at §§ 75.11 (e)(1) and (e)(2). These provisions have changed very little from § 75.11(e) of the interim final rule. The owner or operator may account for SO_2 emissions, in lieu of using the SO_2 CEMS, by either: (1) For pipeline natural gas, determining the heat input using flow and diluent monitors, and then using the default SO_2 emission rate factor of 0.0006 lb/mmBtu to calculate SO_2 mass emissions, in accordance with Equation F–23 in section 7 of appendix F of part 75; or (2) certifying an excepted monitoring system in accordance with appendix D to part 75 and using the fuel sampling and analysis procedures in section 2.3.1 of appendix D. Section 75.11(e)(2) of today's rule clarifies that when the appendix D fuel sampling procedures are used, the unit heat input reported under § 75.54(b)(5) must be based upon hourly averages from the installed flow and diluent monitors, rather than basing it on the fuel flow rate and gross calorific value as specified in section 3 of appendix D and section 5.5 of appendix F. This ensures consistency in the reported heat input data for all hours of unit operation; irrespective of the type of fuel combusted in the unit, the reported heat input values will be based on CEMS data.

The third compliance option, located at § 75.11(e)(3), allows the owner or operator to use the SO_2 monitoring system and a flow monitoring system to determine SO_2 mass emissions. However, the use of the SO_2 monitoring system is subject to several conditions and restrictions: (a) a calibration gas with a concentration of 0.0 percent of span must be used for daily calibration error tests of the CEMS; (b) the response of the monitoring system to the 0.0 percent calibration gas must be adjusted to read exactly 0.0 ppm each time that a daily calibration error test is passed; (c) any hourly average of less than 2.0 ppm recorded by the SO_2 monitor (including zero and negative averages) must be reported as a default value of 2.0 ppm; and (d) if a unit combusts only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) and never combusts any other type of fuel, the SO_2 monitor span must be set to a value not exceeding 200 ppm. Note that conditions (a) and (b) are optional for units that combust natural gas only during unit startup. Compliance with conditions (a) through (d) is required by January 1, 1999. Prior to January 1, 1999, owners or operators may either continue to use the SO_2 CEMS without the additional restrictions or may opt to comply voluntarily with conditions (a) through (d). The January 1, 1999 compliance deadline allows owners or operators sufficient time to incorporate the new requirements into their quality assurance programs and to program the 2.0 ppm default SO_2 concentration into their DAHS.

The requirement to use a 0.0 percent calibration gas for daily calibrations and to adjust the response to 0.0 ppm maximizes the chance of obtaining meaningful SO_2 readings at the low concentrations associated with gas-firing. However, despite this extra quality assurance provision, it is likely (particularly when pipeline natural gas is fired) that the CEMS will give some hourly average SO_2 concentrations of zero ppm and may give an occasional negative hourly average, if the monitor readings drift. Therefore, today's rule requires a 2.0 ppm ''default'' concentration value to be reported whenever hourly averages from the CEMS fall below 2 ppm. The 2.0 ppm value is consistent with the average gas-fired SO_2 concentration of 1 to 2 ppm during unit startup, as estimated by one of the commenters, using the default emission rate of 0.0006 lb/mmBtu for pipeline natural gas. (See Docket A–94–16, Item V–D–08). Use of the 2.0 ppm default SO_2 concentration value minimizes the chance of underestimating gas-fired SO_2 emissions and ensures that a negative or zero SO_2 hourly average will not be reported for any hour in which fuel is combusted in the unit.

For units that sometimes fire gas and at other times burn higher-sulfur fuel, § 75.11(e)(3)(iv) of today's rule specifies that dual-range capability is not required for the SO_2 monitoring system; rather, the SO_2 span and range associated with the higher-sulfur fuel also may be used during gas-fired hours. However, for units that burn only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) and do not combust any other fuel, § 75.11(e)(3)(iv) requires that the owner or operator set the span of the SO_2 monitor to a value not exceeding 200 ppm. This span requirement supersedes the provisions in section 2.1.1.1 of appendix A, which would, in this case, require the SO_2 monitor span to be set unrealistically low (e.g., to a value of 5 ppm or less for pipeline natural gas).

As explained in the preamble to the interim final rule, EPA has little or no confidence in the results of RATAs for SO_2 monitors when natural gas is burned in an affected unit. (See 60 FR 26561.) First, the low SO_2 concentrations associated with natural gas combustion (typically 0.5 to 5.0 ppm for pipeline natural gas) are either at, near or below the sensitivity limit of the analytical method, both for the installed SO_2 monitor and for the reference test method (Method 6C in appendix A to 40 CFR part 60). Second, passing an SO_2 RATA when gas is combusted does not necessarily demonstrate that the monitor is accurate. The criterion in section 3.3.1 of appendix A to part 75 for passing the SO_2 RATA (when emission levels are below 250 ppm) is that the average CEMS and average reference method values must agree to within 15.0 ppm. To illustrate, suppose that the average reference method value for a gas-fired RATA of an SO_2 monitor is 10.0 ppm and the average CEMS value is 0.0 ppm. The RATA would be considered to be ''passed'', according to the 15.0 ppm criterion. However, since the CEMS readings averaged 0.0 ppm, the monitor could actually have been malfunctioning or completely inoperative during the RATA test period and still have passed the RATA.

In view of these considerations, § 75.21(a)(5) of today's rule specifies that for units with installed SO_2 monitoring systems, SO_2 RATAs are not to be done when natural gas (or gaseous fuel with a sulfur content no greater than natural gas) is fired; rather, SO_2 RATAs are to be conducted only when higher-sulfur fuels (e.g., oil or coal) are combusted. In keeping with this requirement, § 75.21(a)(6) of today's rule exempts from the SO_2 RATA requirements of part 75 any unit that burns only natural gas (or fuel(s) with a sulfur content no greater than natural gas), and does not burn any other fuel. For such units, only daily calibrations and quarterly linearity tests of the SO_2 monitor, which ensure that the monitor is operational by checking its response to different concentrations of calibration gas, are required. Section 75.21(a)(7) of today's rule specifies that for a unit that sometimes burns natural gas as a primary or backup fuel and at other times burns higher-sulfur fuel as primary or backup fuel, any calendar quarter in which the unit combusts only natural gas (or fuel with a sulfur content equivalent to natural gas) is to be excluded in determining the deadline for the next RATA of the SO_2 monitoring system. This provision of § 75.21(a)(7) is not substantively different from the corresponding provision in § 75.21(f) of the interim final rule; however, as revised, § 75.21(a)(7) extends the benefit of reduced RATA frequency requirements to include the combustion of other types of fuels (whether gaseous and non-gaseous) with a sulfur content no greater than that of natural gas. Finally, § 75.21(a)(7) specifies that if, as a result of extending the RATA deadline of an SO_2 monitor by excluding quarters in which only natural gas (or equivalent) is combusted, eight calendar quarters elapse after a RATA without a subsequent RATA of the SO_2 monitor having been performed, a RATA is then required in the next calendar quarter in which a fuel with a higher sulfur content than natural gas is combusted in the unit. This differs slightly from the provision in § 75.21(f) of the interim final rule, which, in similar circumstances, required an SO_2 RATA at least once every 2 calendar years. These less burdensome RATA requirements for SO_2 monitors in §§ 75.21(a)(5) through (a)(7) will ensure that owners or operators do not have to burn higher sulfur fuels merely to perform quality assurance testing of the CEMS. The Agency believes that the less stringent RATA requirements will also encourage owners and operators to burn more low-sulfur fuels in their affected units, thus resulting in a net environmental benefit while ensuring continued high quality of emissions data.

If, for a particular unit with an SO_2 CEMS, the owner or operator selects one of the other two SO_2 compliance options for gas-fired hours, in lieu of using the SO_2 monitoring system (i.e., either using appendix D fuel flow meter and fuel sampling procedures or using the default emission factor for pipeline natural gas and Equation F–23 in appendix F), § 75.21(a)(4) of today's rule specifies that no daily calibration error tests of the SO_2 monitoring system are required on ''gas-only'' operating days and no quarterly linearity tests are required in ''gas-only'' operating quarters. While these tests are not required, they are allowed and will be considered valid tests for other requirements of this rule. These quality assurance requirements are waived on days and in quarters when only gas is combusted in the unit, because when the appendix D compliance option or the Equation F–23 compliance option is used, hourly averages from the SO_2 CEMS are not included in the historical CEMS data stream, either for emission reporting, missing data substitutions, or monitor availability calculations. Therefore, the hourly averages from the SO_2 monitor do not require quality assurance on ''gas-only'' days or in ''gas-only'' quarters. These requirements are essentially identical to the corresponding provisions in § 75.21(f) of the interim final rule. The Agency notes, however, that although the daily and quarterly assessments of the SO_2 CEMS are not required in these instances, § 75.21(a)(4) of today's rule allows the tests to continue to be done at the discretion of the owner or operator. If the tests are passed, they are considered to be valid tests of the CEMS. If a test is failed, the CEMS is considered out-of-control until a subsequent test of the same type has been passed. This provision addresses the commenter's concern about the unpredictability of the fuel type(s) that are used during periods of peak electrical demand.

2. SO_2 Concentration Missing Data During Gas Combustion

Background: For an affected unit that sometimes combusts natural gas (or gaseous fuel with a sulfur content no higher than natural gas) and sometimes burns higher sulfur fuel, such as coal or oil, the SO_2 emissions during gas-fired hours are several orders of magnitude smaller than during hours in which coal or oil is combusted. When such a unit uses an SO_2 monitor to account for its SO_2 emissions, then, for each clock hour in which the monitor fails to provide quality-assured SO_2 concentration data, a substitute data value for SO_2 concentration must be reported to EPA, in accordance with the standard missing data procedures of § 75.33. The method required for calculating the substitute data under § 75.33 depends on several factors, such as the overall monitor availability and the duration of the monitor outage. In many cases, the substitute data value, which is reported for each clock hour of the missing data period, is the arithmetic average of the SO_2 readings before and after the missing data period. In other cases, the substitute data value may be either the 90th (or 95th) percentile value from the last 720 quality-assured monitor operating hours or simply the maximum value recorded in the last 720 quality-assured monitor operating hours.

Provided that the sulfur content of the fuel burned in an affected unit remains relatively constant, the standard missing data procedures will generally provide representative substitute data. However, when a unit burns two or more fuels whose sulfur contents differ greatly (e.g., coal and natural gas), using the standard missing data procedures can sometimes cause significant underestimation, and at other times,

significant overestimation of the SO_2 emissions during missing data periods. This is most likely to occur when an SO_2 missing data period either coincides with or occurs around the time of a fuel-switch.

Issues: In the May 17, 1995 interim final rule, EPA revised the standard SO_2 missing data procedures and the SO_2 data availability calculation procedures, to address the issue of units that have SO_2 monitors and sometimes burn natural gas and at other times combust higher-sulfur fuels. Under § 75.11(e) of the interim final rule, beginning on January 1, 1997, owners or operators would no longer be permitted to use an SO_2 CEMS to account for SO_2 mass emissions during hours in which only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) is burned in an affected unit. Therefore, § 75.30(d)(3) specified that the historical CEM data used to derive the SO_2 substitute data values for the standard missing data procedures would consist only of SO_2 concentrations measured by the CEMS during the combustion of higher-sulfur fuels such as coal or oil. Also, § 75.32(a)(4) specified that the percent SO_2 data availability would be calculated only from the hours in which the higher-sulfur fuels were burned. Section 75.21(f) specified that during natural gas-fired hours, the owner or operator would neither be required to operate nor to quality-assure data from the SO_2 CEMS. Rather, during all gas-fired hours, § 75.11(e) specified that SO_2 emissions would be accounted for in one of two ways: (1) By using an excepted monitoring system, in accordance with the requirements of appendix D to part 75; or (2) for pipeline natural gas combustion, by determining the heat input from a flow monitor and diluent monitor and then using the default SO_2 emission rate of 0.0006 lb/mmBtu for pipeline natural gas to calculate the SO_2 mass emission rate, in accordance with Equation F–23 in appendix F. Sections 75.30 (d)(1) and (d)(2) of the interim final rule specified that missing data for option (1) would be filled in using the missing data procedures in appendix D to part 75; for option (2), the procedures in § 75.36 for missing heat input data would be followed.

Several commenters objected to these provisions of the interim final rule, stating that EPA should not prohibit the use of an SO_2 monitor during natural gas-fired hours, but should allow the CEMS to be used as a third compliance option. (See Docket A–94–16, Items V–D–07, V–D–09, V–D–16 and V–D–17.) Two other commenters stated that use of the standard SO_2 missing data procedures and SO_2 data availability calculation procedures should be allowed, without modification, particularly for units that burn natural gas only during unit startup. (See Docket A–94–16, Items V–D–07 and V–D–15.)

Response: As discussed above, for hours in which only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) is combusted, EPA has decided to revise § 75.11(e) to allow units that have SO_2 monitoring systems and sometimes burn natural gas and at other times burn higher-sulfur fuels to use the SO_2 CEMS (subject to certain conditions and restrictions) as a third compliance option, in addition to the two compliance options presented in the interim final rule.

Today's rule, at § 75.30(d)(4), allows an owner or operator who, pursuant to § 75.11(e)(3), selects the SO_2 monitoring system as the compliance option for gas-fired hours to use both the standard SO_2 missing data procedures and the SO_2 data availability calculation procedures, without modification. This is conditioned on the owner or operator keeping records on-site, suitable for inspection, indicating the type of fuel burned during each SO_2 missing data period and the number of hours during the missing data period that each type of fuel was burned. This recordkeeping requirement, located at § 75.55(e)(2) of today's rule, does not apply if natural gas (or gaseous fuel with a sulfur content no greater than natural gas) is the only type of fuel burned in the unit, or if such fuel is burned only during unit startup.

For several reasons, the Agency believes that allowing units which combust both high and low-sulfur fuels to use the standard missing data procedures will probably not, over time, result in any significant underestimation of SO_2 emissions. First, if a unit maintains high SO_2 data availability (90 to 95 percent), then only a few percent of the SO_2 readings in the data stream will be substitute data values. Second, many missing data periods will not occur at or near the time of a fuel switch, and for those missing data periods, the substitute data values will be representative of the fuel burned. Third, over long periods of time, it is likely that, statistically, the effects of occasionally underestimating and overestimating SO_2 substitute data values will tend to balance out. Nevertheless, to ensure that these things are true, the recordkeeping requirement in § 75.55(e)(2) has been added. This will allow EPA, State, and local government auditors to assess, over time, the appropriateness of the SO_2 substitute data values that are used to fill in missing data periods for units that burn both high and low-sulfur fuels, particularly when fuel-switching occurs. Based on this assessment, EPA may revisit this issue in a future rulemaking, if necessary.

Regarding the calculation of percent SO_2 data availability, § 75.11(e)(3)(iii) of today's rule specifies that when an SO_2 monitor is used to account for SO_2 emissions during gas-fired hours, all valid hourly averages from the CEMS are counted as quality-assured data. This includes clock hours in which the default value of 2.0 ppm has been substituted because the hourly averages from the CEMS fall below 2.0 ppm, provided that the monitor is operating and is not out-of-control with respect to any of its required quality assurance tests (i.e., daily calibration, linearity and RATA).

If, for a particular unit with an SO_2 CEMS, the owner or operator selects one of the other two SO_2 compliance options for gas-fired hours, in lieu of using the SO_2 monitor (i.e., either using the default emission factor for pipeline natural gas or using appendix D procedures, in accordance with § 75.11 (e)(1) or (e)(2), respectively), § 75.30(d) of today's rule specifies that CEMS readings obtained during gas-fired hours are to be excluded from the historical CEMS data banks, for purposes of providing substitute data. In addition, today's rule amends § 75.32(a)(3) to state that gas-fired hours are to be excluded from the calculation of percent SO_2 data availability for the CEMS when the SO_2 compliance option in § 75.11 (e)(1) or (e)(2) is selected. These provisions are not substantially different from the provisions in § 75.30(d) and § 75.32(a)(4), respectively, of the interim final rule.

C. Clarifying the Procedures for Performing Cycle Time Tests

Background: The cycle time test is a certification test that measures the amount of time it takes for a CEMS to respond to step changes in concentration. The original cycle time test in section 6.4 of appendix A in the January 11, 1993 final rule measured the length of time necessary for a monitor to achieve 95 percent of the step change in pollutant concentration between stack emissions and a calibration gas, beginning when the calibration gas is released from the cylinder. The May 17, 1995 interim final rule changed the procedures for conducting a cycle time test to eliminate the time it takes the calibration gas to travel from the cylinder to the probe tip of the CEMS. This time period was eliminated in

order to achieve more representative cycle time test results. (See 60 FR 26565.)

In the original January 11, 1993 rule, the purpose of the cycle time test was to measure the amount of time it takes for a monitor to achieve 95 percent of the step change in concentration going from measured stack emissions to a high-level or low-level calibration gas. The cycle time test procedure in the interim final rule was reversed in that it measures the amount of time it takes the monitor to achieve 95 percent of the step change in concentration when going from a high-level calibration gas (downscale test) or low-level calibration gas (upscale test) to a stable measured emissions reading.

In order to implement the revised requirements, section 6.4 of appendix A in the interim final rule specified that the cycle time test procedures be performed and evaluated as follows:

1. Inject a high scale or low scale calibration gas into the probe tip of the monitoring system until a stable response is achieved.
2. After a stable response is achieved, stop the calibration gas flow and record the time.
3. Allow the monitor to stabilize while reading the stack emissions. (The monitor is determined to be stable when either the measured reading deviates less than 1 percent of span for 30 seconds or if the measured concentration reading deviates less than 5 percent of the measured average concentration for a 5 minute interval.)
4. Calculate 95 percent of the step change in concentration and determine the time at which 95 percent of the step change is achieved.
5. Repeat the procedure with the other calibration gas.
6. The response time must be achieved in under 15 minutes for both the downscale and upscale tests.
7. The longest 95 percent step change time from either the low scale or high scale test is the component's cycle time.
8. For the NO_X-diluent CEMS and SO_2-diluent CEMS test, record and report the longer cycle time of the two component analyzers as the system cycle time.
9. For time shared systems, this procedure must be done for all probe locations that will be polled within the same 15-minute period during monitoring system operations.
10. For monitors with dual ranges, perform the test on the range giving the longest cycle time.

Issue: In response to the cycle time test procedures established in the interim final rule, the Agency received significant comments. One commenter noted that the stabilization criteria cited in the May 17, 1995 interim final rule do not allow monitoring systems that record data in 1-minute or 3-minute intervals sufficient time to record data to document a stable concentration reading. (See Docket A–94–16, Item V–D–18.) The commenter also recommended that the procedures for calculating 95 percent of the step change in concentration be clarified. EPA also received comments concerning the order in which calibration gases are introduced during the cycle time test. Some commenters were satisfied with the test in the interim final rule which requires the source to initiate the cycle time test by injecting a zero level or high level calibration gas and then allowing the monitor to stabilize while reading stack emissions. (See Docket A–94–16 Item V–D–02). Other commenters stated that the cycle time test in the interim rule is problematic because the stable ending value is difficult to determine. (See Docket A–94–16 Item V–D–12).

Response: In response to the comments received, today's rule revises the criteria used to determine when the stack emissions have stabilized after a downscale or upscale test, in order to accommodate monitoring systems that record concentration data in 1-minute or 3-minute intervals. (See Docket A–94–16, Item V–D–18.) The EPA concurs that monitoring systems that store data in 1-minute or 3-minute intervals cannot record a sufficient number of data points to meet the stabilization criteria cited in section 6.4 of appendix A in the May 17, 1995 interim final rule. Therefore, in today's rule concentration data readings are considered to be stable after a downscale or upscale test if the analyzer reading deviates by less than 2 percent of the analyzer's span value for a minimum of 2 minutes or if the analyzer's measured concentration reading deviates less than 6 percent from the average measured concentration for 6 minutes. Owners and operators of CEMS that do not record concentrations in 1-minute or 3-minute intervals may petition the Administrator under § 75.66 for permission to use alternative cycle time test stabilization criteria. Today's rule adds a diagram and narrative explanation of the cycle time test procedure to section 6.4 of appendix A to provide additional guidance on how to calculate 95 percent of the step change in concentration and how to calculate the cycle time. EPA concurs with the commenters who stated that the cycle time test in today's rule does not present a burden to the source. The Agency maintains that the cycle time test in today's rule will provide more representative cycle response time; therefore, EPA has not changed the order in which the calibration gases are injected into the probe during a cycle time test.

D. Revising the Reporting of Scrubber Parameters and Missing Data for Add-On Emission Controls

Background: Section 75.34(a)(1) of the January 11, 1993 rule allowed the owner or operator of a unit with add-on emission controls to use standard missing data procedures in §§ 75.31 and 75.33 when outlet SO_2 or NO_X CEMS are out of service and the parametric data shows that the add-on emission controls for the unit are operating properly. The May 17, 1995 interim final rule amended this section by requiring the owner or operator of a unit that uses the standard missing data procedures to demonstrate that the emission control device operating parameters were maintained within certain ranges indicative of normal, stable control device operation. In addition, the designated representative must certify proper operation of the add-on emission controls during missing data periods. Section 75.34 (a)(1) of the interim final rule required the parameter ranges to be part of the monitoring plan for the unit (60 FR 26562; May 17, 1995).

Issue: One commenter expressed the concern that if operating parameter ranges are required to be included in the part 75 monitoring plan, title V permitting authorities might include the operating parameters in the title V operating permit. (See Docket A–94–16, Item V–D–13.) This could result in the normal operating parameter ranges becoming permit conditions, the violation of which could result in an enforcement action.

Response: In order to assure that emissions are not underestimated, and to allow the use of standard missing data procedures, it is essential to verify proper operation of the add-on emission controls during missing data periods. Therefore, today's rule maintains the requirement to establish operating parameter ranges representative of periods of proper operation of the add-on emission controls. The EPA notes that the determination of whether parameters should be referenced in a title V operating permit is up to the permitting authority under title V, which will generally be a State or local agency. Since, for purposes of the Acid Rain Program, this information will most likely be used in field audits, EPA believes that it is reasonable to keep this information on-site in the QA/QC plan

rather than including it in the part 75 monitoring plan to be submitted to EPA and the State. In addition, by no longer requiring the information in the monitoring plan that is sent to EPA, this approach reduces the burden on utilities. Therefore, today's rule requires that the parameter ranges be kept on-site as a part of the QA/QC program required in section 1 of appendix B of part 75. This information must be available to EPA and to State and local agencies upon request or during a field audit.

Issue: A comment was received on § 75.34(d). The commenter stated that the requirement for parametric monitoring will unnecessarily increase the owner or operator's administrative costs and workload. (See Docket A–94–16, Items V–D–13 and V–D–07.) The commenter stated that obtaining the data will increase data collection and paperwork for data storage since some affected units do not have continuous electronic data collection for many of the add-on emission control operating parameters.

Response: The EPA believes that verification of proper operation of add-on emission controls generally requires monitoring and recording of various operating parameters. The January 11, 1993 final rule and the May 17, 1995 interim final rule required that the data be recorded on a continuous basis. The January 11, 1993 final rule and the May 17, 1995 interim final rule also required utilities to keep records of the parametric data corresponding to missing data periods for a period of three years. Since this requirement did not change from the original January 11, 1993 final rule, this is not an increased recordkeeping burden. The EPA does recognize the recordkeeping burden imposed on the source when the data is required to be recorded and reported on a continuous basis, but believes this is reasonable in light of the importance of having an objective basis for determining whether the add-on controls are operating properly.

In today's rule, the add-on control parameter recordkeeping provisions are as follows. As in the January 11, 1993 final rule, if an owner or operator wants to use the standard missing data procedures, he must record and keep the parametric monitoring data for each missing data period. This data, which must be in an accessible form and kept for three years from the creation of the record, must show that the controls are operating within the parameter ranges. In addition, the designated representative must certify that the add-on controls were operating properly.

The EPA notes that the final rule preserves the following alternative provisions: (1) Using maximum potential concentration or maximum inlet readings from the previous 720 hours of quality-assured data during missing data periods; or (2) using backup CEMS to reduce the number of missing data periods. Either of these approaches will reduce the recordkeeping burden associated with maintaining parametric data for each hour of missing CEMS data.

E. Clarifying the Procedures Dealing With the Use of Reference Method 9 Instead of Continuous Opacity Monitors on Bypass Stacks

Background: This issue concerns whether Method 9 in appendix A of part 60 can be used for monitoring opacity on a bypass stack. Section 75.18(3)(b) of the January 11, 1993 final rule required an owner or operator to install and operate a COMS on a bypass stack. The May 17, 1995 direct final rule relaxed this requirement by allowing the use of Method 9 on bypass stacks. The EPA received a significant adverse comment on § 75.18(b)(3); therefore, this section of the rule was withdrawn as required. Today's rule reinstates § 75.18(b)(3).

Issue: The EPA received significant adverse comments on § 75.18(b)(3) of the direct final rule. (See Docket A–94–16, Item V–D–18.) The EPA also received a comment in support of using Method 9 instead of a COMS on bypass stacks. (See Docket A–94–16, Item V–D–21.) One commenter expressed concern that Method 9 is not equivalent to installing a COMS and suggested that § 75.18(b)(3) be removed. The commenter noted that EPA has not specified how often Method 9 has to be performed and suggests § 75.18(b)(3) be revised to require continuous or subsequent visual opacity readings. The commenter also noted that Method 9 cannot be used at night or during inclement weather and that EPA does not address what an owner or operator should do during these times. The commenter suggested that EPA should not allow the owner or operator to have emissions pass through the bypass stack during periods when Method 9 cannot be performed.

Response: The EPA agrees with the commenter that Method 9 is as effective as continuous opacity monitoring. However, Method 9 tends to yield a positive observation error and therefore would not result in underestimation of opacity when taken. Since bypass stacks operate infrequently, and generally only in emergency situations, it is an unnecessary economic burden for the sources to install and maintain a COMS. For the purpose of the Acid Rain Program, opacity is not required for all hours of operation. Thus, there are no missing data procedures for COMS and Method 9 is an acceptable method of monitoring opacity for bypass stacks which are seldom used. Therefore, EPA has concluded that the utility should have the flexibility allowed under § 75.18(b)(3). Today's rule reinstates the provision allowing Method 9 to be used to monitor opacity on a bypass stack whenever emissions pass though the bypass stack. Section 75.18(b)(3) of today's rule specifies that the utility must conduct Method 9 in accordance with applicable State regulations for visual observations of opacity. This would include State requirements for the frequency of performing Method 9 and for procedures to follow when it is not possible to perform Method 9. EPA expects to target for audit units that use the bypass stacks for greater than 5% of the time. If the agency finds a pattern of excessive use of the bypass stacks, EPA may revisit the issue of allowing Method 9 for bypass stacks. States have the authority to require COMS.

F. Addressing Minor Comments on the Direct Final Rule

The EPA received a number of minor comments on the May 17, 1995 direct final rule. In some cases, the commenters asked for clarification of provisions or terms used in the direct final rule. In other cases, commenters requested that EPA take policies from the ''Acid Rain CEM (Part 75) Policy Manual'' (Docket A–94–16, Items II–D–54 and V–A–1) related to provisions in the direct final rule and incorporate these policies into part 75. These provisions include: allowing the use of ''AGA Report No. 7'' for calibration of turbine fuel flowmeters; clarifying reporting provisions for a common stack monitoring situation where emissions may be subtracted; and specifying means for apportioning heat input from a common stack to its constituent units. In addition, a commenter pointed out a case where the direct final rule's requirements for recertification of COMS might be more extensive than necessary.

1. Use of AGA Report No. 7

Background: Appendices D and E of part 75 allow the use of fuel flowmeters, in addition to other data such as sulfur content or gross calorific value of fuel samples or stack testing data, to determine SO_2 mass emissions, NO_X emission rate, and heat input from certain gas-fired and oil-fired units instead of requiring monitoring with CEMS. Utilities choosing to use fuel flowmeter monitoring systems instead of CEMS must demonstrate that the fuel

flowmeters can accurately measure fuel flow rate. This requires an initial calibration and periodic (annual) quality assurance testing.

In general, EPA accepts industry standards for calibration of fuel flowmeters, such as those from the AGA or the American Society of Mechanical Engineers (ASME). Because these industry standards for fuel flowmeters are used to transfer fuel for sale, the standards are written to provide for the accurate calibration and measurement of fuel flow. The EPA considers this level of accuracy sufficient for the Acid Rain Program.

Issue: The AGA requested that EPA allow the use of ''AGA Report No. 7'' for calibration of turbine flowmeters for use in appendices D and E of part 75. (See Docket A–94–16, Item V–D–5.)

Response: The EPA had previously approved use of ''AGA Report No. 7'' as an alternative to the prescribed ASME calibration methods through a petition from a utility under § 75.66. Then, the Agency announced that this was an acceptable method for calibration in Question 10.12 in Update 6 of the ''Acid Rain CEM (Part 75) Policy Manual''. (See Docket A–94–16, Item V–A–1.) Consequently, EPA agrees with the commenter and today's rule incorporates this method by reference in § 75.6 for use in § 75.20(g) and appendix D of part 75. The Agency notes that the specific section for calibration requirements is section 8 of ''AGA Report No. 7''.

2. Provisions for Reporting and Monitoring of Subtracted Emissions at a Common Stack

Background: Section 75.16 contains provisions for the monitoring of SO_2 mass emissions and heat input in cases where more than one unit uses the same stack. This is referred to as a ''common stack''. The EPA revised these provisions in the May 17, 1995 direct final rule to allow more options for monitoring in this type of situation. (See section C(4)(a) of the ''Technical Support Document'', Docket A–94–16, Item II–F–2.) The options of §§ 75.16(a)(2)(ii)(B) and (a)(2)(ii)(C) allow the owner or operator to install SO_2 and flow monitoring systems at the common stack and at some of the individual units using the common stack to monitor SO_2 mass emissions at each location. The owner or operator would then calculate the SO_2 mass emissions from the remaining units by subtracting the SO_2 mass emissions measured at the individual units from the SO_2 mass emissions measured at the common stack. For example, if a Phase II unit and a Phase I unit share a common stack, the utility could monitor SO_2 mass emissions from flow and SO_2 monitoring systems at the common stack, monitor SO_2 mass emissions from flow and SO_2 monitoring systems in the ducts from the Phase I unit, and then subtract the SO_2 mass emissions of the Phase I unit from the common stack SO_2 mass emissions to determine the mass emissions from the Phase II unit.

Issue: One commenter mentioned a potential problem with the options of §§ 75.16(a)(2)(ii)(B) and (a)(2)(ii)(C). The commenter was familiar with such installations and mentioned that this method may sometimes produce a negative value for SO_2 emissions or heat input if the SO_2 or flow monitoring system in the duct has a bias adjustment factor. (See Docket A–94–16, Item V–D–18.) The commenter recommended that EPA clarify in §§ 75.16(a)(2)(ii)(B) and (a)(2)(ii)(C) that negative emission and heat input values be set to zero in this case.

Response: The EPA agrees with the commenter and has clarified these provisions in today's action. Negative emission values do not exist in reality and reporting negative SO_2 mass emission values makes no sense. Therefore, the revised provision indicates that SO_2 mass emission values shall not be reported as a value less than zero. This is also similar to provisions in the ''CEMS Submission Instructions'' (Docket A–94–16, Item II–D-99), which require utilities to adjust negative concentration, flow, heat input or emission values to a value of zero (0). In addition, today's rule makes the same revision to the parallel provision in § 75.16(b)(2)(ii)(B), for a situation where affected Phase II units share a common stack with one or more non-affected units, and SO_2 mass emissions from the non-affected units are subtracted from SO_2 mass emissions on the common stack.

3. Heat Input Apportionment at Common Stacks

Background: Another issue related to common stacks concerns heat input. Heat input can be determined using a flow monitor and a CO_2 or O_2 diluent monitor. In order to determine if a utility system (or dispatch system) has underutilization during Phase I under part 72 (§§ 72.91 and 72.92, in particular), and if so, how many allowances should be surrendered, it is necessary to have heat input on an individual unit basis. Individual unit heat input is still necessary, even in the case where units share a common stack and heat input is measured by monitors on the common stack. In § 75.16(e) of the May 17, 1995 direct final rule, EPA clarified this requirement. (See section C(4)(a) of the ''Technical Support Document,'' Docket A–94–16, Item II–F–2.) In Question 17.5 of the ''Acid Rain CEM (Part 75) Policy Manual,'' EPA approved two methods for apportioning heat input to individual units that feed into a common stack, where all units combust the same type of fuel. (See Docket A–94–16, Item IV–D–54.) These methods apportion total heat input measured at the common stack by using the ratio of the individual unit usage to the usage of all the units using the common stack. For most plants, the measure of unit usage is electrical generation in megawatts (MWe), and for other plants, the measure of unit usage for the apportionment is the flow of steam associated with each unit.

Issue: A commenter requested that EPA incorporate these apportionment methods into part 75. (See Docket A–94–16, Item V–D–18.)

Response: The EPA agrees with the commenter and today's rule has incorporated this heat input apportionment methodology in § 75.16(e)(5). The Agency has already accepted this apportionment method through policy as sufficiently accurate for heat input, provided that all units use the same kind of fuel. Because different fuels have different combustion characteristics and their emission calculation formulas will use a different combustion ratio, called the ''F-factor,'' this heat input apportionment methodology is not appropriate if different fuels with a different F-factor are used. Incorporating the heat input apportionment provision allows utilities to implement this apportionment without going through a formal petition approval process. An apportionment methodology based upon the ratio of electrical generation or steam flow is already incorporated in part 75 for fuel flow measured by flowmeters on common pipes in section 2.1.2.2 of appendix D. For these reasons, EPA is incorporating the heat input methodology in § 75.16(e)(5).

4. Recertification of Opacity Monitoring Systems

Background: Section 75.20(b) contains requirements for recertification of CEMS and COMS. This paragraph requires recertification whenever a significant change is made to a monitoring system or to the conditions under which it is monitoring that will affect the ability of the monitoring system to accurately measure, record and report emissions or opacity. An example of a significant change to a monitoring system's conditions for monitoring is if the ductwork to a stack

is modified so that a new unit emits through the stack, in addition to the existing units. In this case, the change to the flue gas handling system could significantly change the flow and concentration profiles in the stack, thus affecting the ability of the monitor to measure, record and report emissions.

In general, the Acid Rain Program is designed to be as consistent as possible with State requirements for monitoring opacity. Although section 412 of the Act requires installation of opacity monitors for all affected units, the Act does not provide for a standard or limitation on opacity for the Acid Rain Program. In order to make use of opacity monitoring data from affected units, part 75 requires that opacity data be reported to State agencies in the format specified by the State. In addition, if a State agency certifies an opacity monitoring system to the requirements of Performance Specification 1 in appendix B of part 60, that certification also applies to the Acid Rain Program.

Issue: A commenter also noted that § 75.20(b) of the May 17, 1995 direct final rule requires recertification of a COMS due to changes in unit operation. The commenter suggested that the results of the certification tests for opacity monitoring systems are not significantly affected by changes in pollutant emission levels, and therefore, the requirement for recertification upon a change in unit opacity should be deleted.

Response: The EPA agrees with the commenter that changes in emissions, such as from a fuel change, do not significantly affect, and so should not require recertification, of the opacity monitoring system. Today's rule removes this requirement from § 75.20(b).

For similar reasons, EPA is also removing the requirement for recertification of opacity monitoring systems due to modifications in the flue gas handling system, except for those modifications to ductwork that change the path length of the opacity monitoring system. After further consideration of opacity recertification requirements, the Agency has determined that only these modifications would significantly affect the opacity monitoring system's ability to monitor, record and report opacity. The EPA notes that a utility must still meet any State requirements for recertification of an opacity monitoring system.

G. Addressing Comments on RATA Notifications

Background: The May 17, 1995 direct final rule included provisions requiring notification of the date on which periodic Relative Accuracy Test Audits (RATAs) will be performed in §§ 75.21(d) and 75.61(a)(5). The direct final provisions require submission of written notification to the Administrator, the appropriate EPA Regional Office, and the applicable State or local air pollution control agency at least 21 days before the scheduled date of a RATA. The date may be rescheduled if written or oral notice is provided to EPA and to the appropriate State or local air quality agency at least seven days before the earlier of the original scheduled date or the new test date.

The Texas Subgroup commented adversely upon the requirements in §§ 75.21(d) and 75.51(a)(5) for notifications of the date on which periodic RATAs will be performed. These provisions were removed from part 75 in a May 22, 1996 amendment to part 75 (60 FR 25580–25585). As part of the document in the Federal Register, EPA took public comment for an additional 15 days.

Public comment focused upon five main issues related to the notifications for periodic RATAs: need for the notification provision; the agencies or offices to which a notification should be sent; whether agencies or offices could grant a waiver from the testing notification; how the time periods for notification could be changed to allow greater flexibility to utilities; and the means by which or form in which a notification could be transmitted to an agency. Comments were received from three utility commentors and from four State or local air pollution agencies (See Docket A–94–16 Items V–D–25 through V–D–27 and V–D–29 through V–D–32).

Issue: One of the utility commentors felt that the RATA notification provision was not that critical. This utility commentor expressed concern over lack of flexibility (See Docket A–94–16 Item V–D–26). The State and local agencies all supported having a RATA notification (See Docket A–94–16 Items V–D–29 through V–D–32).

Response: As stated in the Federal Register (60 FR 25581), EPA believes it is critical for EPA, State, and local agency personnel to be able to observe periodic RATAs in order to ensure the quality of monitored data for the Acid Rain Program. In addition, the EPA believes that advance notification of the date of periodic RATA testing allows the cost-effective use of agency resources by coordinating auditing of monitor performance with regularly scheduled quality assurance testing and by coordinating field observations at multiple locations. Thus, EPA is reinstating the requirements for notification of the date of periodic RATA testing.

Issue: Two related issues concerned to which agencies notifications should be sent, and whether agencies or offices could grant a waiver from the testing notification. In the Federal Register document requesting comment on the periodic RATA notification, EPA specifically requested comment on removing the requirement that notifications be provided to the Administrator (received by EPA's Acid Rain Division) and allowing a State or local air pollution control agency or EPA regional office to waive the notification requirement. One utility commentor felt that the RATA notification might be necessary for its State agency, but not for the Federal EPA (See Docket A–94–16 Item V–D–25). One State agency supported the idea of allowing a region to determine to which agency should be notified (See Docket A–94–16 Item V–D–29). A utility supported allowing a State or local agency or EPA regional office to issue a waiver (See Docket A–94–16 Item V–D–27).

Response: EPA considered the comment requesting that notifications go only to State agencies. However, some EPA Regional offices are active in observing RATA testing. Therefore, EPA is retaining the requirement to send notifications of periodic RATA testing to EPA.

Based upon the public comments, EPA is creating a provision that would allow a state or local agency, an EPA regional office, or the Administrator's delegatee (EPA's Acid Rain Division) to waive the requirement for periodic RATA notification for a unit or a group of units. In general, a state or local agency could waive the requirement for notification to its own office, but could not waive the requirement for notification to the EPA. Similarly, an EPA Regional office could waive the requirement for notification to its office, but could not waive the requirement for notification to a State or local agency or to the Administrator's delegatee. The waiver should specify the units for which the periodic RATA notification requirement is waived and the test or period of time for which the periodic RATA notification requirement is waived. For example, a regional EPA office might send a letter to the designated representatives of several utilities specifying that the designated representative or owner or operator would not be required to submit notice until and unless the regional office sends another letter specifying that notification is requested. A State agency

might grant a waiver from the testing requirement for one particular unit in that state for its RATA testing in the first quarter of 1997. EPA's Acid Rain Division could issue a policy statement through the Acid Rain Program Policy Manual if it wanted to waive the requirement for notification to the Administrator indefinitely.

Today's rule also specifies that a state agency or EPA may discontinue the waiver from the periodic RATA notification. However, the periodic RATA notification requirement would only resume for any future testing; a utility would never retroactively be required to provide notification. The state agency or EPA would need to send another written statement specifying for which units or groups of units the waiver no longer applies. Thus, if an agency's priorities for observing testing change over time, the agency would be able to grant case-by-case waivers, grant long-term waivers or discontinue long-term waivers to be consistent with those new priorities for observing. EPA believes that allowing this flexibility will encourage States and regional EPA offices to issue waivers in cases where they are certain they will not be observing tests for a unit or group of units for a year or more.

Issue: An issue of great concern to commentors was revising the time limits for notification to allow greater flexibility. One utility commentor felt that putting any time limit for providing notification was problematic, since a utility could be in violation of that time limit. This commentor suggested that if notification were necessary at all, the notification should be a general schedule of testing provided ahead of time (See Docket A–94–16 Item V–D–26). Another utility commenter expressed concern that the requirement for 21 days advance notification under the Acid Rain Program is different from their State agency requirement for a 30-day notification, and that coordinating the different requirements is difficult (See Docket A–94–16 Item V–D–25). State agencies supported having an initial notification requirement of 21 days (See Docket A–94–16 Items V–D–29, V–D–30, V–D–32) or 30 days (See Docket A–94–16 Item V–D–31). One state felt that a 21-day advance notification was reasonable because utilities generally plan at least this far in advance for periodic RATAs (See Docket A–94–16 Item V–D–29).

Several State agencies were sensitive to utility's need for greater flexibility for sending notification where testing has been rescheduled. Some States suggested that it would be sufficient for a utility to notify them as late as twenty-four hours before the new date of the test (See Docket A–94–16 Items V–D–31 and V–D–32), in order to allow utilities greater flexibility in rescheduling. Another state suggested that there should be different requirements for notification, depending on whether the scheduled date is changed by less than three days or changed by three days or greater. In the first case, a two-day notification would not be appropriate, but in the latter case it would be appropriate. This state also commented that in some cases, an observer might already be on site when a test needs to be postponed until the next day (See Docket A–94–16 Item V–D–30). In this case, notification should not be required.

Response: For the initial notification of the date of periodic RATA testing, EPA has decided to retain the requirement for advance notification of at least twenty-one days. EPA agreed with the commentor who felt this requirement was reasonable. EPA notes that twenty-one days advance notification is sufficiently far in advance that agencies can schedule an observer, which is the primary purpose of requiring notification. Although the Agency understands the concerns of utilities with having a time limit, the Agency believes there must be some time limit established in order for the notification to meet its purpose of allowing agencies to observe testing.

Also, EPA would like to clarify that this requirement is for notification *no later than* twenty-one days in advance. Thus, if a state agency has a requirement for notification thirty days in advance, a utility could send notification both to the State and to EPA thirty days in advance. Furthermore, if a utility wanted to send a schedule of testing for all of its units during the next calendar quarter in a single notification, it could do so. In either case, the minimum information that must be present in the notification is as follows: (1) the name of the plant and unit at which RATA testing will be performed; (2) the ORISPL number for the plant; and (3) the date or dates for which RATA testing is scheduled for that unit. It would not be necessary to use the optional EPA form for RATA testing notifications if the schedule letter or State notification letter contained the above information.

EPA also agrees with the commentors who suggest that twenty-four hours is sufficient advance notification when a test is rescheduled, where rescheduling is done shortly before the original test date. If the utility knows the rescheduled test date earlier, it should notify agencies when it knows this date. However, the twenty-four hour notice is a minimum requirement. This should prevent any situations where a utility might be required to wait before starting testing or else risk a technical violation. Using a single time period of twenty-four hours (the calendar day before) would also be more straightforward than having different notification requirements, depending upon how many days the test date is changed. In addition, today's rule includes a provision allowing for waivers of the notification requirement where an observer is on-site. If an observer were actually already on site and testing were postponed, then the observer could choose to waive the notification requirement for that test for *all* agencies (state, local, EPA regional office and the EPA Administrator's delegatee).

Issue: EPA also received comments on the means by which or the form in which a notification could be transmitted to an agency. The May 17, 1995 direct final rule contained a provision requiring an initial written notification of the date of testing, and notification again if a test is rescheduled either ''in writing or by telephone or other means.'' In the May 22, 1996 Federal Register notice requesting public comment, EPA requested comment on using means of notification such as telephone, facsimile, or electronic mail notification for a test that is rescheduled. One utility commentor suggested that they would prefer to send a notification by electronic mail, either for initial notification or in case of rescheduling, and eliminate paper notifications altogether (See Docket A–94–16 Item V–D–25). State commentors felt that notifications could be submitted either by letter, electronic mail or telephone (See Docket A–94–16 Item V–D–29); others explicitly stated that these means were appropriate for a notification where a testing date is rescheduled, but not for the original notification (See Docket A–94–16 Items V–D–30 and V–D–32).

Response: Based upon the comments received, EPA is retaining the provisions that initial notification of the testing date must be provided in writing. However, EPA is clarifying in today's rule that a written notification may be provided in the mail (U.S. mail or overnight mail carrier) or via facsimile. In addition, an agency may choose to accept electronic mail to meet the requirement for an initial written notification. Notification in case of rescheduled testing may be provided in writing, by telephone, or by other means that is acceptable to the agency receiving the notification. Because the

initial notification is most critical for an agency that wants to schedule test observations, it is still required to be submitted in writing, rather than over the telephone. If a utility wishes to use electronic mail or some other form of notification not explicitly mentioned in part 75, it should contact its state or local agency and EPA Regional office to determine if this is acceptable. The agency may request additional safeguards be used when electronic mail notice is provided (e.g., requiring procedures for confirmation of receipt or a follow-up letter in the mail later).

IV. Impact Analyses

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency 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 Agency 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 Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency 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 than $100 million in any one year, the Agency 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 Agency is not required to develop a plan with regard to small governments. However, as discussed in this preamble, the rule has the net effect of reducing the burden of part 75 of the Acid Rain regulations on regulated entities that have add-on emission controls, including both investor-owned and municipal utilities.

C. Paperwork Reduction Act

Today's final rule does not add any additional information collection requirements to the current information collection requirements in the existing part 75. Therefore an Information Collection Request was not prepared for today's final rule.

The information collection requirements for the existing part 75 rule have been approved by the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned control number 2060–0258.

The information collection requirements in today's final rule do not increase the estimated reporting burden. In fact, today's final rule slightly reduces the reporting burden by allowing utilities which have units with add-on emission controls which want to use the missing data procedures described in this final rule to keep the parametric data ranges on site rather than to report it to EPA. Since the reduction is voluntary and only affects units with add-on emission controls, it is difficult to determine the specific amount of the reduction in burden overall.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency; 401 M Street SW (Mail Code 2136); 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.''

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, et seq., requires federal agencies to consider potential impacts of proposed regulations on small business entities. If a preliminary analysis indicates that a proposed regulation would have a significant adverse economic impact on a substantial number of small business entities, then a regulatory flexibility analysis must be prepared. An action which has a predominantly deregulatory or beneficial economic effect on small business does not need a regulatory flexibility analysis.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will reduce regulatory burdens on small business entities because the provisions in today's final rule increase the implementation flexibility and slightly relieve the regulatory burden for all utilities affected by this rule, including small utilities. Therefore, EPA has determined that this rule will have no significant adverse economic effect on a substantial number of small business entities.

E. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 75

Environmental protection, Air pollution control, Carbon dioxide, Continuous emission monitors, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 5, 1996.

Carol M. Browner,

Administrator.

The interim final rule (59 FR 26560, May 17, 1995) is adopted as final with the following changes. For the reasons set out in the preamble, part 75 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 75—CONTINUOUS EMISSION MONITORING

1. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651k.

2. Section 75.6 is amended by revising paragraph (e) to read as follows:

§ 75.6 Incorporation by reference.

* * * * *

(e) The following materials are available for purchase from the following address: American Gas Association, 1515 Wilson Boulevard, Arlington VA 22209:

(1) American Gas Association Report No. 3: Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, Part 1: General Equations and Uncertainty Guidelines (October 1990 Edition), Part 2: Specification and Installation Requirements (February 1991 Edition) and Part 3: Natural Gas Applications (August 1992 Edition), for § 75.20 and appendices D and E of this part.

(2) American Gas Association Transmission Measurement Committee Report No. 7: Measurement of Gas by Turbine Meters (1985 Edition), for § 75.20 and appendix D of this part.

3. Section 75.11 is amended by revising paragraphs (a), (d), and (e); and by removing paragraph (g) to read as follows:

§ 75.11 Specific provisions for monitoring SO_2 emissions (SO_2 and flow monitors).

(a) *Coal-fired units.* The owner or operator shall meet the general operating requirements in § 75.10 for an SO_2 continuous emission monitoring system and a flow monitoring system for each affected coal-fired unit while the unit is combusting coal and/or any other fuel, except as provided in paragraph (e) of this section, in § 75.16, and in subpart E of this part. During hours in which only natural gas or gaseous fuel with a sulfur content no greater than natural gas (i.e., >20 grains per 100 standard cubic feet (gr/100 scf) is combusted in the unit, the owner or operator shall comply with the applicable provisions of paragraph (e)(1), (e)(2), or (e)(3) of this section.

* * * * *

(d) *Gas-fired and oil-fired units.* The owner or operator of an affected unit that qualifies as a gas-fired or oil-fired unit, as defined in § 72.2 of this chapter, based on information submitted by the designated representative in the monitoring plan, shall measure and record SO_2 emissions:

(1) By meeting the general operating requirements in § 75.10 for an SO_2 continuous emission monitoring system and flow monitoring system. If this option is selected, the owner or operator shall comply with the applicable provisions in paragraph (e)(1), (e)(2), or (e)(3) of this section during hours in which the unit combusts only natural gas (or gaseous fuel with a sulfur content no greater than natural gas); or

(2) By providing other information satisfactory to the Administrator using the applicable procedures specified in appendix D of this part for estimating hourly SO_2 mass emissions. Appendix D shall not, however, be used when the unit combusts gaseous fuel with a sulfur content greater than natural gas (i.e., ≤ 20 gr/100 scf); when such fuel is burned, the owner or operator shall comply with the provisions of paragraph (e)(4) of this section.

(e) Units with SO_2 continuous emission monitoring systems during the combustion of gaseous fuel. The owner or operator of an affected unit with an SO_2 continuous emission monitoring system shall, during any hours in which the unit combusts only gaseous fuel, determine SO_2 emissions in accordance with paragraph (e)(1), (e)(2), (e)(3) or (e)(4) of this section, as applicable.

(1) When pipeline natural gas is burned in the unit, the owner or operator may, in lieu of operating and recording data from the SO_2 monitoring system, determine SO_2 emissions by using the heat input calculated using a certified flow monitoring system and a certified diluent monitor, in conjunction with the default SO_2 emission rate for pipeline natural gas from section 2.3.2 of appendix D of this part, and Equation F–23 in appendix F of this part. When this option is chosen, the owner or operator shall perform the necessary data acquisition and handling system tests under § 75.20(c), and shall meet all quality control and quality assurance requirements in appendix B of this part for the flow monitor and the diluent monitor.

(2) When gaseous fuel with a sulfur content no greater than natural gas (i.e., ≤ 20 gr/100 scf) is combusted in the unit, the owner or operator may, in lieu of operating and recording data from the SO_2 monitoring system, determine SO_2 emissions by certifying an excepted monitoring system in accordance with § 75.20 and with appendix D of this part, by following the fuel sampling and analysis procedures in section 2.3.1 of appendix D of this part, by meeting the recordkeeping requirements of § 75.55, and by meeting all quality control and quality assurance requirements for fuel flowmeters in appendix D of this part. If this compliance option is selected, the hourly unit heat input reported under § 75.54(b)(5) shall be determined using a certified flow monitoring system and a certified diluent monitor, in accordance with the procedures in section 5.2 of appendix F of this part. The flow monitor and diluent monitor shall meet all of the applicable quality control and quality assurance requirements of appendix B of this part.

(3) When gaseous fuel with a sulfur content no greater than natural gas (i.e., ≤ 20 gr/100 scf) is burned in the unit, the owner or operator may determine SO_2 mass emissions by using a certified SO_2 continuous monitoring system, in conjunction with a certified flow rate monitoring system. However, on and after January 1, 1999, the SO_2 monitoring system shall be subject to the following provisions; prior to January 1, 1999, the owner or operator may comply with these provisions:

(i) When conducting the daily calibration error tests of the SO_2 monitoring system, as required by section 2.1.1 in appendix B of this part, the zero-level calibration gas shall have an SO_2 concentration of 0.0 percent of span. This restriction does not apply if gaseous fuel is burned in the affected unit only during unit startup.

(ii) The zero-level calibration response of the SO_2 monitoring system shall be adjusted, either automatically or manually, to read exactly 0.0 ppm SO_2 following each successful daily calibration error test conducted in accordance with section 2.1.1 in appendix B of this part. This calibration adjustment is optional if gaseous fuel is burned in the affected unit only during unit startup.

(iii) Any hourly average SO_2 concentration of less than 2.0 ppm recorded by the SO_2 monitoring system shall be adjusted to a default value of 2.0 ppm, for reporting purposes. Such adjusted hourly averages shall be considered to be quality-assured data, provided that the monitoring system is operating and is not out-of-control with

respect to any of the quality assurance tests required by appendix B of this part (i.e., daily calibration error, linearity and relative accuracy test audit).

(iv) Notwithstanding the requirements of sections 2.1.1.1 and 2.1.1.2 of appendix A of this part, a second, low-scale measurement range is not required for units that sometimes burn natural gas (or gaseous fuel with a sulfur content no greater than natural gas) and at other times burn higher-sulfur fuel(s) such as coal or oil. For units that burn only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) and burn no other type(s) of fuel(s), the owner or operator shall set the span of the SO_2 monitoring system to a value no greater than 200 ppm.

(4) During any hours in which a unit combusts only gaseous fuel(s) with a sulfur content greater than natural gas (i.e., > 20 gr/100 scf), the owner or operator shall meet the general operating requirements in § 75.10 for an SO_2 continuous emission monitoring system and a flow monitoring system.

* * * * *

4. Section 75.16 is amended by revising paragraphs (a)(2)(ii)(B), (a)(2)(ii)(C), and (b)(2)(ii)(B) and by adding paragraph (e)(5) to read as follows:

§ 75.16 Special provisions for monitoring emissions from common, bypass, and multiple stacks for SO_2 emissions and heat input determinations.

(a) * * *

(2) * * *

(ii) * * *

(B) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct from each Phase II or nonaffected unit; calculate SO_2 mass emissions from the Phase I units as the difference between SO_2 mass emissions measured in the common stack and SO_2 mass emissions measured in the ducts of the Phase II and nonaffected units; record and report the calculated SO_2 mass emissions from the Phase I units, not to be reported as an hourly average value less than zero; and combine emissions for the Phase I units for compliance purposes; or

(C) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct from each Phase I or nonaffected unit; calculate SO_2 mass emissions from the Phase II units as the difference between SO_2 mass emissions measured in the common stack and SO_2 mass emissions measured in the ducts of the Phase I and nonaffected units, not to be reported as an hourly average value less than zero; and combine emissions for the Phase II units for recordkeeping and compliance purposes; or

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct from each nonaffected unit; determine SO_2 mass emissions from the affected units as the difference between SO_2 mass emissions measured in the common stack and SO_2 mass emissions measured in the ducts of the nonaffected units, not to be reported as an hourly average value less than zero; and combine emissions for the Phase I and Phase II affected units for recordkeeping and compliance purposes; or

* * * * *

(e) * * *

(5) The owner or operator of an affected unit with a diluent monitor and a flow monitor installed on a common stack to determine heat input at the common stack may choose to apportion the heat input from the common stack to each affected unit utilizing the common stack by using either of the following two methods, provided that all of the units utilizing the common stack are combusting fuel with the same F-factor found in section 3 of appendix F of this part. The heat input may be apportioned either by using the ratio of load (in MWe) for each individual unit to the total load for all units utilizing the common stack or by using the ratio of steam flow (in 1000 lb/hr) for each individual unit to the total steam flow for all units utilizing the common stack.

5. Section 75.18 is amended by adding paragraph (b)(3) to read as follows:

§ 75.18 Specific provisions for monitoring emissions from common and bypass stacks for opacity.

* * * * *

(b) * * *

(3) The owner or operator monitors opacity using Method 9 of appendix A of part 60 of this chapter whenever emissions pass through the bypass stack. Method 9 shall be used in accordance with the applicable State regulations.

6. Section 75.20 is amended by revising the introductory text of paragraph (b) and by revising paragraph (g)(1)(i) to read as follows:

§ 75.20 Certification and recertification procedures.

* * * * *

(b) *Recertification approval process.* Whenever the owner or operator makes a replacement, modification, or change in the certified continuous emission monitoring system or continuous opacity monitoring system (which includes the automated data acquisition and handling system, and, where applicable, the CO_2 continuous emission monitoring system), that significantly affects the ability of the system to measure or record the SO_2 concentration, volumetric gas flow, SO_2 mass emissions, NO_X emission rate, CO_2 concentration, or opacity, or to meet the requirements of § 75.21 or appendix B of this part, the owner or operator shall recertify the continuous emission monitoring system, continuous opacity monitoring system, or component thereof according to the procedures in this paragraph. Examples of changes which require recertification include: replacement of the analytical method, including the analyzer; change in location or orientation of the sampling probe or site; rebuilding of the analyzer or all monitoring system equipment; and replacement of an existing continuous emission monitoring system or continuous opacity monitoring system. In addition, if a continuous emission monitoring system is not operating for more than 2 calendar years, then the owner or operator shall recertify the continuous emission monitoring system. The Administrator may determine whether a replacement, modification or change in a monitoring system significantly affects the ability of the monitoring system to measure or record the SO_2 concentration, volumetric gas flow, SO_2 mass emissions, NO_X emission rate, CO_2 concentration, or opacity. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit operation that significantly changes the flow or concentration profile of monitored emissions, the owner or operator shall recertify the continuous emission monitoring system or component thereof according to the procedures in this paragraph. The owner or operator shall recertify a continuous opacity monitoring system whenever the monitor path length changes or as required by an applicable State or local regulation or permit. Recertification is not required prior to use of a non-redundant backup continuous emission monitoring system in cases where all of the following conditions have been met: the non-redundant backup continuous emission monitoring system has been certified at the same sampling location within the previous two calendar years; all components of the non-redundant

backup continuous emissions monitoring system have previously been certified; and component monitors of the non-redundant backup continuous emission monitoring system pass a linearity check (for pollutant concentration monitors) or a calibration error test (for flow monitors) prior to their use for monitoring of emissions or flow. In addition, changes resulting from routine or normal corrective maintenance and/or quality assurance activities do not require recertification, nor do software modifications in the automated data acquisition and handling system, where the modification is only for the purpose of generating additional or modified reports for the State Implementation Plan, internal company uses, or for reporting requirements under subpart G of this part.

* * * * *

(g) * * *

(1) * * *

(i) When the optional SO_2 mass emissions estimation procedure in appendix D of this part or the optional NO_X emissions estimation protocol in appendix E of this part is used, the owner or operator shall provide data from a calibration test for each fuel flowmeter according to the appropriate calibration procedures using one of the following standard methods: ASME MFC–3M–1989 with September 1990 Errata, ''Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi'', ASME MFC–4M–1986 (Reaffirmed 1990) ''Measurement of Gas Flow by Turbine Meters'', ASME MFC–5M–1985, ''Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters'', ASME MFC–6M–1987 with June 1987 Errata, ''Measurement of Fluid Flow in Pipes Using Vortex Flow Meters'', ASME MFC–7M–1987 (Reaffirmed 1992), ''Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles'', ASME MFC–9M–1988 with December 1989 Errata, ''Measurement of Liquid Flow in Closed Conduits by Weighing Method'', ISO 8316: 1987(E) ''Measurement of Liquid Flow in Closed Conduits—Method by Collection of the Liquid in a Volumetric Tank'', Section 8, Calibration from American Gas Association Transmission Measurement Committee Report No. 7: Measurement of Gas by Turbine Meters (1985 Edition) or American Gas Association Report No. 3: Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids Part 1: General Equations and Uncertainty Guidelines (October 1990 Edition), Part 2: Specification and Installation Requirements (February 1991 Edition) and Part 3: Natural Gas Applications (August 1992 Edition), excluding the modified calculation procedures of Part 3, as required by appendices D and E of this part (all methods incorporated by reference under § 75.6). The Administrator may also approve other procedures that use equipment traceable to National Institute of Standards of Technology (NIST) standards. The designated representative shall document the procedure and the equipment used in the monitoring plan for the unit and in a petition submitted in accordance with § 75.66(c).

* * * * *

7. Section 75.21 is amended by revising paragraph (a); by adding paragraph (d); and by removing paragraph (f) to read as follows:

§ 75.21 Quality assurance and quality control requirements.

(a) *Continuous emission monitoring systems.* The owner or operator of an affected unit shall operate, calibrate and maintain each continuous emission monitoring system used to report emission data under the Acid Rain Program as follows:

(1) The owner or operator shall operate, calibrate and maintain each primary and redundant backup continuous emission monitoring system according to the quality assurance and quality control procedures in appendix B of this part.

(2) The owner or operator shall ensure that each non-redundant backup continuous emission monitoring system complies with the daily and quarterly quality assurance and quality control procedures in appendix B of this part for each day and quarter that the system is used to report data.

(3) The owner or operator shall perform quality assurance upon a reference method backup monitoring system according to the requirements of Method 2, 6C, 7E, or 3A in appendix A of part 60 of this chapter (supplemented, as necessary, by guidance from the Administrator), instead of the procedures specified in appendix B of this part.

(4) When a unit combusts only natural gas or gaseous fuel with a sulfur content no greater than natural gas and SO_2 emissions are determined in accordance with §§ 75.11(e)(1) or (e)(2), the owner or operator of a unit with an SO_2 continuous emission monitoring system is not required to perform the daily or quarterly assessments of the SO_2 monitoring system under appendix B of this part on any day or in any calendar quarter in which only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) is combusted in the unit. Notwithstanding, the results of any daily calibration error test and linearity test of the SO_2 monitoring system performed while the unit is combusting only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) shall be considered valid. If any such test is failed, the SO_2 monitoring system shall be considered to be out-of-control until a subsequent test of the same type has been successfully completed.

(5) For a unit with an SO_2 continuous monitoring system, in which natural gas (or gaseous fuel with a sulfur content no greater than natural gas) is sometimes burned as a primary and/or backup fuel, and in which higher-sulfur fuel(s) such as oil or coal are, at other times, burned as primary or backup fuel(s), the owner or operator shall perform the relative accuracy test audits of the SO_2 monitoring system (as required by section 6.5 in appendix A of this part and section 2.3.1 in appendix B of this part) only when the higher-sulfur fuel is combusted in the unit, and shall not perform SO_2 relative accuracy test audits when gaseous fuel is the only fuel being combusted.

(6) If a unit with an SO_2 monitoring system burns only fuel(s) with a sulfur content no greater than that of natural gas and never combusts other fuel(s) with a sulfur content greater than natural gas, the SO_2 monitoring system is exempted from the relative accuracy test audit requirements in appendices A and B of this part.

(7) In determining the deadline for the next semiannual or annual relative accuracy test audit of an SO_2 monitoring system, any calendar quarter during which a unit combusts only fuel(s) with a sulfur content no greater than natural gas shall be excluded in determining the calendar quarter, bypass operating quarter, or unit operating quarter when the next relative accuracy test audit must be performed for the SO_2 monitoring system. If, however, as a result of such exclusion of calendar quarters, eight calendar quarters elapse after a relative accuracy test audit, without a subsequent relative accuracy test audit of an SO_2 monitoring system having been performed, the owner or operator shall ensure that a relative accuracy test audit is performed in the next calendar quarter in which a fuel with a sulfur content greater than natural gas is burned in the unit.

(8) The owner or operator who, in accordance with § 75.11(e)(1), uses a certified flow monitor and a certified diluent monitor and Equation F–23 in appendix F of this part to calculate SO_2 emissions during hours in which a unit combusts only pipeline natural gas,

shall meet all quality control and quality assurance requirements in appendix B of this part for the flow monitor and the diluent monitor.

* * * * *

(d) *Notification for periodic relative accuracy test audits.* The owner or operator or the designated representative shall submit a written notice of the dates of relative accuracy testing as specified in § 75.61.

* * * * *

8. Section 75.30 is amended by revising paragraph (d) to read as follows:

§ 75.30 General provisions.

* * * * *

(d) The owner or operator shall comply with the applicable provisions of this paragraph during hours in which a unit with an SO_2 continuous emission monitoring system combusts only natural gas or gaseous fuel with a sulfur content no greater than natural gas.

(1) Whenever a unit with an SO_2 continuous emission monitoring system combusts only pipeline natural gas and the owner or operator is using the procedures in section 7 of appendix F of this part to determine SO_2 mass emissions pursuant to § 75.11(e)(1), the owner or operator shall, for the purposes of reporting heat input data under § 75.54(b)(5) and for the calculation of SO_2 mass emissions using Equation F–23 in section 7 of appendix F of this part, substitute for missing data from a flow monitoring system, CO_2 diluent monitor or O_2 diluent monitor using the missing data substitution procedures in § 75.36.

(2) Whenever a unit with an SO_2 continuous emission monitoring system combusts gaseous fuel with a sulfur content no greater than natural gas (i.e., ≤ 20 gr/100 scf) and the owner or operator uses the gas sampling and analysis and fuel flow procedures in appendix D of this part, to determine SO_2 mass emissions pursuant to § 75.11(e)(2), the owner or operator shall substitute for missing sulfur content, gross calorific value and fuel flow meter data using the missing data procedures in appendix D of this part and shall also, for the purposes of reporting heat input data under § 75.54(b)(5), substitute for missing data from a flow monitoring system, CO_2 diluent monitor or O_2 diluent monitor using the missing data substitution procedures in § 75.36.

(3) The owner or operator of a unit with an SO_2 monitoring system shall not include hours when the unit combusts only natural gas (or a gaseous fuel with sulfur content no greater than that of natural gas) in the SO_2 data availability calculations in § 75.32, or in the calculations of substitute SO_2 data using the procedures of either §§ 75.31 or 75.33, when SO_2 emissions are determined in accordance with §§ 75.11 (e)(1) or (e)(2). For the purpose of the missing data and availability procedures for SO_2 pollutant concentration monitors in §§ 75.31 through 75.33 only, all hours during which the unit combusts only natural gas, or a gaseous fuel with a sulfur content no greater than natural gas, shall be excluded from the definition of ''monitor operating hour,'' ''quality-assured monitor operating hour,'' ''unit operating hour,'' and ''unit operating day'', when SO_2 emissions are determined in accordance with §§ 75.11 (e)(1) or (e)(2).

(4) During all hours in which a unit with an SO_2 continuous emission monitoring system combusts only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) and the owner or operator uses the SO_2 monitoring system to determine SO_2 mass emissions pursuant to § 75.11(e)(3), the owner or operator shall determine the percent monitor data availability for SO_2 in accordance with § 75.32 and shall use the standard SO_2 missing data procedures of § 75.33.

* * * * *

9. Section 75.32 is amended by revising paragraph (a)(3) and by removing paragraph (a)(4) to read as follows:

§ 75.32 Determination of monitoring data availability for standard missing data procedures.

(a) * * *

(3) The owner or operator shall include all unit operating hours, and all monitor operating hours for which quality-assured data were recorded by a certified primary monitor; a certified redundant or non-redundant backup monitor or a reference method for that unit; or by an approved alternative monitoring system under subpart E of this part when calculating percent monitor data availability using Equation 8 or 9. No hours from more than three years (26,280 clock hours) earlier shall be used in Equation 9. For a unit that has accumulated less than 8,760 unit operating hours in the previous three years (26,280 clock hours), replace the words ''during previous 8,760 unit operating hours'' in Equation 9 with ''in the previous three years'' and replace ''8,760'' with ''total unit operating hours in the previous three years.'' The owner or operator of a unit with an SO_2 monitoring system shall, when SO_2 emissions are determined in accordance with §§ 75.11(e)(1) or (e)(2), exclude hours in which a unit combusts only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) from calculations of percent monitor data availability for SO_2 pollutant concentration monitors, as provided in § 75.30(d).

* * * * *

10. Section 75.34 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (c) introductory text, and (d) to read as follows:

§ 75.34 Units with add-on emission controls.

(a) The owner or operator of an affected unit equipped with add-on SO_2 and/or NO_X emission controls shall use one of the following options for each hour in which quality-assured data from the outlet SO_2 and/or NO_X monitoring system(s) are not obtained:

(1) The owner or operator may use the missing data substitution procedures as specified for all affected units in §§ 75.31 through 75.33 to substitute data for each hour in which the add-on emission controls are operating within the proper parametric ranges specified in the quality assurance/quality control program for the unit, required by section 1 in appendix B of this part. The designated representative shall document in the quality assurance/quality control program the ranges of the add-on emission control operating parameters that indicate proper operation of the controls. The owner or operator shall, for each missing data period, record data to verify the proper operation of the SO_2 or NO_X add-on emission controls during each hour, as described in paragraph (d) of this section. In addition, under § 75.64(c), the designated representative shall submit a certified verification of the proper operation of the SO_2 or NO_X add-on emission control for each missing data period at the end of each quarter.

(2) The designated representative may petition the Administrator under § 75.66 to replace the maximum recorded value in the last 720 quality-assured monitor operating hours with a value corresponding to the maximum controlled emission rate (an emission rate recorded when the add-on emission controls were operating) recorded during the last 720 quality-assured monitor operating hours. For such a petition, the designated representative must demonstrate that the following conditions are met: the monitor data availability, calculated in accordance with § 75.32, for the affected unit is below 90.0 percent and parametric data establish that the add-on emission controls were operating properly (i.e., within the range of operating parameters provided in the quality assurance/

quality control program) during the time period under petition.

(3) The designated representative may petition the Administrator under § 75.66 for approval of site-specific parametric monitoring procedure(s) for calculating substitute data for missing SO_2 pollutant concentration and NO_X emission rate data in accordance with the requirements of paragraphs (b) and (c) of this section and appendix C of this part. The owner or operator shall record the data required in appendix C of this part, pursuant to § 75.55(b).

(b) For an affected unit equipped with add-on SO_2 emission controls, the designated representative may petition the Administrator to approve a parametric monitoring procedure, as described in appendix C of this part, for calculating substitute SO_2 concentration data for missing data periods. The owner or operator shall use the procedures in §§ 75.31, 75.33, or 75.34(a) for providing substitute data for missing SO_2 concentration data unless a parametric monitoring procedure has been approved by the Administrator.

(1) Where the monitor data availability is 90.0 percent or more for an outlet SO_2 pollutant concentration monitor, the owner or operator may calculate substitute data using an approved parametric monitoring procedure.

* * * * *

(c) For an affected unit with NO_X add-on emission controls, the designated representative may petition the Administrator to approve a parametric monitoring procedure, as described in appendix C of this part, in order to calculate substitute NO_X emission rate data for missing data periods. The owner or operator shall use the procedures in §§ 75.31 or 75.33 for providing substitute data for missing NO_X emission rate data prior to receiving the Administrator's approval for a parametric monitoring procedure.

* * * * *

(d) The owner or operator shall keep records of information as described in subpart F of this part to verify the proper operation of the SO_2 or NO_X emission controls during all periods of SO_2 or NO_X emission missing data. The owner or operator shall provide these records to the Administrator or to the EPA Regional Office upon request. Whenever such data are not provided or such data do not demonstrate that proper operation of the SO_2 or NO_X add-on emission controls has been maintained in accordance with the range of add-on emission control operating parameters reported in the quality assurance/quality control program for the unit, the owner or operator shall substitute the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, to report the NO_X emission rate, and either the maximum hourly SO_2 concentration recorded by the inlet monitor during the previous 720 quality-assured monitor operating hours, if available, or the maximum potential concentration for SO_2, as defined by section 2.1.1.1. of appendix A of this part, to report SO_2 concentration for each hour of missing data until information demonstrating proper operation of the SO_2 or NO_X emission controls is available.

11. Section 75.53 is amended by revising the introductory text of paragraph (d) and removing paragraph (d)(4) to read as follows:

§ 75.53 Monitoring plan.

* * * * *

(d) *Contents of monitoring plan for specific situations.* The following additional information shall be included in the monitoring plan for gas-fired or oil-fired units:

* * * * *

12. Section 75.55 is amended by revising paragraphs (b)(3), introductory, (b)(3)(i), (b)(3)(ii), and (e) to read as follows:

§ 75.55 General recordkeeping provisions for specific situations.

* * * * *

(b) * * *

(3) For units with add-on SO_2 or NO_X emission controls following the provisions of §§ 75.34 (a)(1) or (a)(2), the owner or operator shall, for each hour of missing SO_2 or NO_X emission data, record:

(i) Parametric data which demonstrate the proper operation of the add-on emission controls, as described in the quality assurance/quality control program for the unit. The parametric data shall be maintained on site, and shall be submitted upon request to the Administrator, an EPA Regional office, State, or local agency;

(ii) A flag indicating either that the add-on emission controls are operating properly, as evidenced by all parameters being within the ranges specified in the quality assurance/quality control program, or that the add-on emission controls are not operating properly;

* * * * *

(e) *Specific SO_2* emission record provisions during the combustion of gaseous fuel.

(1) If SO_2 emissions are determined in accordance with the provisions in § 75.11(e)(2) during hours in which only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) is combusted in a unit with an SO_2 continuous emission monitoring system, the owner or operator shall record the information in paragraph (c)(3) of this section in lieu of the information in §§ 75.54 (c)(1) and (c)(3), for those hours.

(2) The provisions of this paragraph apply to a unit which, in accordance with the provisions of § 75.11(e)(3) uses an SO_2 continuous emission monitoring system to determine SO_2 emissions during hours in which only natural gas or gaseous fuel with a sulfur content no greater than natural gas is combusted in the unit. If the unit sometimes burns only natural gas (or gaseous fuel with a sulfur content no greater than natural gas) as a primary and/or backup fuel, and at other times combusts higher-sulfur fuels such as coal or oil as primary and/or backup fuel(s), then the owner or operator shall keep records on-site, suitable for inspection, of the type(s) of fuel(s) burned during each period of missing SO_2 data, and the number of hours that each type of fuel was combusted in the unit during each missing data period. This recordkeeping requirement does not apply to an affected unit that burns natural gas (or gaseous fuel with a sulfur content no greater than natural gas) exclusively, nor does it apply to a unit that burns such gaseous fuel(s) only during unit startup.

* * * * *

13. Section 75.56 is amended by revising paragraph (c); and by adding paragraph (d) to read as follows:

§ 75.56 Certification, quality assurance and, quality control record provisions.

* * * * *

(c) For units with add-on SO_2 and NO_X emission controls following the provisions of §§ 75.34(a)(1) or (a)(2), the owner or operator shall keep the following records on-site in the quality assurance/quality control plan required by section 1 in appendix B of this part:

(1) A list of operating parameters for the add-on emission controls, including parameters in § 75.55 (b), appropriate to the particular installation of add-on emission controls; and

(2) The range of each operating parameter in the list that indicates the add-on emission controls are properly operating.

(d) The owner or operator shall meet the requirements of paragraphs (a) and (b) of this section on and after January 1, 1996. The owner or operator shall meet the requirements of paragraph (c) of this section on and after January 1, 1998.

14. Section 75.61 is amended by adding paragraph (a)(5) to read as follows:

§ 75.61 Notifications.

* * * * *

(a) * * *

(5) *Periodic relative accuracy test audits.* The owner or operator or designated representative of an affected unit shall submit written notice of the date of periodic relative accuracy testing performed under appendix B of this part no later than 21 days prior to the first scheduled day of testing. Testing may be performed on a date other than that already provided in a notice under this subparagraph as long as notice of the new date is provided either in writing or by telephone or other means acceptable to the respective State agency or office of EPA, and the notice is provided as soon as practicable after the new testing date is known, but no later than twenty-four (24) hours in advance of the new date of testing.

(i) Written notification under paragraph (a) (5) of this section may be provided either by mail or by facsimile. In addition, written notification may be provided by electronic mail, provided that the respective State agency or office of EPA agrees that this is an acceptable form of notification.

(ii) Notwithstanding the notice requirements under paragraph (a)(5) of this section, the owner or operator may elect to repeat a periodic relative accuracy test immediately, without additional notification whenever the owner or operator has determined that a test was failed, or that a second test is necessary in order to attain a reduced relative accuracy test frequency.

(iii) *Waiver from notification requirements.* The Administrator, the appropriate EPA Regional Office, or the applicable State air pollution control agency may issue a waiver from the requirement of paragraph (a)(5) of this section to provide notice to the respective State agency or office of EPA for a unit or a group of units for one or more tests. The Administrator, the appropriate EPA Regional Office, or the applicable State air pollution control agency may also discontinue the waiver and reinstate the requirement of paragraph (a)(5) of this section to provide notice to the respective State agency or office of EPA for future tests for a unit or a group of units. In addition, if an observer from a State agency or EPA is present when a test is rescheduled, the observer may waive all notification requirements under paragraph (a)(5) of this section for the rescheduled test.

* * * * *

15. Section 75.66 is amended by revising paragraph (f)(2) to read as follows:

§ 75.66 Petitions to the Administrator.

* * * * *

(f) * * *

(2) Data demonstrating that the add-on emission controls were operating properly during the time period under petition (i.e., operating parameters were within the ranges specified for proper operation of the add-on emission controls in the quality assurance/quality control program for the unit);

* * * * *

16. Appendix A to part 75 is amended as follows:

a. by removing sections 6.3.1, 6.3.2 and 6.4.1;

b. by revising section 6.4;

c. by redesignating sections 6.3.3 and 6.3.4 as sections 6.3.1 and 6.3.2 and revising newly designated section 6.3.1; and

d. by adding figure 6 (with notes A through F) after figure 5 at the end of the appendix.

Appendix A to Part 75—Specifications and Test Procedures

* * * * *

6.3 7-day Calibration Error Test

6.3.1 Pollutant Concentration Monitor and CO_2 or O_2 Monitor 7-day Calibration Error Test

Measure the calibration error of each pollutant concentration monitor and CO_2 or O_2 monitor while the unit is operating once each day for 7 consecutive operating days according to the following procedures. (In the event that extended unit outages occur after the commencement of the test, the 7 consecutive unit operating days need not be 7 consecutive calendar days.) Units using dual span monitors must perform the calibration error test on both high- and low-scales of the pollutant concentration monitor.

Do not make manual or automatic adjustments to the monitor settings until after taking measurements at both zero and high concentration levels for that day during the 7-day test. If automatic adjustments are made following both injections, conduct the calibration error test in a way that the magnitude of the adjustments can be determined and recorded. Record and report test results for each day using the unadjusted concentration measured in the calibration error test prior to making any manual or automatic adjustments (i.e. resetting the calibration).

The calibration error tests should be approximately 24 hours apart, (unless the 7-day test is performed over non-consecutive days). Perform calibration error tests at two concentrations: (1) zero-level and (2) high-level, as specified in section 5.2 of this appendix. In addition, repeat the procedure for SO_2 and NO_X pollutant concentration monitors using the low-scale for units equipped with emission controls or other units with dual span monitors. Use only NIST traceable reference material, standard reference material, NIST/EPA-approved certified reference material, research gas material, Protocol 1 calibration gases certified by the vendor to be within 2 percent of the label value or zero air material for the zero level only.

Introduce the calibration gas at the gas injection port, as specified in section 2.2.1 of this appendix. Operate each monitor in its normal sampling mode. For extractive and dilution type monitors, pass the audit gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling and through as much of the sampling probe as is practical. For in situ type monitors, perform calibration checking all active electronic and optical components, including the transmitter, receiver, and analyzer. Challenge the pollutant concentration monitors and CO_2 or O_2 monitors once with each gas. Record the monitor response from the data acquisition and handling system. Using Equation A–5 of this appendix, determine the calibration error at each concentration once each day (at approximately 24-hour intervals) for 7 consecutive days according to the procedures given in this section.

Calibration error tests are acceptable for monitor or monitoring system certification if none of these daily calibration error test results exceed the applicable performance specifications in section 3.1 of this appendix.

* * * * *

6.4 Cycle Time Test

Perform cycle time tests for each pollutant concentration monitor, and continuous emission monitoring system while the unit is operating, according to the following procedures (see also Figure 6 of this appendix).

Use a zero-level and a high-level calibration gas (as defined in section 5.2 of this appendix) alternately. To determine the upscale elapsed time, inject a zero-level concentration calibration gas into the probe tip (or injection port leading to the calibration cell, for in situ systems with no probe). Record the stable starting gas value and start time, using the data acquisition and handling system (DAHS). Next, allow the monitor to measure the concentration of flue gas emissions until the response stabilizes. Record the stable ending stack emissions value and the end time of the test using the DAHS. Determine the upscale elapsed time as the time it takes for 95.0 percent of the step change to be achieved between the stable starting gas value and the stable ending stack emissions value. Then repeat the procedure, starting by injecting the high-level gas concentration to determine the downscale elapsed time, which is the time it takes for 95.0 percent of the step change to be achieved between the stable starting gas value and the stable ending stack emissions value. End the downscale test by measuring the stable concentration of flue gas emissions. Record the stable starting and ending monitor values, the start and end times, and the downscale elapsed time for the monitor using the DAHS. A stable value is equivalent to a reading with a change of less than 2 percent of the span value for 2 minutes, or a reading with a change of less than 6 percent from the measured average concentration over 6 minutes. (Owners or

operators of systems which do not record data in 1-minute or 3-minute intervals may petition the Administrator under § 75.66 for alternative stabilization criteria).

For monitors or monitoring systems that perform a series of operations (such as purge, sample, and analyze), time the injections of the calibration gases so they will produce the longest possible cycle time. Report the slower of the two elapsed times (upscale or downscale) as the cycle time for the analyzer. (See Figure 5 of this appendix.) For the NO_X-diluent continuous emission monitoring system test and SO_2-diluent continuous emission monitoring system test, record and report the longer cycle time of the two component analyzers as the system cycle time.

For time-shared systems, this procedure must be done at all probe locations that will be polled within the same 15-minute period during monitoring system operations. To determine the cycle time for time-shared systems, add together the longest cycle time obtained at each of the probe locations. Report the sum of the longest cycle time at each of the probe locations plus the sum of the time required for all purge cycles (as determined by the continuous emission monitoring system manufacturer) at each of the probe locations as the cycle time for each of the time-shared systems. For monitors with dual ranges, report the test results from on the range giving the longer cycle time. Cycle time test results are acceptable for monitor or monitoring system certification if none of the cycle times exceed 15 minutes.

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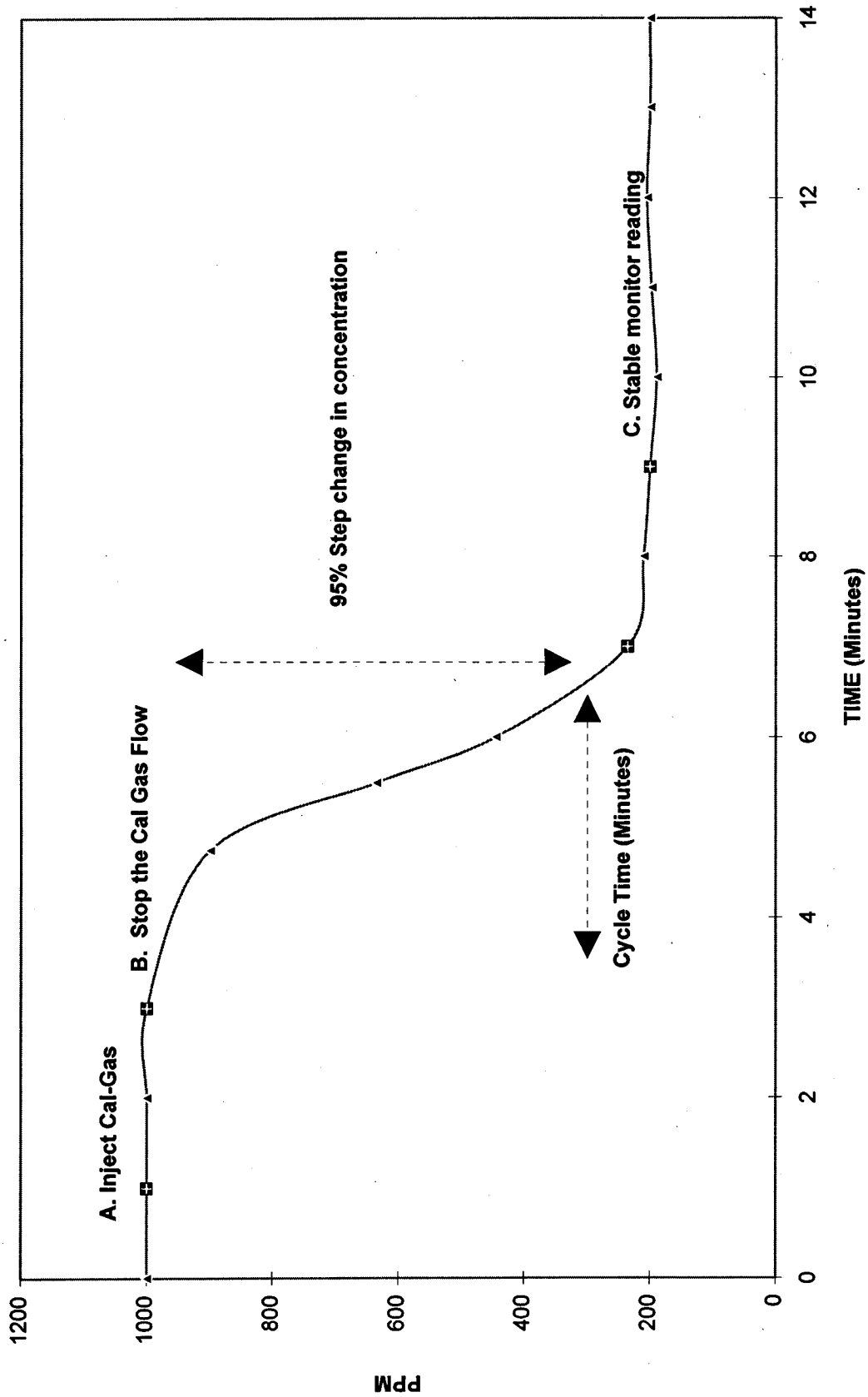

Figure 6. Downscale Cycle Time Test

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A. To determine the downscale cycle time, inject a high level calibration gas into the port leading to the calibration cell or thimble.

B. Allow the analyzer to stabilize. Record the stabilized value. Stop the calibration gas flow and allow the monitor to measure the flue gas emissions until the response stabilizes.

C. Record the stabilized value. A stable reading is achieved when the concentration reading deviates less than 6% from the measured average concentration in 6 minutes or if it deviates less than 2% of the monitor's span value in 2 minutes. (Owners and operators of units that do not record data in 1 minute or 3 minute intervals may petition the Administrator under section 75.66 for alternative stabilization criteria.)

D. Determine the step change. The step change is equal to the difference between the stabilized calibration gas value (Point B) and the final stable value (Point C). Take 95% of the step change value and subtract the result from the stabilized calibration gas value (Point B). Determine the time at which 95% of the step change occurred (Point D).

E. Determine the cycle time. The cycle time is equal to the downscale elapsed time, i.e. the time at which 95% of the step change occurred (point D) minus the time at which the calibration gas flow was stopped (Point B). In this example, cycle time=(6.5 − 4)=2.5 minutes (Report as 3 minutes).

F. To determine the cycle time for the upscale test, inject a zero scale calibration gas into the probe and repeat the procedures described above, except that 95% of the step change in concentration is added to the stabilized calibration gas value. Afterwards, compare the two cycle times achieved for both the upscale and downscale tests. The longer of these two times equals the cycle time for the analyzer.

17. Appendix B to part 75 is amended as follows:

a. by revising sections 2.1 and 2.1.1;

b. by removing sections 2.1.2 and 2.1.7; redesignating section 2.1.3 as section 2.1.2 and revising newly designated section 2.1.2;

c. by redesignating sections 2.1.4 and 2.1.5 as 2.1.3 and 2.1.4, respectively; and

d. by adding new sections 1.6, 2.1.1.1 and 2.1.1.2, 2.1.5, 2.1.5.1, and 2.1.5.2.

Appendix B to Part 75—Quality Assurance and Quality Control Procedures

1. Quality Control Program

* * * * *

1.6 Parametric Monitoring for Units With Add-On Emission Controls

The owner or operator shall keep a written (or electronic) record including a list of operating parameters for the add-on SO_2 or NO_X emission controls, including parameters in § 75.55(b), and the range of each operating parameter that indicates the add-on emission controls are operating properly.

The owner or operator shall keep a written (or electronic) record of the parametric monitoring data during each hour of each SO_2 or NO_X missing data period.

* * * * *

2. Frequency of Testing

* * * * *

2.1 Daily Assessments

Perform the following daily assessments to quality-assure the hourly data recorded by the monitoring systems during each period of unit operation, or, for a bypass stack or duct, each period in which emissions pass through the bypass stack or duct. These requirements are effective as of the date when the monitor or continuous emission monitoring system completes certification testing.

2.1.1 Calibration Error Test

Except as provided in section 2.1.1.2 of this appendix, perform the daily calibration error test of each gas monitoring system according to the procedure in section 6.3.1 of appendix A of this part and perform the daily calibration error test of each flow monitoring system according to the procedure in section 6.3.2 of appendix A of this part.

For units with add-on emission controls and dual-span or auto-ranging monitors, and other units that use the maximum expected concentration to determine calibration gas values, perform the daily calibration error tests on each scale that has been used since the previous calibration error test. For example, if the pollutant concentration has not exceeded the low-scale value (based on the maximum expected concentration) since the previous calibration error test, the calibration error test may be performed on the low-scale only. If, however, the concentration has exceeded the low-scale span value for one hour or longer since the previous calibration error test, perform the calibration error test on both the low- and high-scales.

2.1.1.1 On-line Daily Calibration Error Tests. Except as provided in section 2.1.1.2 of this appendix, all daily calibration error tests must be performed while the unit is in operation at normal, stable conditions (i.e. ''on-line'').

2.1.1.2 Off-line Daily Calibration Error Tests. Daily calibrations may be performed while the unit is not operating (i.e., ''off-line'') and may be used to validate data for a monitoring system that meets the following conditions:

(1) An initial demonstration test of the monitoring system is successfully completed and the results are reported in the quarterly report required under § 75.64 of this part. The initial demonstration test, hereafter called the ''off-line calibration demonstration'', consists of an off-line calibration error test followed by an on-line calibration error test. Both the off-line and on-line portions of the off-line calibration demonstration must meet the calibration error performance specification in section 3.1 of appendix A of this part. Upon completion of the off-line portion of the demonstration, the zero and upscale monitor responses may be adjusted, but only toward the true values of the calibration gases or reference signals used to perform the test and only in accordance with the routine calibration adjustment procedures specified in the quality control program required under section 1 of appendix B to this part. Once these adjustments are made, no further adjustments may be made to the monitoring system until after completion of the on-line portion of the off-line calibration demonstration. Within 26 clock hours of the completion hour of the off-line portion of the demonstration, the monitoring system must successfully complete the first attempted calibration error test, i.e., the on-line portion of the demonstration.

(2) For each monitoring system that has passed the off-line calibration demonstration, a successful on-line calibration error test of the monitoring system must be completed no later than 26 unit operating hours after each off-line calibration error test used for data validation.

2.1.2 Daily Flow Interference Check

Perform the daily flow monitor interference checks specified in section 2.2.2.2 of appendix A of this part while the unit is in operation at normal, stable conditions.

* * * * *

* * * * *

2.1.5 Quality Assurance of Data With Respect to Daily Assessments

When a monitoring system passes a daily assessment (i.e., daily calibration error test or daily flow interference check), data from that monitoring system are prospectively validated for 26 clock hours (i.e., 24 hours plus a 2-hour grace period) beginning with the hour in which the test is passed, unless another assessment (i.e. a daily calibration error test, an interference check of a flow monitor, a quarterly linearity check, a quarterly leak check, or a relative accuracy test audit) is failed within the 26-hour period.

2.1.5.1 Data Invalidation with Respect to Daily Assessments. The following specific rules apply to the invalidation of data with respect to daily assessments:

(1) Data from a monitoring system are invalid beginning with the first hour following the expiration of a 26-hour data validation period or beginning with the first hour following the expiration of an 8-hour start-up grace period (as provided under section 2.1.3.2 of this appendix) if the required subsequent daily assessment has not been conducted.

(2) Beginning on January 1, 1999, for a monitoring system that has passed the off-line calibration demonstration, if an on-line daily calibration error test of the same monitoring system is not conducted and passed within 26 unit operating hours of an off-line calibration error test that is used for data validation, then data from that monitoring system are invalid, beginning with the 27th unit operating hour following that off-line calibration error test.

2.1.5.2 Daily Assessment Start-Up Grace Period. For the purpose of quality assuring data with respect to a daily assessment (i.e. a daily calibration error test or a flow interference check), a start-up grace period may apply when a unit begins to operate after

a period of non-operation. The start-up grace period for a daily calibration error test is independent of the start-up grace period for a daily flow interference check. To qualify for a start-up grace period for a daily assessment, there are two requirements:

(1) The unit must have resumed operation after being in outage for 1 or more hours (i.e., the unit must be in a start-up condition) as evidenced by a change in unit operating time from zero in one clock hour to an operating time greater than zero in the next clock hour.

(2) For the monitoring system to be used to validate data during the grace period, the previous daily assessment of the same kind must have been passed on-line within 26 clock hours prior to the last hour in which the unit operated before the outage. In addition, the monitoring system must be in-control with respect to quarterly and semi-annual or annual assessments.

If both of the above conditions are met, then a start-up grace period of up to 8 clock hours applies, beginning with the first hour of unit operation following the outage. During the start-up grace period, data generated by the monitoring system are considered quality-assured. For each monitoring system, a start-up grace period for a calibration error test or flow interference check ends when either: (1) a daily assessment of the same kind (i.e., calibration error test or flow interference check) is performed; or (2) 8 clock hours have elapsed (starting with the first hour of unit operation following the outage), whichever occurs first.

* * * * *

18. Appendix D of part 75 is amended by revising section 2.1.5.1 to read as follows:

Appendix D to Part 75—Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Units

* * * * *

2.1 Flowmeter Measurements

* * * * *

2.1.5.1 Use the procedures in the following standards for flowmeter calibration or flowmeter design, as appropriate to the type of flowmeter: ASME MFC–3M–1989 with September 1990 Errata (''Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi''), ASME MFC–4M–1986 (Reaffirmed 1990), ''Measurement of Gas Flow by Turbine Meters,'' American Gas Association Report No. 3, ''Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids Part 1: General Equations and Uncertainty Guidelines'' (October 1990 Edition), Part 2: ''Specification and Installation Requirements'' (February 1991 Edition) and Part 3: ''Natural Gas Applications'' (August 1992 edition), (excluding the modified flow-calculation method in Part 3), Section 8, Calibration from American Gas Association Transmission Measurement Committee Report No. 7: Measurement of Gas by Turbine Meters (1985 Edition), ASME MFC–5M–1985 (''Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters''), ASME MFC–6M–1987 with June 1987 Errata (''Measurement of Fluid Flow in Pipes Using Vortex Flow Meters''), ASME MFC–7M–1987 (Reaffirmed 1992), ''Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles,'' ISO 8316: 1987(E) ''Measurement of Liquid Flow in Closed Conduits—Method by Collection of the Liquid in a Volumetric Tank,'' or MFC–9M–1988 with December 1989 Errata (''Measurement of Liquid Flow in Closed Conduits by Weighing Method'') for all other flow meter types (incorporated by reference under § 75.6 of this part). The Administrator may also approve other procedures that use equipment traceable to National Institute of Standards and Technology standards. Document other procedures, the equipment used, and the accuracy of the procedures in the monitoring plan for the unit and a petition submitted by the designated representative under § 75.66(c). If the flowmeter accuracy exceeds ±2.0 percent of the upper range value, the flowmeter does not qualify for use under this part.

* * * * *

19. Appendix F of part 75 is amended by revising section 7 to read as follows:

Appendix F to Part 75—Conversion Procedures

* * * * *

7. Procedures for SO_2 Mass Emissions at Units With SO_2 Continuous Emission Monitoring Systems During the Combustion of Pipeline Natural Gas

The owner or operator shall use the following equation to calculate hourly SO_2 mass emissions as allowed for units with SO_2 continuous emission monitoring systems if, during the combustion of pipeline natural gas, SO_2 emissions are determined in accordance with § 75.11(e)(1).

$$E_h = (0.0006)\ HI \qquad \text{(Eq. F–23)}$$

Where,

E_h=Hourly SO_2 mass emissions, lb/hr.

0.0006=Default SO_2 emission rate for pipeline natural gas, lb/mmBtu.

HI=Hourly heat input, as determined using the procedures of section 5.2 of this appendix.

[FR Doc. 96–29452 Filed 11–19–96; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
November 20, 1996

Part III

Department of Justice

28 CFR Part 345

Federal Prison Industries (FPI) Inmate Work Programs; Final Rule

DEPARTMENT OF JUSTICE

28 CFR Part 345

[BOP–1060–F]

RIN 1120–AA50

Federal Prison Industries (FPI) Inmate Work Programs: Sick Call Status

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its rule on Federal Prison Industries (FPI) Inmate Work Programs to clarify the definition of ''FPI Work Status'' with respect to an inmate on sick call or on medical idle. An inmate on sick call during assigned hours is now considered to be in FPI work status. This amendment is intended to provide for administrative consistency in the operation of FPI inmate work assignments. The proviso pertinent to an inmate on medical idle due to an FPI work-related injury has been reworded for clarity of cross reference.

EFFECTIVE DATE: November 20, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Federal Prison Industries (FPI) Inmate Work Programs (28 CFR part 345). A final rule on this subject was published in the Federal Register on March 27, 1995 (60 FR 15827).

Under the previous definition of FPI Work Status in § 345.11(c)(1), an inmate on sick call was not considered to be in FPI work status. In order to prevent inconsistencies in interpreting retention of benefit provisions, the Bureau is reversing this presumption and is revising paragraph (c)(1) to specify that an inmate is considered to be in FPI work status if he or she is on sick call during assigned hours. The status of an inmate on sick call with regard to retention of benefits is therefore consistent with the status of an inmate for the first thirty days on medical idle for an FPI work-related injury.

The work status of an inmate for the first thirty days on medical idle due to an FPI work-related injury was contingent upon the injury's being not intentional and not the result of a violation of safety regulations. This proviso has been reworded in order to refer more clearly to the pertinent provisions on inmate work safety standards in § 345.40.

Because this amendment either is editorial in nature or confers a benefit on its regulated public, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 345

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons, and Commissioner of Federal Prison Industries.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons and the Board of Directors, Federal Prison Industries in 28 CFR 0.96(p) and 0.99, part 345 in chapter III of 28 CFR is amended as set forth below.

PART 345—FEDERAL PRISON INDUSTRIES (FPI) INMATE WORK PROGRAMS

1. The authority citation for 28 CFR part 345 continues to read as follows:

Authority: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

2. In § 345.11, paragraph (c)(1) is revised to read as follows:

§ 345.11 Definitions.

* * * * *

(c) * * *

(1) An inmate is in FPI work status if on the job, on sick call during the inmate's assigned hours, on furlough, on vacation, for the first thirty days on writ, for the first 30 days in administrative detention, or for the first 30 days on medical idle for FPI work-related injury so long as the injury did not result from an intentional violation by the inmate of work safety standards.

* * * * *

[FR Doc. 96–29640 Filed 11–19–96; 8:45 am]

BILLING CODE 4410–05–P

federal register

Wednesday
November 20, 1996

Part IV

The President

Presidential Determination No. 97–01 of November 8, 1996—Assistance Program for the New Independent States of the Former Soviet Union

Federal Register
Vol. 61, No. 225
Wednesday, November 20, 1996

Presidential Documents

Title 3—

The President

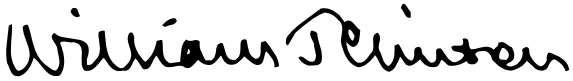
Presidential Determination No. 97–01 of November 8, 1996

Assistance Program for the New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to subsection (o) under the heading ''Assistance for the New Independent States of the Former Soviet Union'' in Title II of the Foreign Operations, Export Financing and Related Programs Appropriations Act, for fiscal year 1996 (Public Law 104–107) and fiscal year 1997 (Public Law 104–208), I hereby determine that it is important to the national security interest of the United States to make available funds appropriated under that heading without regard to the restriction in that subsection.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the Federal Register.



THE WHITE HOUSE,
Washington, November 8, 1996.

Memorandum of Justification Regarding Determination Under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act (Public Laws 104–107 and 104–208)

The Administration shares the deep concern of the Congress over Russian nuclear cooperation with Iran. Such cooperation, which could contribute over time to a nuclear-armed Iran, continues to be a threat not only to U.S. security interests, the Middle East Peace Process, and global stability, but also to Russian security interests as well. In dealing with this pressing issue, the Administration has repeatedly and strenuously objected to any form of nuclear cooperation with Iran. The President has raised the important issue repeatedly and directly with President Yeltsin, including during their April 1996 meeting in Moscow. The Vice President discussed our concerns with Prime Minister Chernomyrdin most recently during their July Meeting in Moscow. The Administration has also established a multi-level dialogue with the Russians and continues to give this issue the necessary high priority on the bilateral agenda. In addition, we have made clear to the Russians that we are not prepared to renew or expand the current U.S.-Russian Agreement on S&T Cooperation in the Field of Peaceful Uses of Atomic Energy because of Russia's ongoing nuclear cooperation with Iran. In addition, we informed the Russians in 1995 that a Section 123 agreement would not be possible while Russian nuclear cooperation with Iran continues.

Subsection (o) under the heading, ''Assistance for the New Independent States of the Former Soviet Union,'' in Title II of the FY 1996 and FY 1997 Foreign Operations Appropriations Acts contain a restriction on assistance to Russia unless there is a Presidential determination that the Government of Russia has terminated implementation of arrangements to provide

Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor or related nuclear research facilities or programs. Given present circumstances, the President is unable to make this determination. In order to further the national security interest of the United States, the President is exercising the authority provided by the Congress in subsection (o) to make funds available to Russia under these Acts without regard to this restriction.

The President takes this action because it remains important to the national security interest of the United States to continue support for the reform process in Russia. Assisting Russia and the other New Independent States in their transitions to democratic systems of government and market economies continues to be one of the Administration's highest foreign policy goals. As we noted in our previous determination, the outcome of this historic reform effort will have a critical impact on the future of regional and international peace and stability as well as the national security interests of the United States. Much has already been accomplished along the uncharted road to reform in Russia, including Russia's unprecedented 1996 Presidential elections. The transformation of Russia into a more democratic, market-oriented society, however, is a long-term proposition, and the outcome is far from certain. The United States and the world community must remain steadfast in support of the people of Russia and the other New Independent States (NIS) during this important period of transition.

Our assistance and other cooperative programs continue to play a vital role promoting basic U.S. interests by furthering the reform process in Russia and bolstering fledgling democratic, market-oriented processes and institutions. With the Russian presidential elections complete, Russia must now accelerate major structural reforms, such as building the legal and institutional structures to support a market economy. To cut off assistance and thereby sharply cut back the influence Americans are having on Russian reform at this important juncture in Russia's history would be counterproductive. Most significantly, a withdrawal of assistance would undercut those in Russia who seek to build relations of a new kind with the United States, who support democratic and market economic principles, and who are helping to integrate Russia into global economic and security systems.

We must continue to support two worthy foreign policy goals: supporting the reform process in Russia and ending Russian nuclear cooperation with Iran. Carefully designed and implemented assistance programs will help us to achieve the former, which in turn will help lessen the incentive for Russia to cooperate with Iran on nuclear programs. Active engagement with Russia at the highest levels will also help us accomplish this latter objective. We will continue to work with the Congress to achieve our mutual goals in this regard.

The President has made this determination because it is essential to enable us to continue to pursue with Russia our policy of pragmatic engagement, in which we seek to support U.S. national security and other interests by helping to integrate Russia into global economic and security systems as a cooperative, peaceful, and prosperous member of the world community.

[FR Doc. 96–29867
Filed 11–19–96; 8:46 am]
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REMINDERS

The items 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; approval and promulgation; various States:
- Illinois; published 10-21-96

Toxic substances:
- Significant new uses--
  - Benzidine-based chemical substances; published 10-7-96

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Thrift savings plan:
- Earnings allocation; published 11-20-96

FEDERAL TRADE COMMISSION

Debt Collection Improvement Act:
- Civil penalties; monetary awards; inflation adjustments; published 10-21-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- New drug applications--
  - Clindamycin hydrochloride liquid; published 11-20-96
  - Ivermectin with pyrantel pamoate; published 11-20-96

JUSTICE DEPARTMENT

Federal Prison Industries

Work and compensation; FPI inmate work programs:
- Sick call status; published 11-20-96

NATIONAL SCIENCE FOUNDATION

Enforcement and hearing procedures; tourism guidelines:
- Civil monetary penalties; inflation adjustment; published 11-20-96

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:
- Christmas Parade of Boats; published 11-20-96

TREASURY DEPARTMENT

Comptroller of the Currency

Extensions of credit to insiders and transactions with affiliates; published 10-21-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Olives, imported, and grown in California; comments due by 11-25-96; published 11-8-96

Tomatoes grown in--
- Florida; comments due by 11-29-96; published 10-29-96

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Agricultural conservation programs:
- Environmental quality incentives program; comments due by 11-25-96; published 10-11-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
- Grapes; comments due by 11-25-96; published 9-24-96
- Raisins; comments due by 11-29-96; published 10-30-96

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Identity and composition standards; comments due by 11-25-96; published 9-9-96
- Processed meat and poultry products; nutrient content claim and general definition and standard identity
  - Comment period extended; comments due by 11-25-96; published 5-28-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries--
  - Northeast multispecies; comments due by 11-25-96; published 11-14-96

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:
- Futures commission merchants, introducing brokers and leverage transaction merchants; financial reports; comments due by 11-25-96; published 10-25-96

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Competitive range determinations; comments due by 11-26-96; published 11-15-96

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Clothes washers, dryers, and dishwashers; test procedures; comments due by 11-25-96; published 11-8-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Primary aluminum reduction plants; comments due by 11-25-96; published 9-26-96

Air quality implementation plans; approval and promulgation; various States:
- Indiana; comments due by 11-29-96; published 10-30-96
- Pennsylvania; comments due by 11-25-96; published 10-25-96
- Rhode Island; comments due by 11-29-96; published 10-30-96
- Texas et al.; comments due by 11-29-96; published 10-30-96

Air quality planning purposes; designation of areas:
- Washington; comments due by 11-25-96; published 10-25-96

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- State air quality plans; designated facilities and pollutants--
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  - Arizona; comments due by 11-29-96; published 10-30-96

Hazardous waste program authorizations:
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- National oil and hazardous substances contingency plan--
  - National priorities list update; comments due by 11-25-96; published 10-25-96
  - National priorities list update; comments due by 11-25-96; published 10-25-96

Water pollution; effluent guidelines for point source categories:
- Centralized water treatment; comments due by 11-25-96; published 11-4-96

FEDERAL COMMUNICATIONS COMMISSION

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- Commercial mobile radio services--
  - Flexible service offerings; comments due by 11-25-96; published 8-26-96

Radio stations; table of assignments:
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FEDERAL EMERGENCY MANAGEMENT AGENCY

Disaster assistance:
- Snow removal assistance; comments due by 11-25-96; published 10-24-96

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Competitive range determinations; comments due by 11-26-96; published 11-15-96

GOVERNMENT ETHICS OFFICE

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HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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HOUSING AND URBAN DEVELOPMENT DEPARTMENT

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Public and Indian housing:

Performance funding system incentives; operating subsidy payment; comments due by 11-29-96; published 9-30-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Alameda whipsnake et al.; comments due by 11-29-96; published 11-1-96

JUSTICE DEPARTMENT

Prisons Bureau

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LABOR DEPARTMENT

Federal Contract Compliance Programs Office

Special disabled veterans and Vietnam era veterans; affirmative action and nondiscrimination obligations of contractors and subcontractors; comments due by 11-25-96; published 9-24-96

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Mine Safety and Health Administration

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LABOR DEPARTMENT

Occupational Safety and Health Administration

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LABOR DEPARTMENT

Wage and Hour Division

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Federal Aviation Administration

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TRANSPORTATION DEPARTMENT

Federal Highway Administration

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Research and Special Programs Administration

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TRANSPORTATION DEPARTMENT

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TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

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Customs Service

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Fiscal Service

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VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

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