12–19–96
Vol. 61 No. 245
Pages 66867–67178

Federal Register

Thursday
December 19, 1996

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WASHINGTON, DC

WHEN: January 28, 1997 at 9:00 am

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

Electronic Bulletin Board
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CFR PARTS AFFECTED IN THIS ISSUE

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

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.

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 651

Acquisition of Real Property Regulations

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The Natural Resources Conservation Service (NRCS) is removing obsolete regulations from the Code of Federal Regulations. This action removes the regulations found at 7 CFR part 651 concerning the acquisition of real property under federally-assisted programs.

EFFECTIVE DATE: December 19, 1996.

FOR FURTHER INFORMATION CONTACT: Peter Zeck (202) 690–4860.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This document does not meet the criteria for a significant regulatory action as specified in E.O. 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

This final rule will have no significant effect on the human environment, and therefore an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

Background

Pursuant to the Administration effort to review existing agency regulations and remove unnecessary regulations from the Code of Federal Regulations, the NRCS has determined that the regulations found at 7 CFR part 651, ''Acquisition of Real Property Under Federally-Assisted Programs,'' are unnecessary because the regulations address matters of internal agency policy and duplicate, in part, regulations found elsewhere in the Code of Federal Regulations. The removal of this part will not have any effect on the public, any private enterprise, or any Government agency. This action will result in the removal of obsolete regulations from the CFR.

List of Subjects in 7 CFR Part 651

Real Property, Technical Assistance.

PART 651—[REMOVED]

In consideration of the above under the authority of 7 U.S.C. 4601–4655, 7 CFR part 651 is removed.

Signed at Washington, D.C. on December 5, 1996.

Paul Johnson,

Chief, Natural Resources Conservation Service.

[FR Doc. 96–32193 Filed 12–18–96; 8:45 am]

BILLING CODE 3410–16–M

Rural Utilities Service

7 CFR Parts 1710, 1714, 1717, and 1786

RIN 0572–AB24

RUS Policies on Mergers and Consolidations of Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is streamlining its regulations through amendments that are intended to encourage electric borrowers to merge, consolidate, or enter into similar arrangements that benefit borrowers and rural communities and are consistent with the interests of the Government as a secured lender. These amendments are part of an ongoing RUS project to modernize agency policies and procedures in order to provide borrowers with the flexibility they need to continue providing reliable electric service at reasonable cost in rural areas, while maintaining the integrity of Government loans.

DATES: This rule is effective January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, Room 2230–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. Telephone: 202–720–0736. FAX: 202–720–4120. E-mail: sarnold@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) is taking this regulatory action as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force. This regulatory action has been determined to be significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and, therefore has been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) for which RUS published a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b), or any other law. Therefore, the Regulatory Flexibility Act does not apply to this proposed rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Sec. 3 of the Executive Order.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is

available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0114.

Background

In response to rapid changes in the regulatory and business environment of the electric industry, many electric borrowers are exploring the possibility of mergers. It is clear that the success of the RUS electric program in supporting rural infrastructure and economic development is directly tied to the ability of borrowers to respond rapidly to new business challenges, including opportunities to merge.

On August 7, 1996, at 61 FR 41025, RUS published proposed rules to update RUS policies on mergers. (The term ''merger'' as used in this rule refers generically to mergers, consolidations, and similar actions.) The intention of this action is to encourage borrowers to merge, consolidate, or enter into similar agreements that benefit borrowers and are consistent with the interests of RUS as a secured lender. The rules proposed: (1) Transitional assistance measures to assist borrowers during the transition period before long-term merger benefits can be realized; (2) A streamlined application process for mergers that require RUS approval; and (3) Documentation that RUS as a secured lender needs in order to conduct business with any newly merged entity.

RUS received a total of eight comments on the proposed rule. Three comments are from individual electric distribution borrowers. Two of these borrowers said in their comments that they are negotiating a merger with each other.

Other commenters include a three-state association of distribution borrowers; a group of three power supply (G&T) borrowers in Texas; an individual G&T borrower in Indiana; the National Rural Electric Cooperative Association (NRECA), a national organization representing RUS electric borrowers; and the National Rural Utilities Cooperative Finance Corporation (CFC), a private sector supplemental lender to RUS borrowers.

Commenters generally supported the proposed rules.

Transitional Assistance

RUS recognizes that short-term financial stresses can follow even the most beneficial mergers. To help stabilize electric rates during this period, enhance the credit quality of outstanding loans made or guaranteed by the Government, and otherwise ease the transition period before long-term efficiencies and economies can be realized, the rules proposed new policies for transitional assistance following mergers.

RUS will consider requests for transitional assistance after each merger. For example, if three borrowers form a single successor through two consecutive mergers, transitional assistance may be available, subject to RUS regulations, following each of the mergers. For transitional assistance available for a closed-ended period after a merger, the availability period in some cases will begin tolling on the effective date of the most recent merger even if that date is prior to the effective date of this rule.

The proposed rule included several types of transitional assistance, and all commenters offered suggestions.

Organization of the Rule

To avoid any confusion about borrower eligibility for transitional assistance, RUS has redrafted 7 CFR Part 1717 in the final rule slightly. The section designated as § 1717.154 in the proposed rule has been split into three sections: §§ 1717.154, 1717.155, and 1717.156, and language has been added clearly stating which borrowers are eligible for which types of transitional assistance. Sections 1717.155–1717.159 of the proposed rule are redesignated accordingly in the final rule.

Transitional Assistance in General

One commenter believes that ''successful mergers create their own benefits.'' The commenter expressed concerns that offering transitional assistance to newly merged entities implies that bigger is automatically better and is unfair to cooperatives whose members choose not to merge.

As stated in 7 CFR 1717.150(b), RUS encourages electric borrowers to consider mergers when such action is likely to contribute to greater operating efficiency and financial soundness. RUS does not intend to convey the impression that bigger is always better. RUS emphasizes that transitional assistance is not intended to reward borrowers simply for growing. It is intended, rather, to ease the transition period before long-term merger benefits can be realized.

Other commenters noted that agreements short of merger, such as shared services initiatives, may provide benefits similar to those of a merger. They asked that RUS consider transitional assistance following such agreements. RUS agrees that shared services agreements can offer substantial benefits. However, transitional assistance is intended to help mitigate the short term financial stresses associated with mergers. Such stresses are not generally associated with shared service agreements, and RUS cannot, therefore, justify providing transitional assistance in these cases.

CFC suggested that RUS make loan funds available for ''soft costs'' of mergers, such as studies and consultant fees. RUS believes that prudent borrowers should analyze various business opportunities as a matter of course. RUS does not believe that such studies are an appropriate use of loan funds.

NRECA suggested that RUS offer ''more aggressive incentives'' to merger candidates in appropriate situations. These more aggressive incentives could include a write down of principal and interest on RUS loans and loan guarantees as an incentive to mergers between a financially strong borrower and a financially weak borrower pursuant to Section 748 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub.L. 104–127), which amended Section 331(b)(4) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981(b)(4)). RUS is developing a separate rulemaking to implement this new law. Addressing write downs in today's final rule without an extended period for public comment would be premature.

NRECA also suggested that, as a counterpart to offering priority loan processing, RUS also offer priority processing of lien accommodations. Existing regulations at 7 CFR 1717.859 establish timeframes for RUS action on lien accommodations. Priority loan processing is intended to address situations where loan approval is delayed because requests for loan funds from eligible borrowers temporarily exceed the amount of loan funds appropriated. This situation does not exist for lien accommodations. RUS believes that no change to existing rules for lien accommodations is needed.

Loan Processing Priority

RUS loans are generally processed in chronological order based on the date the complete application is received in the regional or division office. The rule proposed, in 7 CFR 1710.119 and 1717.154(a)(1), to alter this policy to

offer priority processing on loans to newly merged borrowers. RUS would, at the borrower's request, offer loan processing priority for the first loan following a merger if the loan is approved by RUS not later than 5 years after the effective date of the merger. For any subsequent loans approved during those 5 years, RUS may offer loan processing priority, under certain conditions.

One commenter wondered about the exact meaning of the term ''loan processing priority.'' Loan processing priority means simply that a loan application will be moved as close to the front of the processing queue as the Administrator determines to be appropriate, considering such factors as the urgency of applications in hand and the loan authority for the fiscal year.

Another commenter supported the proposal provided ''that this loan processing priority should not have a detrimental effect on other borrowers.'' RUS believes that loan processing priority under the limited conditions in the rule can be implemented in a way that is fair and equitable to all borrowers.

Supplemental Financing Requirements

RUS generally requires that an applicant for a municipal rate loan obtain a portion of its debt financing from a supplemental source without an RUS guarantee. The rule proposed in 7 CFR 1710.110 and 1717.154(b) to waive the supplemental financing requirement for the first RUS loan following a merger between active distribution borrowers if the loan period does not exceed 2 years, and the loan is approved by RUS not later than 5 years after the effective date of the merger. For any subsequent loans approved during those 5 years, or if the loan period is longer than 2 years, RUS may reduce or waive supplemental financing under the conditions set out in the rule.

Most commenters support this amendment. One commenter requested that waiver of supplemental financing apply automatically if the loan period is as long as 4 years. The limit of 2 years for automatic waiver is to avoid undue processing delays for all borrowers during periods when the demand for loan funds is high and funding levels are uncertain. RUS will consider waiver of supplemental financing on a case-by-case basis if the loan period is longer than 2 years as set forth in § 1717.154(b) of the final rule.

Two distribution borrowers that are considering merging with each other asked for a clarification of RUS policy on supplemental financing in connection with future loans, after the complete waiver on the first loan. Under long-standing RUS policy, borrowers who in 1980 had either extremely low consumer density or a very high adjusted plant revenue ratio are now required to obtain only 10 percent of their debt financing from a supplemental source. For most borrowers the required supplemental financing portion is determined at the time of loan approval and may be as high as 30 percent. See existing rules at 7 CFR 1710.110(c). One of these two commenters is now grandfathered as a ''90/10'' borrower, and the commenters wonder whether they will lose this benefit by merging.

RUS will grandfather 90/10 status for that portion of the system that enjoyed this benefit prior to the merger. In other words, the portion of a loan that is for facilities to serve consumers in territory that were served by the 90/10 borrower immediately prior to the merger will be eligible for 90 percent RUS financing; the supplemental financing portion on loans to serve the rest of the system will be determined at the time of loan approval pursuant to 7 CFR 1710.110(c)(1)(ii). The final rule adds this provision to 7 CFR 1710.110(c)(1).

Coverage Ratios

RUS, as a secured lender, requires that borrowers maintain adequate levels of coverage ratios, including times interest earned ratio (TIER); operating times interest earned ratio (OTIER); debt service coverage (DSC); and operating debt service coverage (ODSC). Under the proposed rule in 7 CFR 1710.114 and 1717.154(b)(2), RUS could approve, on a case-by-case basis, a phase-in plan allowing a distribution borrower to project and achieve lower levels for up to 5 years following a merger, provided that a minimum TIER level of 1.00 is maintained, and that trends are generally favorable.

NRECA believes that a cash DSC, similar, but not identical to ODSC is a better measure of the borrower's ability to meet its debt service payments than TIER. NRECA urged RUS to replace the minimum TIER requirement with a minimum cash DSC requirement in any phase-in plan for coverage ratios.

As stated in 7 CFR 1717.155 of the final rule, RUS will require any borrower requesting a phase-in plan to submit a financial forecast demonstrating the borrower's ability to meet its debt service payments. In addition, the rule leaves RUS the option of requiring a minimum level of DSC and other coverage ratios in an individual phase in plan. RUS believes that a minimum TIER level of 1.00 is the appropriate across the board rule of thumb for a phase-in plan.

Advance of Funds From Insured Loans

The fund advance period, which is the period during which funds from an insured loan may be advanced to a borrower, generally terminates automatically after 4 or 5 years. See 7 CFR 1714.56. However, the execution and filing of legal documents after a merger often takes some time, and RUS cannot advance funds to a successor until the documents are executed and filed. Therefore, the rule proposed in 7 CFR 1714.56(c) and 7 CFR 1717.154(c), to generically extend this period for preexisting loans with unadvanced funds on the effective date of a merger.

One commenter wondered whether the automatic termination date would be generically extended after a merger if the period had been extended once already. The answer is yes. This extension is granted because of the time requirements for legal completion of a merger. Section 7 CFR 1717.156 of the final rule clarifies this point.

Other commenters requested that the fund advance period be generically extended by 5 years instead of the 2 years proposed. RUS believes that the 2-year extension provides adequate time for preparation and filing of merger documents. In cases where more time is needed, the borrower may request an additional extension pursuant to 7 CFR 1714.56(c).

Finally, one commenter requested that a longer fund advance period be available to all borrowers, regardless of whether the borrower has merged. As already noted, any borrower may apply for an extension under 7 CFR 1714.56(c).

Applicability of Transitional Assistance to Power Supply (G&T) Borrowers

Under the proposed rule, certain types of transitional assistance would be available only to distribution borrowers. The G&T borrowers who commented and NRECA believe that mergers involving G&T's can offer many of the same benefits as mergers between distribution borrowers.

Two of the types of transitional assistance limited to distribution borrowers are waiver of supplemental financing and a longer period for reimbursement of general funds and interim financing. Since loans to G&T's are generally much larger than loans to distribution systems, RUS cannot offer these types of incentives to power supply borrowers without sharply reducing the funds available for smaller distribution systems.

These commenters also requested that a phase-in period for coverage ratios also be available to G&T's. Required minimum levels of TIER and DSC for G&T's are 1.05 and 1.00, respectively. RUS rules do not establish required minimum levels for OTIER or ODSC for G&T's. See 7 CFR 1710.114(b)(2). It would not be prudent for RUS to allow lower levels of TIER or DSC.

Borrowers Who Prepaid RUS Loans Pursuant to 7 CFR Part 1786

Pursuant to 7 CFR part 1786, subparts C, E and F, borrowers may use private financing or internally generated funds to prepay RUS direct or insured loans at a discounted present value. Borrowers who prepay under this rule may not apply for or receive any new direct or insured loans from RUS for a period after the prepayment, except at the Administrator's discretion. Questions arise about the eligibility of a newly merged system where one of the merging entities had ''bought out'' of RUS, and the other is still an active borrower.

Under the proposed rule at 7 CFR 1717.156 and 1786.167(a), the Administrator would exercise discretionary authority to approve insured loans to finance facilities to serve only consumers that were, immediately prior to the merger, served by the active borrower; that is, the borrower that did not prepay. Several commenters questioned this policy, noting, among other things the administrative burden involved in separating facilities eligible for RUS financing from facilities that are not.

RUS believes that the administrative burden of separating facilities eligible for RUS financing from those not eligible is not as great as it appears. Locations of new facilities and consumers should be part of the borrower's construction work plans and should be clear in the loan application documents. If there are questions, in cases where, for example, a single distribution line will serve some consumers that are located in territory formerly served by the borrower that was active immediately prior to the merger, and other consumers in territory that was served by the former borrower that prepaid, RUS will consider any reasonable method for allocating funds.

However, RUS has redrafted other portions of the final rule in order to encourage beneficial mergers between active borrowers and former borrowers. According to the proposed rule, certain types of transitional assistance (waiver of supplemental financing, longer period for reimbursement of general funds, and phase in plan for coverage ratios, 7 CFR 1717.154(a)(2) and 1717.154(3)(b)(2), respectively) would be available only if all parties to the merger are active distribution borrowers. The final rule at 7 CFR 1717.154(b) and 1717.154(c), and 1717.155(b), extends availability for this assistance to mergers where at least one of the parties is a former distribution borrower and all other parties are active distribution borrowers if the merger is effective after December 19, 1996.

RUS Procedures

The requirement that RUS, as a secured lender, generally approve mergers is in the loan documents and RUS regulations. Under certain conditions, set out in 7 CFR 1717.615 and 1710.7(c), as published December 29, 1995, at 60 FR 67395, borrowers may enter into such mergers without RUS approval.

One commenter addressed the timeframe for RUS processing. This commenter urged RUS ''to require action by RUS within a certain designated time period.'' According to the proposed rule at 7 CFR 1717.157 (final rule at section 1717.159), borrowers must submit applications for RUS approval of mergers no later than 90 days prior to the proposed effective date. RUS understands that mergers are time sensitive and intends to make every effort to act on these applications in timely fashion.

Another commenter questioned the need for rate information in 7 CFR 1717.158(e) of the proposed rule, in cases where rates schedules will not change after the merger. RUS agrees, and section 1717.160(e) of the final rule now notes that a statement that no change to rate schedules is planned will suffice, if such is the case.

Rescission of Obsolete Directive

Effective January 21, 1997, REA Bulletin 115–2, Merger and Consolidation of Electric Borrowers, is rescinded. RUS has determined that this bulletin, issued November 9, 1972, is obsolete.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Rural areas.

7 CFR Part 1714

Electric Power, Loan programs—energy, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien subordinations, Loan programs—energy, Reporting and recordkeeping requirements, Rural development.

7 CFR Part 1786

Accounting, Administrative practice and procedure, Electric utilities.

For the reasons set out in the preamble, and under the authority of 7 U.S.C. 901 et seq., RUS amends 7 CFR Chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Public Law 99–591, 100 Stat. 3341–16; Public Law 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1710.109 is amended by redesignating paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3) as paragraphs (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), and (c)(1)(iii), respectively, and by adding a new paragraph (c)(2) to read as follows:

§ 1710.109 Reimbursement of general funds and interim financing.

* * * * *

(c) * * *

(2) Policies for reimbursement of general funds and interim financing following certain mergers, consolidations, and transfers of systems substantially in their entirety are set forth in 7 CFR 1717.154.

* * * * *

3. Section 1710.110 is amended by revising the first sentence of paragraph (a) and adding a new paragraph (c)(1)(iii):

§ 1710.110 Supplemental financing.

(a) Except in the case of financial hardship as determined by the Administrator, and following certain mergers, consolidations, and transfers of systems substantially in their entirety as set forth in 7 CFR 1717.154, applicants for a municipal rate loan will be required to obtain a portion of their loan funds from a supplemental source without an RUS guarantee, in the amounts set forth in paragraph (c) of this section. * * *

* * * * *

(c) * * *

(1) * * *

(iii) If a distribution borrower enters into a merger, consolidation, or transfer of system substantially in its entirety, and the provisions of 7 CFR 1717.154(b) do not apply, required supplemental financing will be determined as follows for loans approved by RUS after

December 19, 1996. If one of the merging parties met the criteria in paragraph (c)(1)(i) of this section prior to the effective date of the merger consolidation or transfer, the borrower will be required to obtain supplemental financing equal to 10 percent of any loan funds requested for facilities to serve consumers located in the territory formerly served by the ''paragraph (c)(1)(i)'' borrower. The required amount of supplemental financing for the rest of the loan will be determined according to the provisions of paragraph (c)(1)(ii) of this section.

* * * * *

4. Section 1710.114 is amended by adding a sentence at the end of paragraph (b)(3) to read as follows:

§ 1710.114 TIER, DSC, OTIER and ODSC requirements.

* * * * *

(b) * * *

(3) * * * Policies for coverage ratios following certain mergers, consolidations, and transfers of systems substantially in their entirety are in 7 CFR 1717.155.

* * * * *

5. Section 1710.119 is amended by revising paragraph (b)(3) to read as follows:

§ 1710.119 Loan processing priorities.

* * * * *

(b) * * *

(3) To finance the capital needs of borrowers that are the result of a merger, consolidation, or a transfer of a system substantially in its entirety, provided that the merger, consolidation, or transfer has either been approved by RUS or does not need RUS approval pursuant to the borrower's loan documents (See 7 CFR 1717.154); or

* * * * *

PART 1714—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

6. The authority citation for part 1714 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub.L. 99–591, 100 Stat. 3341; Pub.L. 103–353, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*)

7. Section 1714.56 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 1714.56 Fund advance period.

* * * * *

(c) The Administrator may agree to an extension of the fund advance period for loans approved on or after June 1, 1984, if the borrower demonstrates to the satisfaction of the Administrator that the loan funds continue to be needed for approved loan purposes (i.e., facilities included in an RUS approved construction work plan). Policies for extension of the fund advance period following certain mergers, consolidations, and transfers of systems substantially in their entirety are set forth in 7 CFR 1717.156.

* * * * *

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

8. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub.L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

9. Subpart D is added to part 1717 to read as follows:

Subpart D—Mergers and Consolidations of Electric Borrowers

Sec.

Subpart D—Mergers and Consolidations of Electric Borrowers

§ 1717.150 General.

(a) This subpart establishes RUS policies and procedures for mergers of electric borrowers. These policies and procedures are intended to provide borrowers with the flexibility to negotiate and enter into mergers that offer advantages to the borrowers and to rural communities, and adequately protect the integrity and credit quality of RUS loans and loan guarantees.

(b) Consistent with prudent lending practices, the maintenance of adequate security for RUS loans and loan guarantees, and the objectives of the Rural Electrification Act of 1936, as amended, (7 U.S.C. 901 *et seq.*) (RE Act), RUS encourages electric borrowers to consider mergers when such action is likely to contribute, in the long-term, to greater operating efficiency and financial soundness. Borrowers are specifically encouraged to explore mergers that are likely to enhance the ability of the successor to provide reliable electric service at reasonable cost to RE Act beneficiaries.

(c) Pursuant to the loan documents and RUS regulations, certain mergers are subject to RUS approval. See § 1717.615.

(d) Since RUS must take action in order to advance funds and otherwise conduct business with a successor, RUS encourages borrowers to consult RUS early in the process regardless of whether RUS approval of the merger is required. RUS will provide technical assistance and guidance to borrowers to help expedite the processing of their requests and to help resolve potential problems early in the process.

§ 1717.151 Definitions.

The definitions set forth in 7 CFR 1710.2 are applicable to this subpart unless otherwise stated. In addition, for the purpose of this subpart, the following terms shall have the following meanings:

Active borrower means an electric borrower that has, on the effective date, an outstanding insured or guaranteed loan from RUS for rural electrification, and whose eligibility for future RUS financing is not restricted pursuant to 7 CFR part 1786.

Active distribution borrower means an electric distribution borrower that has, on the effective date, an outstanding insured or guaranteed loan from RUS for rural electrification, and whose eligibility for future RUS financing is not restricted pursuant to 7 CFR part 1786.

Consolidation see *merger.*

Coverage ratios means collectively TIER, OTIER, DSC and ODSC, as these terms are defined in 7 CFR 1710.2.

Effective date means the date a merger is effective pursuant to applicable state law.

Former distribution borrower means any organization that (1) sells or intends to sell electric power and energy at retail;

(2) at one time had an outstanding loan made or guaranteed by RUS, or its predecessor the Rural Electrification Administration (REA) for rural electrification; and

(3) either repaid such loans at face value or prepaid pursuant to 7 CFR part 1786.

Loan documents means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note(s) entered into between the borrower and RUS.

Merger means: (1) A consolidation where two or more companies are

extinguished and a new successor is created, acquiring the assets, liabilities, franchises and powers of those passing out of existence;

(2) A merger where one company is absorbed by another, the former ceasing to exist as a separate business entity, and the latter retaining its own identity and acquiring the assets, liabilities, franchises and powers of the former; or

(3) A transfer of mortgaged property by one company to another where the transferee acquires substantially as an entirety the assets, liabilities, franchises, and powers of the transferor.

New loan means a loan to a successor approved by RUS on or after the effective date.

Preexisting loan means a loan to a borrower approved by RUS prior to, and outstanding on the effective date.

Successor means the entity that continues as the surviving business entity as of the effective date, and acquires all the assets, liabilities, franchises, and powers of the entity or entities ceasing to exist as of the effective date.

Transitional assistance means financial relief provided to borrowers by RUS during a limited period of time following a merger.

§ 1717.152 Required documentation for all mergers.

In order for RUS to advance funds, send bills, and otherwise conduct business with a successor, the documents listed in this section must be submitted to RUS regardless of the need for RUS approval of the merger. Borrowers are responsible for ensuring that these documents are received by RUS in timely fashion. In cases of mergers that require RUS approval, or cases where borrowers must submit requests for transitional assistance, the documents listed in this section may be combined with the documents required by §§ 1717.157 and/or 1717.160 where appropriate.

(a) Prior to the effective date, borrowers must submit:

(1) A transmittal letter on corporate letterhead signed by the manager of each active borrower that is a party to the proposed merger indicating the borrower's intention to merge and tentative timeframes, including the proposed effective date;

(2) An original certified board resolution from each party to the proposed merger affirming the board's support of the merger;

(3) All documents necessary to evidence the merger pursuant to applicable law. Examples include plan of merger, articles of merger, amended articles of incorporation, bylaws, and notices and filings required by law. These documents may be copies of documents filed elsewhere, unless otherwise specified by RUS; and

(4) A letter addressed to the Administrator from the counsel of at least one of the active borrowers briefly describing the merger and indicating the relevant statutes under which the merger will be consummated.

(b) On or after the effective date, borrowers must submit:

(1) An opinion of counsel from the successor addressing, among other things, any pending litigation, proper authorization and consummation of the merger, proper filing and perfection of RUS' security interest, and all approvals required by law. RUS will provide the form of the opinion of counsel to the successor;

(2) A letter signed by the manager of the successor advising RUS of the effective date of the merger; the corporate name, address, and phone number; the names of the officers of the successor; and the taxpayer identification number; and

(3) Evidence of proper filing and perfection of RUS' security interest, as instructed by RUS, and an executed loan contract.

§ 1717.153 Transitional assistance.

RUS recognizes that short-term financial stresses can follow even the most beneficial mergers. To help stabilize electric rates, enhance the credit quality of outstanding loans made or guaranteed by the Government, and otherwise ease the transition period before the long-term efficiencies and economies of a merger can be realized, RUS may approve one or more types of transitional assistance to a successor under the conditions set forth in this part.

§ 1717.154 Transitional assistance in connection with new loans.

Requests for transitional assistance in connection with new loans may be submitted to RUS no later than the loan application.

(a) *Loan processing priority*. (1) RUS loans are generally processed in chronological order based on the date the complete application is received in the regional or division office. At the borrower's request, RUS will offer loan processing priority for the first loan to a successor, provided that the loan is approved by RUS not later than 5 years after the effective date of the merger. For any subsequent loans approved during those 5 years, RUS may offer loan processing priority. In reviewing requests for loan processing priority on subsequent loans, RUS will consider the loan authority for the fiscal year, the borrower's projected cash flows, its electric rates and rate disparity, and the likely mitigating effects of priority loan processing. See 7 CFR 1710.108 and 1710.119.

(2) Loan processing priority is available following any merger where at least one of the merging parties is an active borrower.

(b) *Supplemental financing.* (1) RUS generally requires that an applicant for a municipal rate loan obtain a portion of its debt financing from a supplemental source without an RUS guarantee. See 7 CFR 1710.110. RUS will, at the borrower's request, waive the requirement to obtain supplemental financing for the first RUS loan approved after the effective date if that first loan is a municipal rate loan whose loan period does not exceed 2 years, and the loan is approved by RUS not later than 5 years after the effective date. For any subsequent loans approved during these 5 years, or if the borrower requests a loan period longer than 2 years, RUS may, subject to the availability of loan funds, waive or reduce the amount of supplemental financing required. In reviewing requests to reduce or waive supplemental financing on subsequent loans or on loans with a loan period longer than 2 years, RUS will consider the differences in interest rates between RUS and supplemental loans and the impacts of this difference on the borrower's projected cash flows and its electric rates and rate disparity. If significant differences would result, the waiver will be granted.

(2) Waiver of supplemental financing may be available if:

(i) All parties to the merger are active distribution borrowers, *or*

(ii) At least one of the merging parties is an active distribution borrower, all merging parties are either active distribution borrowers or former distribution borrowers, *and* the merger is effective after December 19, 1996.

(c) *Reimbursement of general funds and interim financing.* (1) Borrowers may request RUS loan funds to reimburse general funds and/or interim financing used to finance equipment and facilities included in a RUS approved construction work plan or amendment if the construction was completed immediately preceding the current loan period. This reimbursement period is generally limited to 24 months. See 7 CFR 1710.109. RUS may, in connection with the first RUS loan approved after the effective date, approve a reimbursement period of up to 48 months prior to the current loan period if the loan is approved not later than 5 years after the

effective date. In reviewing requests for this longer reimbursement period, RUS will consider the stresses that the transaction and other costs of entering into the merger places on the borrower's rates and cash flows, and the mitigating effects of more generous reimbursement.

(2) A longer reimbursement period may be available if:

(i) All parties to the merger are active distribution borrowers, *or*

(ii) At least one of the merging parties is an active distribution borrower, all merging parties are either active distribution borrowers of former distribution borrowers, *and* the merger is effective after December 19, 1996.

§ 1717.155 Transitional assistance affecting new and preexisting loans.

Requests for transitional assistance affecting new and preexisting loans must be received by RUS no later than 2 years after the effective date.

(a) *Section 12 deferments.* (1) Section 12 of the RE Act (7 U.S.C. 912) allows RUS to extend the time of payment of interest or principal of RUS loans. Section 12 deferments do not extend the final maturity of the loan; lower payments during the deferment period result in higher payments later. Therefore, RUS may approve a Section 12 deferment of loan payments of up to 5 years only if such deferments will help to avoid substantial increases in retail electric rates during the transition period, without placing borrowers in financial stress after the deferment period.

(2) Section 12 deferment may be available following any merger where at least one of the merging parties is an active borrower.

(b) *Coverage ratios.* Required levels for coverage ratios are set forth in 7 CFR 1710.114 and in the loan documents. RUS may approve a plan, on a case by case basis, that provides for a phase-in period for these coverage ratios of up to 5 years from the effective date. Under such a plan the successor would be permitted to project and achieve lower levels for one or more of these coverage ratios during the phase-in period.

(1) A phase-in plan for coverage ratios must provide a pro forma level for each ratio during each year of the phase-in period and be supported by a financial forecast covering a period of not less than 10 years from the effective date of the merger. The plan must demonstrate that a minimum TIER level of 1.00 will be achieved in each year, that trends will be generally favorable, that the borrower will achieve the levels required in its loan documents and RUS regulations by the end of the phase-in period, and that these levels will be maintained in subsequent years.

(2) In reviewing phase-in plans for coverage ratios, RUS will review rates, rate disparity, and likely mitigating effects of the proposed phase-in plan.

(3) The borrower is responsible for obtaining approvals of supplemental lenders.

(4) Upon RUS approval of a phase-in plan, the levels in that plan will be substituted for the levels required in the borrower's preexisting loan documents and will be incorporated in any new loan or security documents.

(5) A phase in plan for coverage ratios may be available if:

(i) All parties to the merger are active distribution borrowers, *or*

(ii) At least one of the merging parties is an active distribution borrower, all merging parties are either active distribution borrowers or former distribution borrowers, and the merger is effective after December 19, 1996.

§ 1717.156 Transitional assistance affecting preexisting loans.

The fund advance period for an insured loan, which is the period during which RUS may advance loan funds to a borrower, terminates automatically after a specific period of time. See 7 CFR 1714.56. If, on the effective date the original fund advance period or the fund advance period as extended pursuant to 7 CFR 1714.56(c), on any preexisting RUS loan to any of the active borrowers involved in a merger has not terminated, such fund advance period shall be automatically lengthened by 2 years. On the borrower's request RUS will prepare documents necessary for the advance of loan funds. RUS will prepare documents for the borrower's execution that will reflect this extension and will provide the legal authority for RUS to advance funds to the successor.

§ 1717.157 Requests for transitional assistance.

(a) If the merger requires RUS approval, the borrower should, where possible, indicate that it desires transitional assistance at the time it requests approval of the merger. The formal request for transitional assistance must be received by RUS as specified in §§ 1717.155 and 171.156. Documents listed in this section may be combined with the documents required by §§ 1717.152 and/or 1717.160 where appropriate. If the request for transitional assistance is submitted at the same time as a loan application, documents listed in this section may be combined with the loan application documents where appropriate. See 7 CFR part 1710, subpart I. A request for transitional assistance must include:

(1) Transmittal letter(s) formally listing the types of transitional assistance requested. If the request is submitted before the effective date, a transmittal letter must be signed by the manager of each party to the transaction. If the request is submitted on or after the effective date, a transmittal letter must be signed by the manager of the successor. Transmittal letter(s) must be signed originals on corporate letterhead stationery;

(2) Board resolution(s). If the request is submitted before the effective date, a separate board resolution must be submitted from each entity involved in the merger. If the request is submitted on or after the effective date, a board resolution from the successor must be submitted. Each board resolution must be a certified original;

(3) A merger plan, financial forecasts, and any available studies such as net present value analyses showing the anticipated costs and benefits of the merger and likely timeframes for the merger. The merger plan must clearly identify those benefits that cannot be achieved without a merger, and those benefits that can be achieved through other means;

(4) If the transitional assistance requires RUS approval, the type and extent of the mitigation that the transitional assistance is expected to provide; and

(5) Other information that may be relevant.

(b) Borrowers are responsible for ensuring that requests for transitional assistance are complete and sound in form and substance when they are submitted to RUS. After submitting a request, borrowers shall promptly notify RUS of any changes or events that materially affect the request or any information in the request.

(c) In considering whether to approve requests for transitional assistance, RUS will evaluate the costs and benefits of the merger; the type and extent of the likely transitional stress; whether the transitional assistance requested is likely to materially mitigate such stress; and the likely impacts on electric rates and on the security of RUS loans. Review factors applicable to each type of transitional assistance are set forth in §§ 1717.154–1717.156.

§ 1717.158 Mergers with borrowers who prepaid RUS loans.

In some cases, an active distribution borrower may merge with a borrower that has prepaid RUS debt at a discount pursuant to 7 CFR part 1786, and whose eligibility for future RUS financing is

thereby restricted. During the period when the restrictions on future financing are in effect, the successor will be eligible for RUS loans to finance facilities to serve consumers located in the territory that was served by the active distribution borrower immediately prior to the effective date, provided that other requirements for loan eligibility are met.

§ 1717.159 Applications for RUS approvals of mergers.

If a proposed merger requires RUS approval according to RUS regulations and/or the loan documents executed by any of the active borrowers involved, the application must be submitted to RUS not later than 90 days prior to the effective date of the proposed borrower action. A distribution borrower should consult with its assigned RUS general field representative, and a power supply borrower with the Director, Power Supply Division for general information prior to submitting the request.

§ 1717.160 Application contents.

An application for RUS approval of a merger must include the documents listed in this section. Documents listed in this section may be combined with the documents required by §§ 1717.152 and/or 1717.157 where appropriate.

(a) *Transmittal letters* signed by the managers of all borrowers and non-borrowers who are parties to the proposed merger. These letters must include the actual corporate name, address, and taxpayer identification number of all parties to the proposed merger. The transmittal letters must be signed originals on corporate letterhead stationery.

(b) *Resolutions from the boards of directors* of all borrowers and non-borrowers who are parties to the proposed merger. This document is the formal request by each entity for RUS approval of the proposed merger. The board resolution must include a description of the proposed merger, including timeframes, and authorization for RUS to release appropriate information to supplemental or other lenders, and for these lenders to release appropriate information to RUS. Each board resolution must be a certified original.

(c) *Evidence* that the proposed merger will result in a viable entity, and that the security of outstanding RUS loans will not be adversely affected by the action. This evidence shall include financial forecasts, and any available studies such as net present value analyses covering a period of not less than 10 years from the effective date of the merger, as well as information about any threatened actions by other parties that could adversely affect the financial condition of any of the parties to the proposed merger, or of the successor. Such threatened actions may include annexations or other actions affecting service territory, loads, rates or other such matters.

(d) *Regulatory information* about pending federal or state proceedings pertaining to any of the parties that could have material effects on the successor.

(e) *Rate information*. Distribution and power supply borrowers shall submit schedules of proposed rates after the merger, including the effects of the proposed action on rates and the status of any pending rate cases before a state regulatory authority. The rates of power supply borrowers are subject to RUS approval. If rates are not projected to change after the merger, a statement to that effect will suffice.

(f) *Area coverage and line extension policies:* If any distribution systems are parties to the proposed merger, a statement of proposed area coverage and line extension policies for the successor.

§ 1717.161 Application process.

(a) Borrowers are responsible for ensuring that their applications for RUS approval of a merger are complete and sound in form and substance when they are submitted to RUS. After submitting an application, borrowers shall promptly notify RUS of any changes or events that materially affect the application or any information in the application.

(b) In reviewing borrower requests for approval of mergers, RUS will consider the likely effects of the action on the ability of the successor to provide reliable electric service at reasonable cost to RE Act beneficiaries and on the security of outstanding RUS loans. Among the factors RUS will consider are whether the proposed merger is likely to:

(1) Contribute to greater operating efficiency and financial soundness;

(2) Mitigate high electric rates and or rate disparity;

(3) Help borrowers to diversify their loads or otherwise hedge risks;

(4) Have beneficial effects on rural economic development in the community served by the borrower, such as diversifying the economic base or alleviating unemployment; and

(5) Provide other benefits consistent with the purposes of the RE Act.

(c) RUS will not approve a merger if, in the sole judgment of the Administrator, such action is likely to have an adverse effect on the credit quality of outstanding loans made or guaranteed by the Government. RUS will thoroughly review each request for approval of such action, including review of the feasibility and security of outstanding Government loans according to the standards in 7 CFR 1710.112 and 1710.113, respectively, and in other RUS regulations.

(d) RUS will keep the borrowers apprised of the progress of their applications.

PART 1786—PREPAYMENT OF RUS GUARANTEED AND INSURED LOANS TO ELECTRIC AND TELEPHONE BORROWERS

Subpart F—Discounted Prepayments on RUS Electric Loans

10. The authority citation for subpart F continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; Pub.L. 103–534, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*)

11. Section 1786.167 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 1786.167 Restrictions to additional RUS financing.

(a) * * * Special provisions for mergers involving a borrower that has prepaid pursuant to this subpart are in 7 CFR 1717.158.

* * * * *

Dated: December 13, 1996.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 96–32084 Filed 12–18–96; 8:45 am]

BILLING CODE 3410–15–P

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

12 CFR Part 1511

Resolution Funding Corporation; Book-Entry Procedure

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Final rule.

SUMMARY: The Thrift Depositor Protection Oversight Board is publishing final regulations to govern Resolution Funding Corporation book-entry securities. This action is being taken in conjunction with similar amendments being made by the Department of the Treasury to the regulations governing book-entry Treasury securities, and by other government-sponsored enterprises (GSEs) for securities that are maintained on the book-entry system operated by the Federal Reserve Banks. The rules incorporate recent and significant changes in commercial law addressing

the holding of securities in book-entry form through financial intermediaries.

EFFECTIVE DATE: January 1, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Van B. Jorstad, Acting Executive Director, Thrift Depositor Protection Oversight Board (202) 622–0462, or Joan Affleck-Smith, Director, Office of Financial Institutions Policy, Department of the Treasury (202) 622–2740.

SUPPLEMENTARY INFORMATION: Most government-sponsored enterprises (GSEs) have regulations governing their book-entry securities maintained in the Federal Reserve book-entry system that are nearly identical to the Treasury regulations governing marketable Treasury securities.[1] In 1989, the Oversight Board adopted regulations for obligations issued by the Resolution Funding Corporation [2] which are also modeled on Treasury regulations. These regulations provide that the Federal Reserve Banks may issue, service and maintain Resolution Funding Corporation obligations in book-entry form.[3] The regulations also set forth book-entry procedures including the transfer, pledge, and servicing of book-entry Resolution Funding Corporation obligations.

The current Treasury regulations will be superseded by new regulations (the ''TRADES regulations'')[4] that will go into effect on January 1, 1997. As explained below, the TRADES regulations incorporate recent and significant changes in commercial law addressing the holding of securities in book-entry form through financial intermediaries.

Some commenters on the TRADES regulations were concerned about coordination among Treasury and GSEs that issue book-entry securities. The commenters urged simultaneous effectiveness of parallel GSE rules. Accordingly, the Thrift Depositor Oversight Board (''Oversight Board'') is issuing revised regulations that will be effective January 1, 1997, for Resolution Funding Corporation book-entry securities.

Consistent with the approach in the TRADES regulations, the regulations in this Part contain specific provisions that deal with the rights and obligations of the Resolution Funding Corporation and the Federal Reserve Banks with respect to Resolution Funding Corporation securities and the operation of the book-entry system. The regulations are also based in large part on Revised Article 8 on Investment Securities of the Uniform Commercial Code (''Revised Article 8''). The regulations include certain choice of law rules patterned on Revised Article 8. In the event the jurisdiction specified under the choice of law rules has not adopted Revised Article 8, then the law to be applied is Revised Article 8. At the time of the publication of the final TRADES rule, 28 states had adopted Revised Article 8.[5]

Except with respect to matters related to differences between Resolution Funding Corporation securities and Treasury securities,[6] the provisions of these rules are the same as the rules that will apply to Treasury securities. The Oversight Board intends that the analysis contained in the commentary to the TRADES final rule, Appendix B to 31 CFR Part 357, and other interpretations of the TRADES regulations published in the Federal Register, are to be used in interpreting the regulations in Part 1511.

The only notable differences between these regulations and the TRADES regulations are as follows. First, there is no comparable system such as ''TREASURY DIRECT,'' [7] for Resolution Funding Corporation securities. Second, in contrast to Treasury securities, no Resolution Funding Corporation securities have been issued in registered definitive or bearer (paper) form. All outstanding Resolution Funding Corporation securities (referred to as ''bonds'' in the offering documentation) were issued only in book-entry form and are maintained on the book-entry system of the Federal Reserve Banks. Third, there are some variations in terminology.

Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'' pursuant to Executive Order 12866.

The Oversight Board is adopting these regulations as a final rule effective January 1, 1997. For the following reasons, the Oversight Board finds that notice and public procedure and a 30-day delayed effective date are unnecessary, impracticable, and contrary to the public interest, pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3). First, the rule merely conforms the regulations governing book-entry Resolution Funding Corporation securities to the TRADES regulations that will govern book-entry Treasury securities. Second, the TRADES regulations were published in various forms, as a proposed rule four times and as a final rule once. In each instance, the TRADES regulations were accompanied by extensive commentary addressing the background and rule provisions. Third, the comments on the TRADES regulations urged uniformity in substance and effectiveness for regulations for GSEs that issue book-entry securities maintained on the Federal Reserve book-entry system. Fourth, there are compelling reasons for setting the effective date at January 1, 1997, when the TRADES regulations and those of the other GSEs will become effective. Having the rules become effective at different times for securities that are all maintained and transferred on the book-entry system would be burdensome and unworkable for market participants.

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

There are no collections of information contained in this final rule. Therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 12 CFR Part 1511

Bonds, Electronic funds transfer, Federal Reserve System, Government securities, Incorporation by reference, Securities.

For the reasons set forth in the preamble, Title 12, Chapter XV, Subchapter B, Part 1511 is revised to read as follows:

PART 1511—BOOK-ENTRY PROCEDURE

Sec.

[1] 31 CFR Part 306, Subpart O.

[2] 54 FR 41948 (October 13, 1989).

[3] Section 21B(h)(2) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1441b(h)(2)), authorizes the Federal Reserve Banks to act as depositaries for or fiscal agents or custodians of the Funding Corporation.

[4] 61 FR 43626 (August 23, 1996).

[5] California has since also adopted Revised Article 8.

[6] Resolution Funding Corporation securities are not obligations of, or guaranteed as to principal by, the United States. See the Offering Circular and Supplements for a more complete statement of their terms.

[7] In TREASURY DIRECT, the beneficial owners of Treasury securities hold their securities directly, on the books of the issuer (in contrast to holding through a financial intermediary).

Authority: 12 U.S.C. 1441b.

§ 1511.0 Applicability.

The regulations in this part apply to Book-entry Funding Corporation Securities.

§ 1511.1 Definitions of terms.

In this part, unless the context indicates otherwise:

Act means the Federal Home Loan Bank Act as amended (12 U.S.C. 1421 *et seq.*).

Adverse Claim means a claim that a claimant has a property interest in a Book-entry Funding Corporation Security and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Book-entry Funding Corporation Security.

Book-entry Funding Corporation Security means a Funding Corporation Security in book-entry form that is issued or maintained in the Book-entry System. Solely for the purposes of this Part, it also means the separate interest and principal components of a Book-entry Funding Corporation Security if such security has been divided into such components as authorized by the Securities Documentation and the components are maintained separately on the books of one or more Federal Reserve Banks.

Book-entry System means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the Funding Corporation, on which Book-entry Funding Corporation Securities are issued, recorded, transferred and maintained in book-entry form.

Entitlement Holder means a Person to whose account an interest in a Book-entry Funding Corporation Security is credited on the records of a Securities Intermediary.

Federal Reserve Bank or Reserve Bank means a Federal Reserve Bank or Branch.

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry Securities accounts (including Book-entry Funding Corporation Securities) and transfers book-entry Securities (including Book-entry Funding Corporation Securities).

Funding Corporation means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

Funding Corporation Security or *Security* means a Funding Corporation bond, note, debenture and similar obligations issued under section 21B of the Act.

Funds Account means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, book-entry securities transaction fees, or principal and interest payments.

Participant means a Person that maintains a Participant's Securities Account with a Federal Reserve Bank.

Participant's Securities Account means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry Funding Corporation Securities held for a Participant are or may be credited.

Person means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, the Funding Corporation, or a Federal Reserve Bank.

Revised Article 8 means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text. Revised Article 8 of the Uniform Commercial Code is incorporated by reference in this Part pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51. Article 8 was adopted by the American Law Institute and the National Conference of Commissioners on Uniform State laws and approved by the American Bar Association on February 14, 1995. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611. Copies are also available for public inspection at the Department of the Treasury Library, Room 5030, main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington DC 20220, and in the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington DC.

Securities Documentation means the applicable offering circular, supplement, or other documents establishing the terms of a Book-entry Funding Corporation Security.

Securities Intermediary means:

(1) A Person that is registered as a ''clearing agency'' under the Federal securities laws; a Federal Reserve Bank; any other Person that provides clearance or settlement services with respect to a Book-entry Funding Corporation Security that would require it to register as a clearing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

Security Entitlement means the rights and property interest of an Entitlement Holder with respect to a Book-entry Funding Corporation Security.

State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

Transfer message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Funding Corporation Security, as set forth in Federal Reserve Bank Operating Circulars.

§ 1511.2 Law governing rights and obligations of the Funding Corporation and Federal Reserve Banks; rights of any Person against the Funding Corporation and the Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the following are governed solely by the regulations contained in this part 1511, the Securities Documentation and Federal Reserve Bank Operating Circulars:

(1) The rights and obligations of the Funding Corporation and the Federal Reserve Banks with respect to:

(i) A Book-entry Funding Corporation Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Funding Corporation Securities; and

(2) The rights of any Person, including a Participant, against the Funding Corporation and the Federal Reserve Banks with respect to:

(i) A Book-entry Funding Corporation Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Funding Corporation Securities.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1511.4(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal

Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1511.4(c)(1), is governed by the law determined in the manner specified in § 1511.3.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8 (incorporated by reference, see § 1511.1), then the law specified in paragraph (b) shall be the law of that State as though Revised Article 8 had been adopted by that State.

§ 1511.3 Law governing other interests.

(a) To the extent not inconsistent with the regulations in this part, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection and priority of a security interest in a Security Entitlement.

(b) The following rules determine a ''Securities Intermediary's jurisdiction'' for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8 (incorporated by reference, see § 1511.1), then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Securities Account is a clearing corporation, and the Participant's interest in a Book-entry Funding Corporation Security is a Security Entitlement.

§ 1511.4 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry Funding Corporation Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an ''authorized representative of the United States'' is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Funding Corporation and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank, the Funding Corporation, or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest in a Security Entitlement, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 1511.2(b) or § 1511.3. The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 1511.5 Obligations of Funding Corporation; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 1511.4(c)(1), for the purposes of this part 1511, the Funding Corporation and the Federal Reserve Banks shall treat the Participant to

whose Securities Account an interest in a Book-entry Funding Corporation Security has been credited as the Person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor the Funding Corporation is liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to a Book-entry Funding Corporation Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Funding Corporation Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Funding Corporation to make payments of interest and principal with respect to Book-entry Funding Corporation Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Funding Corporation Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Bank or otherwise paid as directed by the Participant.

(2) Book-entry Funding Corporation Securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest where applicable, to a Funds Account at such Bank or otherwise paying such principal and interest, as directed by the Participant. The principal of such Securities shall be paid using the proceeds of the noninterest bearing instruments maintained by the Funding Corporation for such purpose.

§ 1511.6 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Funding Corporation to perform functions with respect to the issuance of Book-entry Funding Corporation Securities offered and sold by the Funding Corporation, in accordance with the Securities Documentation, and Federal Reserve Bank Operating Circulars; to service and maintain Book-entry Funding Corporation Securities in accounts established for such purposes; to make payments of principal and interest with respect to such Book-entry Funding Corporation Securities as directed by the Funding Corporation; to effect transfer of Book-entry Funding Corporation Securities between Participants' Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Funding Corporation.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this Part, governing the details of its handling of Book-entry Funding Corporation Securities, Security Entitlements, and the operation of the Book-Entry System under this Part.

§ 1511.7 Liability of the Funding Corporation and Federal Reserve Banks.

The Funding Corporation and the Federal Reserve Banks may rely on the information provided in a Transfer Message, or other documentation, and are not required to verify the information. The Funding Corporation and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a Transfer Message, other documentation, or evidence submitted in support thereof.

§ 1511.8 Notice of attachment.

The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. The regulations in this part do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

Dated: December 5, 1996.

Van B. Jorstad,

Acting Executive Director.

[FR Doc. 96–32169 Filed 12–18–96; 8:45 am]

BILLING CODE 2221–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–136–AD; Amendment 39–9840; AD 96–24–16]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe 125–800A, Model Hawker 800, and Model Hawker 800XP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model BAe 125–800A, Model Hawker 800, and Model Hawker 800XP series airplanes, that requires the filling of two tooling holes on the firewalls of the left and right engine pylons with sealant. This amendment is prompted by notification from the manufacturer that these holes were not sealed during production. The actions specified by this AD are intended to prevent an engine fire from moving to the fuselage and to the lines that carry flammable fluid that are located inboard of the firewall.

DATES: Effective January 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. 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, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4146; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model BAe 125–800A, Model Hawker 800, and Model Hawker 800XP series airplanes was published in the Federal Register on September 4, 1996 (61 FR 46574). That action proposed to require the filling of the two, unused (open) holes in the firewall of each engine pylon.

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

There are approximately 286 Model BAe 125–800A, Model Hawker 800, and Model Hawker 800XP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 170 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $20,400, or $120 per airplane.

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

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:

96–24–16 Raytheon Aircraft Company (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddley, et al.): Amendment 39–9840. Docket 96–NM–136–AD.

Applicability: Model BAe 125–800A series airplanes, Model Hawker 800 series airplanes including Special Variants (C29A, U125, and U125A), and Model Hawker 800XP series airplanes; on which the modification described in Raytheon Service Bulletin SB.54–1–3815B, or a production equivalent, has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must 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.

Note 2: Raytheon Model BAe 125–800B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, may also be subject to the unsafe condition addressed by this AD. As of the effective date of this AD, however, this model is not type certificated for operation in the United States. Airworthiness authorities of countries in which the Model BAe 125–800B series airplanes are approved for operation should consider adopting corrective action, applicable to this model, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent an engine fire from moving to the fuselage and flammable fluid carrying lines located inboard of the firewalls on the left and right engine pylons, accomplish the following:

(a) Within six months after the effective date of this AD, fill the two, unused (open) tooling holes in the firewalls of the left and right engine pylons, in accordance with Raytheon Service Bulletin SB.54–1–3815B, dated March 26, 1996.

(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, Wichita 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, Wichita ACO.

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

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

(d) The action shall be done in accordance with Raytheon Service Bulletin SB.54–1–3815B, dated March 26, 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 Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita ACO, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 27, 1997.

Issued in Renton, Washington, on November 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–30569 Filed 12–19–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–199–AD; Amendment 39–9839; AD 96–24–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, and KC–10A (military) series airplanes, that requires high frequency eddy current inspections to detect cracks in the secondary pivot support of the horizontal stabilizer, and various follow-on actions, if necessary. This amendment is prompted by reports of crack development in the secondary pivot support of the horizontal stabilizer due to fatigue. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the horizontal stabilizer and, consequently, lead to reduced controllability of the airplane.

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

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5224; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: 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 McDonnell Douglas Model DC–10 series airplanes, and KC–10A (military) airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the Federal Register on March 22, 1996 (61 FR 11789). That action proposed to require high frequency eddy current inspections to detect cracks in the secondary pivot support of the horizontal stabilizer. That action also proposed to require repair of the cracked area and follow-on actions; or replacement of the cracked secondary pivot support of the horizontal stabilizer with a new secondary pivot support, which would constitute terminating action for the repetitive inspections.

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

One commenter supports the proposal.

Request that Credit Be Given for Previous Inspections

One commenter states that the proposed inspections already have been accomplished on a number of affected airplanes. Because of this, the commenter requests that the proposed rule be revised to specify that those operators will be given credit for having previously accomplished what the proposed rule would require.

The FAA does not consider that a change to the final rule is necessary. Operators are always given credit for work previously performed by means of the phrase in the Compliance section of the AD that states, ''Required as indicated, *unless accomplished previously.*'' Therefore, in the case of this AD, if the initial inspection has been accomplished prior to the effective date of the AD, this AD does not require that it be repeated. However, the AD does require that repetitive inspections be conducted thereafter at intervals not to exceed 10,000 landings [(if no cracking is detected, as specified in paragraph (b)(1)], and that the other follow-on actions be accomplished when indicated.

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 as proposed.

Cost Impact

There are approximately 376 McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 230 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $69,000, or $300 per airplane, per inspection cycle.

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

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:

96–24–15 McDONNELL DOUGLAS: Amendment 39–9839. Docket 95–NM–199–AD.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes, and KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletin 53–167, Revision 1, dated February 15, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the secondary pivot support of the horizontal stabilizer, which could result in reduced structural integrity of the horizontal stabilizer and, consequently, lead to reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 10,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracks in the secondary pivot support of the horizontal stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 53–167, Revision 1, dated February 15, 1995.

(b) If no cracks are detected during the HFEC inspection required by paragraph (a) of this AD, accomplish paragraph (b)(1) of this AD until paragraph (b)(2) of this AD is accomplished.

(1) Repeat the HFEC inspection thereafter at intervals not to exceed 10,000 landings.

(2) Accomplishment of the preventative modification in accordance with Condition I (no cracks), Option 2, of the service bulletin constitutes terminating action for the repetitive inspection requirements of paragraph (b)(1) of this AD.

(c) If any crack is detected during the HFEC inspection required by paragraph (a) or (b) of this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Repair the crack in accordance with Paragraph (1) of Condition II (cracks), Option 1 (temporary repair), of the Accomplishment Instructions of the service bulletin. Within 300 landings after accomplishing that repair, perform a visual inspection to detect cracks at the area of the repair, in accordance with the service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 300 landings.

(i) If any crack is detected during the visual inspection required by paragraph (c)(1) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(ii) Prior to 2,800 landings after accomplishing the HFEC inspection required by paragraph (a) of this AD, replace the secondary pivot support of the horizontal stabilizer with a new secondary pivot support, in accordance with Condition II (cracks), Option 2, of the service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive HFEC and visual inspection requirements of this AD.

(2) Replace the secondary pivot support of the horizontal stabilizer with a new secondary pivot support, in accordance with Condition II (cracks), Option 2 (permanent repair), of the service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive HFEC and visual inspection requirements of this AD.

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

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

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

(f) The inspections, certain repairs, and replacement shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 53–167, Revision 1, dated February 15, 1995 . This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 27, 1997.

Issued in Renton, Washington, on November 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–30568 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–176–AD; Amendment 39–9846; AD 96–25–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires inspections to detect chafing of the wire looms (bundles) in the wing and the horizontal stabilizer; and repair or replacement, protection, and realignment, if necessary. This amendment requires that those actions also be accomplished in certain areas of the main landing gear (MLG) bays. This amendment also requires installation of protective sleeves around the wire bundles, and realignment of bundles that are not guided centrally into the conduit end fittings, which constitutes terminating action for the repetitive inspections. This amendment is prompted by a report that electrical short circuiting could occur in the wire bundles in the MLG bays. The actions specified by this AD are intended to prevent such electrical short circuiting due to chafing of the wire bundles in the wing, horizontal stabilizer, or MLG bays.

DATES: Effective January 27, 1997. The incorporation by reference of Airbus Service Bulletin A320–24–1044, Revision 3, dated March 12, 1993; and Airbus Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993, as listed in the regulations, is approved by the Director of the Federal Register as of January 27, 1997.

The incorporation by reference of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992; and Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992; as listed in the regulations was approved previously by the Director of the Federal Register as of December 3, 1992 (57 FR 48957).

ADDRESSES: The service information referenced in this AD may be obtained

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–22–02, amendment 39–8388 (57 FR 48957, October 29, 1992), which is applicable to certain Airbus Model A320 series airplanes, was published in the Federal Register on September 11, 1996 (61 FR 47835). The action proposed to supersede AD 92–22–02 to continue to require inspections to detect chafing of the wire bundles in the wing and the horizontal stabilizer; and repair or replacement, protection, and realignment, if necessary. The action also proposed to require that these actions be accomplished in certain areas of the MLG bays. Additionally, the action proposed to require installation of protective sleeves around the wire bundles, and realignment of bundles that are not guided centrally into the conduit end fittings, which would constitute terminating action for the repetitive inspections.

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

Both commenters support the proposed rule.

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 as proposed.

Cost Impact

There are approximately 30 Model A320 series airplanes of U.S. registry that will be affected by this proposed AD.

The actions that are currently required by AD 92–22–02 take approximately 31 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 actions currently required on U.S. operators is estimated to be $55,800, or $1,860 per airplane.

The inspections that are required by this new AD action will take approximately 31 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 required inspections on U.S. operators is estimated to be $55,800, or $1,860 per airplane.

The installation that is required by this AD action takes approximately 59 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost for required parts is negligible. Based on these figures, the cost impact of the installation on U.S. operators is estimated to be $106,200, or $3,540 per airplane.

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

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 removing amendment 39–8388 (57 FR 48957, October 29, 1992), and by adding a new airworthiness directive (AD), amendment 39–9846, to read as follows:

96–25–04 Airbus Industrie: Amendment 39–9846. Docket 95–NM–176–AD. Supersedes AD 92–22–02, Amendment 39–8388.

Applicability: Model A320 series airplanes on which Airbus Modification No. 22109 (Airbus Service Bulletin A320–24–1045, Revision 3, dated June 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 (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical short circuiting due to chafing of the wire bundles in the wing, horizontal stabilizer, or main landing gear (MLG) bay, accomplish the following:

Restatement of Requirements of AD 92–22–02

(a) For airplanes having manufacturer's serial numbers through 169 inclusive: Prior to the accumulation of 450 hours time-in-service after December 3, 1992 (the effective date of AD 92–22–02, amendment 39–8388), inspect the wire bundles in wing zones 574 and 674 through panels 574AB and 674AB to detect chafing or contact with the end fittings of the protective conduit, in accordance with Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993. Thereafter, repeat this inspection at intervals not to exceed 450 hours time-in-service until the inspection required by paragraph (c) of this AD is accomplished.

(1) If any chafed or damaged wire is found, prior to further flight, repair or replace it in accordance with the Airplane Maintenance Manual or the Aircraft Wiring Manual.

(2) If any wire bundle is found in contact with the edge of the conduit end fitting, or

which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(2)(b) of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993.

(b) For airplanes having manufacturer's serial numbers through 169 inclusive: Prior to the accumulation of 1,500 hours time-in-service after December 3, 1992, inspect the wire bundles in the wing and horizontal stabilizer, excluding wing zones 574 and 674 through panels 574AB and 674AB, to detect chafing or contact with the ending fittings of the protective conduit, in accordance with Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993. Thereafter, repeat this inspection at intervals not to exceed 3,500 hours time-in-service until the inspection required by paragraph (d) of this AD is accomplished.

(1) If any chafed or damaged wire is found, prior to further flight, repair or replace it in accordance with the Airplane Maintenance Manual or the Aircraft Wiring Manual.

(2) If any wire bundle is found in contact with the edge of the conduit end fitting, or which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(6)(b) of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993.

New Requirements of This AD

(c) For all airplanes: Prior to the accumulation of 450 hours time-in-service after the effective date of this AD, inspect the wire bundles in wing zones 574 and 674 through panels 574AB and 674AB to detect damage, contact chafing, or contact with the end fittings of the protective conduit, in accordance with Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993. Thereafter, repeat this inspection at intervals not to exceed 450 hours time-in-service. Accomplishment of this inspection terminates the inspections required by paragraph (a) of this AD.

(1) If any chafed or damaged wire is found, prior to further flight, accomplish the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Repair or replace the wire in accordance with the Airplane Maintenance Manual or the Aircraft Wiring Manual. And

(ii) Protect the wire bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(2)(b) of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993.

(2) If any wire bundle is found in contact with the edge of the conduit end fitting, or which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(2)(b) of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993.

(d) For all airplanes: Prior to the accumulation of 1,500 hours time-in-service after the effective date of this AD, inspect the wire bundles in the wing and horizontal stabilizer, excluding wing zones 574 and 674 through panels 574AB and 674AB, to detect chafing or contact with the ending fittings of the protective conduit, in accordance with Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993. Thereafter, repeat this inspection at intervals not to exceed 3,500 hours time-in-service. Accomplishment of this paragraph terminates the inspections required by paragraph (b) of this AD.

(1) If any chafed or damaged wire is found, prior to further flight, accomplish the requirements of paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Repair or replace the wire in accordance with the Airplane Maintenance Manual or the Aircraft Wiring Manual. And

(ii) Protect the wire bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(6)(b) of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993.

(2) If any wire bundle is found in contact with the edge of the conduit end fitting, or which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(6)(b) of Airbus Service Bulletin A320–24–1044, Revision 3, dated March 12, 1993. Thereafter, repeat this inspection at intervals not to exceed 3,500 hours time-in-service.

(e) For all airplanes: Prior to the accumulation of 1,500 hours time-in-service after the effective date of this AD, inspect the wire bundles in the MLG bays to detect chafing or contact with the end fittings of the protective conduit, in accordance with Airbus Service Bulletin A320–24–1044, Revision 3, dated March 12, 1993. Thereafter, repeat this inspection at intervals not to exceed 3,500 hours time-in-service.

(1) If any chafed or damaged wire is found, prior to further flight, accomplish the requirements of paragraphs (e)(1)(i) and (e)(1)(ii) of this AD.

(i) Repair or replace the wire in accordance with the Airplane Maintenance Manual or the Aircraft Wiring Manual. And

(ii) Protect the wire bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(6)(b) of Airbus Service Bulletin A320–24–1044, Revision 3, dated March 12, 1993.

(2) If any wire bundle is found in contact with the edge of the conduit end fitting, or which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(6)(b) of Airbus Service Bulletin A320–24–1044, Revision 3, dated March 12, 1993.

(f) If a temporary repair over a damaged length of wire bundle is accomplished in accordance with paragraph (a)(2), (b)(2), (c)(2), (d)(2), or (e)(2) of this AD: Prior to the accumulation of 450 hours time-in-service, replace the temporary repair with a protective sleeve around the wire bundle, and realign the bundle if it is not guided centrally into the conduit end fittings. Accomplish these actions in accordance with Airbus Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993. Accomplishment of these actions terminates the repetitive inspections required by paragraph (c), (d), or (e) of this AD, as applicable.

Note 2: Accomplishment of the actions in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, is acceptable for compliance with the requirements of paragraph (f) of this AD for the areas specified in paragraphs (c) and (d) of this AD.

(g) For all airplanes: Prior to the accumulation of 7,000 hours time-in-service after the effective date of this AD, install protective sleeves around the wire bundles, and realign any bundle that is not guided centrally into the conduit end fittings, in wing zones 574 and 674 through panels 574AB and 674AB, in the wing and horizontal stabilizer, excluding wing zones 574 and 674 through panels 574AB and 674AB, and in the MLG bays, in accordance with Airbus Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993. Accomplishment of these actions constitutes terminating action for the repetitive inspections required by this AD.

Note: 3: Accomplishment of the actions in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, is acceptable for compliance with the requirements of paragraph (g) of this AD for the areas specified in paragraphs (c) and (d) of this AD.

(h) 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 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

obtained from the Standardization Branch, ANM–113.

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

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

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
A320–24–1044, Revision 2 March 3, 1992	1–6, 8, 8A, 8B, 9, 12, 16	2	March 3, 1992.
	7, 10, 11, 13–15, 17–23	1	August 23, 1991.
A320–24–1044, Revision 3, March 12, 1993 ...	1–6, 8A, 13, 24	3	March 12, 1993.
	7, 10, 11, 14, 15, 17–23	1	August 23, 1991.
	8, 8B, 9, 12, 16	2	March 3, 1992.
A320–24–1045, Revision 2, April 12, 1992	1, 2, 4–8, 8A, 8B, 23	1	August 23, 1991.
	3, 9, 14–16, 10–13, 17–22	Original	February 1, 1991.
A320–24–1045, Revision 3, June 10, 1993	1–3, 6, 8A, 9 11, 21, 22	3	June 10, 1993.
	4, 5, 7, 8, 8B, 23	2	April 12, 1992.
	10, 12–14, 17–20	Original	February 1, 1991.
	15, 16	1	August 23, 1991.

The incorporation by reference of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992; and Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992; was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of December 3, 1992 (57 FR 48957, October 29, 1992). The incorporation by reference of Airbus Service Bulletin A320–24–1044, Revision 3, dated March 12, 1993; and Airbus Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993; was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on January 23, 1997.

Issued in Renton, Washington, on December 2, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31113 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–47–AD; Amendment 39–9847; AD 96–25–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, –212, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, –212, and –231 series airplanes, that requires repetitive inspections to detect cracks of the rear bracket attached to the outboard rib of the shroud boxes and the surfaces of the lugs adjacent to the bushes, and replacement, if necessary. This amendment also requires replacement of the outboard aft brackets of the shroud boxes with modified brackets that have floating boxes, which terminates the repetitive inspections. This amendment is prompted by a report that the lug of the rear outboard bracket failed due to fatigue. The actions specified by this AD are intended to prevent fatigue-related cracking in the subject lug, and the consequent failure of this lug; this condition could result in the loss of the shroud box and, consequently, lead to reduced controllability of the airplane.

DATES: Effective January 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1997.

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

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

SUPPLEMENTARY INFORMATION: 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 Airbus Model A320–111, –211, –212, and –231 series airplanes was published in the Federal Register on August 26, 1996 (61 FR 43687). That action proposed to require repetitive visual inspections to detect cracks of the rear bracket attached to the outboard rib of the shroud boxes and the surfaces of the lugs adjacent to the bushes, and replacement, if necessary. That action also proposed to require replacement of the outboard aft brackets of the shroud boxes with modified brackets with floating boxes, which constitutes terminating action for the repetitive inspection requirements.

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

The FAA estimates that 70 Airbus Model A320–111, –211, –212, and –231 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $4,200, or $60 per airplane, per inspection cycle.

It will take approximately 35 work hours per airplane to accomplish the required modification, at an average

labor rate of $60 per work hour. Required parts will cost approximately $2,170 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $298,900, or $4,270 per airplane.

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

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:

96–25–05 Airbus Industrie: Amendment 39–9847. Docket 96–NM–47–AD.

Applicability: Model A320–111, –211, –212, and –231 series airplanes, as listed in Airbus Service Bulletin A320–57–1034, Revision 2, dated September 8, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must 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 fatigue-related cracking in the shroud box attachment lug, which could result in the loss of the shroud box and, consequently, lead to reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 17,000 total landings, or within 12 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks of the rear bracket attached to the outboard rib of the shroud boxes and the surfaces of the lugs adjacent to the bushes, in accordance with Airbus Service Bulletin A320–57–1034, Revision 2, dated September 8, 1995.

Note 2: Inspections accomplished prior to the effective date of this amendment in accordance with Airbus Service Bulletin A320–57–1034, Revision 1, dated August 24, 1992, are considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(1) If no crack is detected, repeat the visual inspection thereafter at intervals specified in paragraph (a)(1)(i) or (a)(1)(ii), as applicable.

(i) For Model A320–100 series airplanes: Repeat at intervals not to exceed 6,000 landings.

(ii) For Model A320–200 series airplanes: Repeat at intervals not to exceed 4,800 landings.

(2) If any crack is detected, prior to further flight, replace the bracket with a modified bracket, in accordance with Airbus Service Bulletin A320–57–1035, Revision 4, dated February 22, 1994. Accomplishment of this replacement terminates the requirements of this AD for that bracket.

(b) Within 4 years following accomplishment of paragraph (a) of this AD, replace the outboard aft brackets of the shroud boxes with modified brackets that have floating boxes, in accordance with Airbus Service Bulletin A320–57–1035, Revision 4, dated February 22, 1994. Accomplishment of this replacement constitutes terminating action for the repetitive inspections requirements of paragraph (a) of 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, 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.

(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 Airbus Service Bulletin A320–57–1034, Revision 2, dated September 8, 1995. The replacement shall be done in accordance with Airbus Service Bulletin A320–57–1035, Revision 4, dated February 22, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2, 10	4	February 22, 1994.
3–9, 11–16	3	January 11, 1994.

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

(f) This amendment becomes effective on January 23, 1997.

Issued in Renton, Washington, on December 2, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31112 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–201–AD; Amendment 39–9848; AD 96–25–06]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38; an inspection to verify that the sizes of the holes of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings. This amendment is prompted by a report of jamming of a flap due to incorrect tolerances of the flap-hinge installation, which caused high bearing stress on the bushings in the flap fittings. The actions specified by this AD are intended to prevent such high bearing stress, which could result in wear on the bushings, cracking of the flap fittings, and breakage of the lugs; these conditions could result in jamming of the flaps and consequent reduced controllability of the airplane.

DATES: Effective January 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1997.

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

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the Federal Register on September 11, 1996 (61 FR 47831). That action proposed to require repetitive visual inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38; an eventual inspection to verify that the sizes of the inboard and outboard holes (swaged bushings) of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings.

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 224 Saab Model SAAB SF340A and SAAB 340B series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required visual inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required visual inspection on U.S. operators is estimated to be $13,440, or $60 per airplane.

For operators required to accomplish Modification 2628—Part 1, the FAA estimates that it will take approximately 30 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost $100 per airplane. Based on these figures, the cost impact of Modification 2628—Part 1 on U.S. operators is estimated to be $1,900 per airplane.

For operators required to accomplish Modification 2628—Part 2, the FAA estimates that it will take approximately 60 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost $100 per airplane. Based on these figures, the cost impact of Modification 2628—Part 2 on U.S. operators is estimated to be $3,700 per airplane.

For operators required to accomplish Modification 2628—Part 3, the FAA estimates that it will take approximately 96 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost $1,400 per airplane. Based on these figures, the cost impact of Modification 2628—Part 3 on U.S. operators is estimated to be $7,160 per airplane.

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

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:

96–25–06—SAAB Aircraft AB: Amendment 39–9848. Docket 95–NM–201–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 379 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 high bearing stress on the bushings in the flap fittings, which could result in jamming of the flaps and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 800 hours time-in-service after the effective date of this AD: Perform a visual inspection to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38, in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995.

(1) If no cracking or damage is found, and the flap fittings have not been modified or replaced, repeat the visual inspection thereafter at intervals not to exceed 800 hours time-in-service.

(2) If any cracking is found, prior to further flight, replace the flap fittings with new improved flap fittings, and install improved bushings, in accordance with the Accomplishment Instructions (Modification 2628—Part 3) of the service bulletin. After this modification is accomplished, no further action is required by this paragraph.

(b) Within 4,500 hours time-in-service after the effective date of this AD, perform an inspection to determine the size of the inboard and outboard holes (swaged bushings) of the flap fittings, and to detect loose swaged bushings, in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995.

(1) If the sizes of the holes are within the limits specified in the service bulletin, and if no loose swaged bushings are found, prior to further flight, install improved bushings in accordance with the Accomplishment Instructions (Modification 2628—Part 1) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(2) If the size of any hole is outside the limits specified in the service bulletin, or if any loose swaged bushing is found, prior to further flight, install oversize bushings in the flap fittings, and install improved bushings, in accordance with the Accomplishment Instructions (Modification 2628—Part 2) of the service bulletin. After this modification is accomplished, no further action is required by 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, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

(e) The inspections, replacement, and installations shall be done in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 27, 1997.

Issued in Renton, Washington, on December 2, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31111 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–164–AD; Amendment 39–9849; AD 96–25–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires repetitive visual inspections and end-float checks of the ram air turbine (RAT), and replacement of the RAT, if necessary. This amendment requires installation of a modified RAT, which constitutes terminating action for the currently required inspections. This amendment is prompted by the development of a modification of the RAT that positively addresses the unsafe condition. The actions specified by this AD are intended to prevent the RAT from breaking away from its support leg, which could damage the airplane structure and systems, and could injure ground personnel.

DATES: Effective January 27, 1997. The incorporation by reference of Airbus Service Bulletin A320–29–1065, dated February 28, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of January 27, 1997.

The incorporation by reference of Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 3, 1994 (59 FR 4562, February 1, 1994).

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–01–11, amendment 39–8793 (59 FR 4562, February 1, 1994), which is applicable to certain Airbus Model A320 series airplanes, was published in the Federal Register on September 11, 1996 (61 FR 47829). The action proposed to require to continue to require repetitive visual inspections and end-float checks of the ram air turbine (RAT), and replacement of the RAT, if necessary. The action also proposed to require the installation of the new modified RAT (Modification 24701) as terminating action for the repetitive inspections. In addition, the action proposed to limit the applicability of the AD to only airplanes on which Modification 24701 has not been installed.

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

Both commenters support the proposed rule.

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 as proposed.

Cost Impact

There are approximately 94 Airbus Model A320 series airplanes of U.S. registry that will be affected by this AD.

The inspections/checks that are currently required by AD 94–01–11 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the current inspection/check requirement is estimated to be $5,640, or $60 per airplane, per inspection/check.

The terminating modification that is required in this AD action will take approximately 74 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact on U.S. operators of the modification requirement of this AD is estimated to be $417,360, or $4,440 per airplane.

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

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 removing amendment 39–8793 (59 FR 4562, February 1, 1994), and by adding a new airworthiness directive (AD), amendment 39–9849, to read as follows:

96–25–07 Airbus Industrie: Amendment 39–9849. Docket 96–NM–164–AD. Supersedes AD 94–01–11, Amendment 39–8793.

Applicability: Model A320–111, –211, –212, –214, –231, and –232 series airplanes; on which Airbus Industrie Modification 24701 (as described in Airbus Service Bulletin A320–29–1065, dated February 28, 1995) has not been installed; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the ram air turbine (RAT) from breaking away from its support leg, which could damage the airplane structure and systems, and could injure ground personnel, accomplish the following:

(a) Perform a detailed visual inspection and an end-float check of the RAT between turbine and leg, in accordance with Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993, at the earliest of the times specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD:

(1) Within the next 450 flight hours after March 3, 1994 (the effective date of AD 94–01–11, amendment 39–8793); or

(2) Before and after the first functional ground check of the RAT that is performed after March 3, 1994; or

(3) After the first in-flight deployment of the RAT that occurs after March 3, 1994.

(b) If no discrepancy is detected, repeat the detailed visual inspection and the end-float check after each functional ground check of the RAT, and after each in-flight deployment of the RAT.

Note 2: Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993, references Dowty Aerospace Service Bulletin 600–29–171, dated January 4, 1993, which provides specific descriptions of the discrepancies in paragraph 2 of that service bulletin.

Note 3: The discrepancies that are addressed in this AD can only occur during use of the RAT, and not during stowage of the RAT; therefore, it is not necessary to perform the repetitive inspections and end-float checks before each functional ground check of the RAT if the RAT has not been used since the preceding inspection.

(c) If any discrepancy is detected as a result of any detailed visual inspection required by this AD, prior to further flight, accomplish the requirements of either paragraph (c)(1) or (c)(2) of this AD.

(1) Replace the RAT in accordance with Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993; and after replacement, repeat the detailed visual inspection and the end-float check required by paragraph (a) of this AD. Thereafter, repeat the detailed visual inspection and the end-float check after each functional ground check of the RAT, and after each in-flight deployment of the RAT. Or

(2) Install a new modified RAT (Modification 24701) in accordance with Airbus Service Bulletin A320–29–1065, dated February 28, 1995. Installation of this modification constitutes terminating action for the repetitive visual inspections and end-float checks required by this AD.

(d) Within 2 years after the effective date of this AD, install a new modified RAT (Modification 24701) in accordance with Airbus Service Bulletin A320–29–1065, dated February 28, 1995. Installation of this modification constitutes terminating action for the repetitive visual inspections and end-float checks required by this AD.

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

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

(g) The actions shall be done in accordance with Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993, and Airbus Service Bulletin A320–29–1065, dated February 28, 1995. The incorporation by

reference of Airbus Service Bulletin A320–29–1065, dated February 28, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 3, 1994 (59 FR 4562, February 1, 1994). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 27, 1997.

Issued in Renton, Washington, on December 2, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31110 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–248–AD; Amendment 39–9838; AD 96–24–14]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model 382 series airplanes, that requires that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this AD are not met, and that the new landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes; and the subsequent review of allowable brake wear limits for all transport category airplanes. The actions specified by this AD are intended to prevent loss of brake effectiveness during a high energy RTO.

DATES: Effective January 27, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Lockheed Model 382 series airplanes was published in the Federal Register on August 6, 1996 (61 FR 40762). That action proposed to require (1) inspection of the main landing gear brakes, having part number 9560685, for wear, and replacement if the new wear limits are not met; and (2) incorporation of specified maximum wear limits into the FAA-approved maintenance inspection program.

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

There are approximately 112 Lockheed Model 382 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of parts to accomplish the change (cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is estimated to be $4,800 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $87,480, or $4,860 per airplane.

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

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:

96–24–14 LOCKHEED: Amendment 39–9838. Docket 95–NM–248–AD.

Applicability: All Model 382 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 loss of brake effectiveness during a high energy rejected takeoff (RTO), accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Inspect the main landing gear brakes having the brake part number listed below for wear, in accordance with Hercules Alert Service Bulletin A382–32–47, dated March 1, 1995. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within that limit, in accordance with the alert service bulletin.

Brake manufacturer	Brake part No.	Maximum wear limit (inches)
Hercules	9560685	0.359

(2) Incorporate into the FAA-approved maintenance inspection program the maximum brake wear limits specified in paragraph (a)(1) of this AD.

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

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

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

(d) The inspection shall be done in accordance with Hercules Alert Service Bulletin A382–32–47, dated March 1, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 27, 1997.

Issued in Renton, Washington, on November 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–30567 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 96–NM–268–AD; Amendment 39–9850; AD 96–24–10]

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) 96–24–10 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 amendment supersedes an existing AD, but retains the requirement of that AD to incorporate a revision to the Airplane Flight Manual that will enable the flightcrew to determine if the thrust reversers are properly stowed and locked prior to take-off. This new AD also requires a new revision to the maintenance program to incorporate certain instructions related to checks of the thrust reverser system. This new AD allows dispatch of the airplane, under certain conditions, with both thrust reversers inoperative. This action is prompted by results of a review, which indicated that a potential latent failure of the secondary lock switch 1 of the thrust reverser system in the open position may occur, in addition to the potential failure of the secondary lock relay 1 in the energized position, which was addressed by the existing AD. The actions specified by this AD are intended to prevent such failures, which could result in reduced protection against inadvertent deployment of the thrust reversers during flight.

DATES: Effective December 24, 1996, to all persons except those persons to whom it was made immediately effective by emergency AD 96–24–10, issued on November 19, 1996, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 24, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: On November 8, 1996, the FAA issued AD 96–23–16, amendment 39–9825 (61 FR 5887, November 20, 1996), applicable to all Fokker Model F28 Mark 0070 and 0100 series airplanes. That AD:

1. Requires a revision to the Airplane Flight Manual (AFM) to include information that will enable the flightcrew to determine if the thrust reversers are properly stowed and locked prior to take-off;

2. Provides for dispatch of the airplane with both autothrottle channels inoperative, provided that 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. Requires revising the maintenance program to provide instructions to

correct malfunctions of the thrust reverser system.

The requirements of that AD were intended to prevent an unannunciated failure of the secondary lock relay 1 of the thrust reversers, which could result in reduced protection against inadvertent deployment of the thrust reversers during flight.

Actions Since Issuance of Previous AD

Since the issuance of AD 96–23–16, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, advises that Fokker has conducted an additional review and safety assessment of the thrust reverser control and indication system. The results of this review indicate that a potential latent failure of the secondary lock switch 1 in the open position may occur; this is in addition to the potential failure of the secondary lock relay 1 in the energized position, which was addressed by AD 96–23–16.

Failure of the secondary lock switch 1 in the open position could prevent or block the automatic signal to command the thrust reversers to the stow position when an uncommanded movement of the secondary lock actuator occurs.

Explanation of Relevant Service Information

Fokker has issued All Operator Message TS96.67591, dated November 14, 1996, including Appendix 1 and Appendix 2. Among other things, the All Operator Message describes procedures for performing a daily check to detect a latent failure of the secondary lock switch 1. Accomplishment of these actions will prevent a latent failure of the secondary lock switch 1. The RLD classified the All Operator Message as mandatory and issued Netherlands airworthiness directive (BLA) 1996–138/2 (A), dated November 15, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplanes model are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the 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 Rule

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 96–24–10 to prevent failure of the secondary lock relay 1 of the thrust reversers in the energized position and secondary lock switch 1 in the open position, which could result in reduced protection against inadvertent deployment of the thrust reversers during flight. The new AD supersedes AD 96–23–16, but continues to require a revision to the Limitations Section of the FAA-approved AFM to enable the flightcrew to determine if the thrust reversers are properly stowed and locked prior to take-off by monitoring proper engagement of the autothrottle system (ATS). This new AD allows dispatch of the airplane with both thrust reversers inoperative, provided they are deactivated and secured in the stowed position, and no operations are conducted that are predicated on thrust reverser operation. In addition, the new AD requires a new revision to the FAA-approved maintenance program to incorporate instructions to correct malfunctions of the secondary lock relay 1 of the thrust reversers found during the operational tests; to perform a daily check to detect latent failure of the secondary lock switch 1; and to take corrective actions, if necessary. The revision to the maintenance program is required to be accomplished in accordance with Appendix 2 of the All Operator Message previously described.

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

Differences Between This AD and the Related Netherlands BLA

This AD differs from the Netherlands airworthiness directive (BLA) 1996–138/2 (A), in the following respects:

1. This AD allows dispatch with both thrust reversers inoperative, provided they are deactivated and stowed, and no operations are conducted that are predicated on thrust reverser operation; whereas, the Dutch airworthiness directive does not address this issue. The FAA-approved Master Minimum Equipment List (MMEL) only allows one thrust reverser to be inoperative; whereas, the Dutch MMEL allows both thrust reversers to be inoperative. Therefore, the FAA finds that the AD must include provisions for dispatch of the airplane with both thrust reversers deactivated and stowed.

2. The AD does not allow both autothrottle channels to be inoperative; whereas, the Dutch airworthiness directive does permit this option, albeit with certain restrictions. The FAA-approved MMEL allows only one autothrottle to be inoperative. The FAA finds no safety-related reason to change this requirement.

3. The AD does not allow dispatch of the airplane with an inoperative thrust reverser indication and alerting system, which is consistent with the FAA-approved MMEL. The Dutch airworthiness directive removes this provision from the Dutch MMEL.

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–268–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 removing amendment 39–9825 (61 FR 5887, November 20, 1996), and by adding a new airworthiness directive, amendment 39–9850, to read as follows:

96–24–10 Fokker: Amendment 39–9850. Docket 96–NM–268–AD. Supersedes AD 96–23–16, amendment 39–9825.

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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced protection against inadvertent deployment of the thrust reversers during flight, accomplish the following:

(a) Within 48 hours after November 25, 1996 (the effective date of AD 96–23–16, amendment 39–9825), 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.

''• 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.''

(b) Dispatch with both thrust reversers inoperative is allowed, provided they are deactivated and secured in the stowed position, and no operations are conducted that are predicated on thrust reverser operation. Where there are differences between the Master Minimum Equipment List (MMEL) and the AD, the AD prevails.

(c) Within 48 hours after the effective date of this AD, revise the FAA-approved maintenance program to include the procedures specified in Appendix 2 of Fokker All Operator Message TS96.67591, dated November 14, 1996. These procedures must be accomplished daily, and prior to further flight following failure of the operational check required by paragraph (a) of this AD. If any failure is detected during these procedures, prior to further flight, accomplish the corrective actions in accordance with the procedures. The FAA-approved maintenance program procedures required by paragraph (a)(3) of AD 96–23–16, amendment 39–9825, may be removed following accomplishment of the requirements of this paragraph.

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

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

(f) The revision to the maintenance program shall be done in accordance with Fokker All Operator Message TS96.67591, dated November 14, 1996, including Appendix 1 and Appendix 2. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 24, 1996, to all persons except those persons to whom it was made immediately effective by emergency AD 96–24–10, issued on November 19, 1996, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 5, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31524 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–ANE–57; Amendment 39–9853; AD 96–25–10]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney JT9D series turbofan engines, that requires installing an improved design turbine exhaust case (TEC) with a thicker containment wall, modifying the existing TEC to incorporate a containment shield, or modifying the existing TEC to replace the ''P'' flange and case wall. This amendment is prompted by reports of 64 uncontained engine failures since 1972. The actions specified by this AD are intended to prevent release of uncontained debris from the TEC following an internal engine failure, which can result in damage to the aircraft.

DATES: Effective February 18, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 18, 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: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, 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) JT9D series turbofan engines was published in the Federal Register on June 5, 1996 (61 FR 28520). That action proposed to require installing an improved design turbine exhaust case (TEC) with a thicker containment wall, modifying the existing TEC to incorporate a containment shield, or modifying the existing TEC to replace the ''P'' flange and case wall.

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

One commenter states that the proposed modification of the TEC as a solution to preventing uncontained engine failure is unnecessary since there are modifications and inspection programs available that specifically address the root causes for those events that led to uncontained engine failures. The commenter points out that of the 64 incidents of TEC penetration, all but one event are addressed by other mandated actions. The FAA does not concur. Since January 1993, when the FAA first considered issuance of an AD for TEC containment, three additional conditions have occurred that the FAA considers warranting AD action at this time. First, there have been new root cause problems resulting in TEC penetrations; second the rate of uncontained engine failures has increased; and third, more substantial damage to the engine and aircraft has occurred. The discovery of new root causes of failures demonstrates that failures and subsequent uncontainments result from a wider variety of reasons than previously believed. The causal factors for these uncontainments include maintenance, design deficiencies, manufacturing defects, corrosion, foreign object damage, etc. The FAA has determined that even with the best available strategies for addressing the root cause of engine failures, the FAA expects that new failure modes and failure sequences could exist. As a result, the FAA anticipates further challenges to the TEC containment structure, and has determined that the necessary containment modifications must be implemented through an AD as proposed.

In response to the comment that the root cause of all but one of the 64 referenced uncontained events are addressed by current mandatory action, the FAA does not concur. Additional review of the TEC penetration history reveals multiple incidents in which the root cause was undetermined, or in which no mandatory action by AD is required, or in which operators inadvertently did not comply with AD action, or in which improper repair or inspection was performed on certain engine components.

One commenter states that a probabilistic risk assessment accomplished by PW in October 1995 concludes that there is insufficient risk to mandate TEC modification. The FAA does not concur. The risk assessment performed by PW is a structured approach that enables the FAA to better assess and target critical areas and prioritize resources. It is also necessary to emphasize that risk assessment is not the only means of determining the need for mandatory corrective action, and that other parameters such as incidence rate, failure modes, restoration of certification basis, and basic engineering judgment are also utilized. The FAA has determined that for the TEC penetration issue all these other factors result in the need to issue an AD.

One commenter states that the FAA cost assessment of approximately $2,500 per engine to accomplish the proposed actions is based on the accomplishment of the option to weld shields to provide increased wall thickness. For some operators this is not a preferred option. The FAA concurs in part. The FAA has provided industry three options for compliance with the proposed AD. These options, in terms of decreasing cost, are as follows: a new thick wall TEC, a modified TEC with a new, thicker ''P'' flange, and finally welding on containment shields. Several operators have expressed concern with the durability of the welded containment shields option and take exception to the fact that the FAA utilized this option for the AD cost assessment. This operator plans to utilize one of the more costly methods for compliance with the AD. The FAA has reviewed all three options for enhanced containment and concludes that all three satisfy Part 33 of the Federal Aviation Regulations (FAR) (14 CFR part 33) requirements. The FAA performed the cost assessment utilizing the containment shield option since it has the least economic impact, and the FAA has reason to believe that the majority of operators will utilize this option, which has sound design and durability in accordance with FAR Part 33. The FAA understands that a new case would have greater longevity, and that the new ''P'' flange may be necessary when the existing ''P'' flange is no longer serviceable. In conclusion, this AD leaves it to the discretion of the operator the choice of option and provides all three options as approved type designs.

One commenter states that the containment shields are not an acceptable option, due to the fact that the shields could lead to corrosion of the TEC inner wall, which could compromise the structural integrity of the TEC. The FAA does not concur. The FAA has performed a thorough technical review of the proposed containment shields. As part of this review, multiple TECs were returned from service and have had their shields removed with subsequent sectioning of the case wall and shields for evaluation of corrosion extent. In this review no case walls were found with corrosion

that compromised case wall thickness. In addition, no residual material was found that would suggest entrapment of foreign substances. The shields themselves also exhibited no corrosion that compromises type design wall thickness. This commenter states that the current cleaning and inspection procedures may have the potential for entrapment of cleaning and inspection solutions between the case wall and containment shields. The FAA has studied this concern and does not believe this is a problem. The FAA has determined that the containment shields are attached with a stitch weld, which will allow for sufficient purging of potentially corrosive solutions. When the TECs were sectioned in the evaluation, no residual deposits of cleaning or inspection solutions were found. However, to assure that corrosion due to potential entrapment of cleaning or inspection fluids is mitigated, the manufacturer is developing enhanced inspection and cleaning procedures in the engine overhaul manual.

One commenter states that they hold two Supplemental Type Certificates (STCs) that provide for modification of the TEC by the installation of a thicker containment wall, and requests inclusion of these STCs as a means of compliance to the AD. The FAA concurs and has revised this final rule accordingly.

One commenter states that the inclusion of an STC in the AD as an alternative method of compliance gives the STC holder an unfair marketing advantage. The commenter requests that their company approved repair be listed in the text of the AD with the STC. The FAA does not concur. The AD identifies all known type designs and, as such, the STC is an FAA-approved type design. The commenter does not hold a design approval and therefore cannot be listed as a method of compliance to this AD. The commenter is listed in the PW SB as a source acceptable to PW for performing the approved repair. Therefore, the FAA would consider them an acceptable source for repair.

One commenter states that due to variations in incidence rate for uncontained TEC penetrations by engine model, i.e., JT9D–7, JT9D–7Q, and JT9D–7R4, that the FAA should adjust the proposed AD to be engine model specific. The FAA does not concur. The FAA finds that any variation in incident rate is not a significant enough factor to warrant providing a model-specific inspection interval.

Since issuance of the NPRM, the FAA has received a report that certain PW JT9D–7R4 TECs were modified improperly. These TECs have a soft material condition, which renders them incapable of properly containing debris, as required by this AD. These TECs were modified to incorporate a replacement ''P'' flange and case wall in accordance with PW SB No. JT9D–7R4–72–513, Revision 3, November 13, 1996, or prior revisions. This final rule AD adds a paragraph to the compliance section requiring heat treatment of all TECs modified in accordance with PW SB No. JT9D–7R4–72–513, Revision 3, November 13, 1996, or prior revisions, in accordance with PW SB No. JT9D–7R4–72–534, dated October 18, 1996.

In addition, PW has issued SB No. 6157, Revision 1, dated July 17, 1996, which only differs from the original by adding additional repair stations. This final rule AD references Revision 1 of this SB.

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 2,748 engines of the affected design in the worldwide fleet. The FAA estimates that 740 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,404 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,660,560.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–25–10 Pratt & Whitney: Amendment 39–9853. Docket 95–ANE–57.

Applicability: Pratt & Whitney (PW) JT9D–3, –7, –20, –59A, –70A, –7Q, and –7R4 series turbofan engines, installed on but not limited to Airbus A300 and A310 series; Boeing 747 and 767 series; and McDonnell Douglas DC–10 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 release of uncontained debris from the turbine exhaust case (TEC) following an internal engine failure, which can result in damage to the aircraft, accomplish the following:

(a) At the next removal of the TEC from the low pressure turbine case ''P'' flange for overhaul, where the No. 4 bearing, carbon seals, lubrication pressurization lines, or scavenge lines are removed for maintenance after the effective date of this AD, but not later than 48 months after the effective date of this AD, accomplish the following:

(1) For PW JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, and –20J series turbofan engines, accomplish any one of the following actions:

(i) Install a thicker-walled TEC, with Part Numbers (P/N's) listed in PW SB No. 6113, dated April 13, 1993, as applicable; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. 5907, dated March 27, 1990, as applicable; or

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. 6118, Revision 3, dated January 10, 1996, or

(iv) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with Chromalloy Supplemental Type Certificate (STC) SE00047AT–D, dated October 15, 1996.

(2) For PW JT9D–7Q and –7Q3 series turbofan engines, accomplish any one of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. 5977, dated December 14, 1990; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. 5907, dated March 27, 1990, as applicable; or

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. 6157, Revision 1, dated July 17, 1996; or

(iv) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with Chromalloy STC SE00047AT–D, dated October 15, 1996.

(3) For PW JT9D–59A and –70A series turbofan engines, accomplish one of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. 6243, dated February 1, 1996; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. 5907, dated March 27, 1990, as applicable;

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. 6157, Revision 1, dated July 17, 1996; or

(iv) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with Chromalloy STC SE00047AT–D, dated October 15, 1996.

(4) For PW JT9D–7R4D (BG–700 series) turbofan engines, accomplish one of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. JT9D–7R4–72–479, Revision 1, dated November 12, 1993; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. JT9D–7R4–72–407, Revision 1, dated August 16, 1990, as applicable; or

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with Chromalloy STC SE00047AT–D, dated October 15, 1996.

(5) For PW JT9D–7R4D (BG–800 series), –7R4D (BG–900 series), –7R4D1 (AI–500 series), –7R4E (BG–800 series), –7R4E (BG–900 series), –7R4E1 (AI–500 series), –7R4E1 (AI–600 series), –7R4E4 (BG–900 series), –7R4G2 (BG–300 series), and –7R4H1 (AI–600 series) turbofan engines, accomplish any one of the following actions:

(i) Install a thicker-walled TEC, with P/N's listed in PW SB No. JT9D–7R4–72–534, dated October 18, 1996; or

(ii) Install a modified TEC that incorporates a containment shield, with P/N's listed in PW SB No. JT9D–7R4–72–466, Revision 2, dated May 10, 1996; or

(iii) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with P/N's listed in PW SB No. JT9D–7R4–72–534, dated October 18, 1996; or

(iv) Install a modified TEC that incorporates a replacement ''P'' flange and case wall, with Chromalloy STC SE00054AT–D, dated October 19, 1994.

(6) For PW JT9D–7R4D (BG–800 series), –7R4D (BG–900 series), –7R4D1 (AI–500 series), –7R4E (BG–800 series), –7R4E (BG–900 series), –7R4E1 (AI–500 series), –7R4E1 (AI–600 series), –7R4E4 (BG–900 series), –7R4G2 (BG–300 series), and –7R4H1 (AI–600 series) turbofan engines, with TECs that have been modified to incorporate a replacement flange and case wall, in accordance with PW SB No. JT9D–7R4–72–513, Revision 3, dated November 13, 1996, or previous revisions, perform heat treatment of the TECs in accordance with the Accomplishment Instructions of PW SB No. JT9D–7R4–72–534, dated October 18, 1996.

(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 SBs:

Document No.	Pages	Revision	Date
SB No. 6113	1–38	Original	April 13, 1993.
Total pages: 38.			
SB No. 5977	1–6	Original	December 14, 1990.
Total pages: 6.			
SB No. JT9D–7R4–72–479	1	1	November 12, 1993.
	2, 3	Original	February 25, 1993.
	4–6	1	November 12, 1993.
Total pages: 6.			
SB No. 6243	1–6	Original	February 1, 1996.
Total pages: 6.			
SB No. JT9D–7R4–72–513	1–19	3	November 13, 1996.
Total pages: 19.			
SB No. JT9D–7R4–72–534	1–26 5	Original	October 18, 1996.
Total pages: 26.			
SB No. 5907	1–32	Original	March 27, 1990.
Total pages: 32.			
SB No. JT9D–7R4–72–407	1	1	August, 16, 1990.
	2–5	Original	March 30, 1990.
	6	1	August 16, 1990.
	7–22	Original	March 30, 1990.
Total pages: 22.			
SB No. JT9D–7R4–72–466	1, 2	2	May 10, 1996.
	3–8	Original	January 15, 1993.
	9–11	1	March 4, 1994.
	12, 13	Original	January 15, 1993.
	14–16	1	March 4, 1994.
	17, 18	Original	January 15, 1993.

Document No.	Pages	Revision	Date
Total pages: 18.			
SB No. 6118	1	3	January 10, 1996.
	2–5	2	April 18, 1995.
	6–32	Original	April 15, 1993.
	33	2	April 18, 1995.
	34–38	Original	April 15, 1993.
	39	1	May 20, 1993.
	40	Original	April 15, 1993.
	41–44	1	May 20, 1993.
	45	3	January 10, 1996.
Total pages: 45.			
SB No. 6157	1	1	July 17, 1996.
	2–15	Original	February 9, 1994.
	16	1	July 17, 1996.
Total pages: 16.			

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 February 18, 1997.

Issued in Burlington, Massachusetts, on December 4, 1996.

James C. Jones,

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

[FR Doc. 96–31947 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–160–AD; Amendment 39–9862; AD 96–25–19]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires either the application of a vapor sealant on the back of the receptacle of the auxiliary power unit (APU) power feeder cable; or a one-time visual inspection for gold-plating and evidence of damage of the connector contacts of the power feeder cable of the APU generator, and various follow-on actions. This amendment adds a requirement for replacement of certain connector contacts (pins/sockets) with gold-plated contacts. This amendment is prompted by reports of burning and arcing of the connector contacts of the power feeder cable of the APU generator. The actions specified by this AD are intended to reduce the potential for a fire hazard as a result of such burning or arcing.

DATES: Effective January 27, 1997.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996, as listed in the regulations was approved previously by the Director of the Federal Register as of June 21, 1996 (61 FR 28736, June 6, 1996).

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

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5347; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–12–10, amendment 39–9652 (61 FR 28736, June 6, 1996), which is applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published in the Federal Register on September 30, 1996 (61 FR 51058). The action proposed to require supersede AD 96–12–10 to continue to require a one-time visual inspection for gold-plating and evidence of damage of the connector contacts of the power feeder cable of the auxiliary power unit (APU) generator, and various follow-on actions. This action also proposed to add a requirement for replacement of certain connector contacts with gold-plated contacts.

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

The commenter supports the proposed rule.

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 as proposed.

Cost Impact

There are approximately 149 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96–12–10 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $5,400, or $120 per airplane.

The new action (replacement) that is required by this new AD will take approximately 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour.

Required parts will cost approximately $909 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $65,205, or $1,449 per airplane.

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

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 removing amendment 39–9652 (61 FR 28736, June 6, 1996), and by adding a new airworthiness directive (AD), amendment 39–9862, to read as follows:

96–25–19 McDonnell Douglas: Amendment 39–9862. Docket 96–NM–160–AD. Supersedes AD 96–12–10, Amendment 39–9652.

Applicability: Model MD–11 series airplanes; as listed in McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 96–12–10. As allowed by the phrase, ''unless accomplished previously,'' if those requirements of AD 96–12–10 have been accomplished previously, this AD does not require that they be repeated.

To reduce the potential for a fire hazard as a result of burning and arcing of the connector contacts of the power feeder cable of the auxiliary power unit (APU) generator, accomplish the following:

Restatement of Requirements of AD 96–12–10

(a) Within 60 days after June 21, 1996 (the effective date of AD 96–12–10, amendment 39–9652), accomplish the actions specified in either paragraph (a)(1) or (a)(2) of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996.

(1) Apply a vapor sealant on the back of the APU power feeder cable receptacle. Or

(2) Accomplish the actions specified in both paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Perform a one-time visual inspection for color (gold-plating) and evidence of damage of the connector contacts (pins/sockets) of the power feeder cable of the APU generator located in the upper left corner of the APU compartment in the forward bulkhead. And

(ii) Replace any damaged pin or socket with a gold-plated pin or socket, or deactivate the electrical operation of the APU until the replacement required by paragraph (c) of this AD is accomplished.

New Requirements of This AD:

(b) For airplanes on which the requirements of paragraph (a)(2) of this AD have not been accomplished previously: Within 60 days after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996.

(1) Perform a one-time visual inspection for color (gold-plating) and evidence of damage of the connector contacts (pins/sockets) of the power feeder cable of the APU generator located in the upper left corner of the APU compartment in the forward bulkhead. And

(2) Replace any damaged pin or socket with a gold-plated pin or socket, or deactivate the electrical operation of the APU until the replacement required by paragraph (c) of this AD is accomplished.

(c) Within 24 months after the effective date of this AD, replace any pin or socket that is nickel-plated or copper (brass) with a pin or socket that is gold-plated. Accomplish the replacement in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996.

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

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

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

(f) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 21, 1996 (61 FR 28736, June 6, 1996). Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 27, 1997.

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

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–32049 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–121–AD; Amendment 39–9858 ; AD 96–25–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–200 Series Airplanes; McDonnell Douglas MD–11 Airplanes; and British Aerospace Avro Model 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain transport category airplanes equipped with certain Honeywell Standard Windshear Detection System (WSS). It requires a revision to the airplane flight manual to alert the flightcrew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. This amendment also requires replacement of the currently-installed line replaceable unit (LRU) with a modified LRU having new software that eliminates delays in the WSS. This amendment is prompted by a report of an accident during which an airplane encountered severe windshear during a missed approach. The actions specified by this AD are intended to prevent significant delays in the WSS detecting hazardous windshear, which could lead to the loss of flight path control.

EFFECTIVE DATE: January 23, 1997.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

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 transport category airplanes equipped with certain Honeywell Standard Windshear Detection System (WSS) series airplanes was published in the Federal Register on September 13, 1996 (61 FR 48431). That action proposed to require a revision to the FAA-approved AFM to alert the flightcrew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. That action also proposed to require replacement of the currently-installed LRU with a modified LRU having new software that eliminates delays in the WSS.

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

Request To Eliminate Installation Requirement

One commenter objects to paragraph (b) of the proposal, which would require operators to replace the currently installed LRU with a modified LRU having new software that eliminates delays in the WSS detecting windshear when the flaps of the airplane are in transition. This commenter considers that the proposed replacement would not enhance safety of the affected airplanes. This commenter also asserts that the proposed replacement requirement would result in changes in the aircraft configuration that would increase nuisance alerts, since the sensitivity reduction factor would be totally eliminated during flap transition.

The FAA does not concur with the commenter's request to withdraw the proposal for the following reasons:

First, the criteria for reactive windshear systems state that a warning must be issued once a windshear phenomenon is encountered. The criteria also state that the system must consider the airplane's available performance and the system's propensity for nuisance alerts due to turbulence. The FAA evaluates compliance with these criteria based upon the system's ability to issue timely warnings in all reasonably expected conditions. The FAA finds that encountering windshear during flap transition is a reasonably expected condition. This finding is based, in part, on the data obtained from the flight data recorder retrieved from the airplane involved in the accident in which windshear was encountered while the airplane was executing a missed approach.

Second, the FAA has determined that conducting missed approaches, prior to encountering windshear, is a reasonably probable scenario. In such a scenario, the pilot would rely on prior knowledge attained in FAA-required training to recognize and recover from a windshear encounter, such as that provided in ''Windshear Training Aid,'' Revision 1, dated February 1990. Therefore, the pilot would likely determine that windshear has been encountered before the detection system actually detects the phenomenon, since the WSS is intended to be strictly an adjunct system, not a sole or primary system. The windshear training that pilots receive instructs them not to retract the airplane's flaps in this scenario. However, if the pilot does not believe that windshear has been encountered, the pilot may execute a normal go-around and retract the flaps, due to what the pilot perceives to be an unstable approach. Therefore, the FAA considers any delay in windshear detection to be unacceptable while the airplane's flaps are in transition. Consequently, the FAA finds that any improvement in warning time for the pilot will enhance safety for the affected airplanes.

Third, the FAA does not concur with the commenter's assertion that installation of a modified LRU, and consequently, removal of the windshear warning delay during flap transition, would result in an increase in nuisance alerts. The FAA has reviewed all available data and cannot substantiate that elimination of the sensitivity reduction factor during flap transition would result in an increase in nuisance alerts. The FAA finds that the flaps are usually extended at altitudes higher than the altitude at which the system is armed. Furthermore, the FAA considers conducting a go-around with strong turbulence (excluding actual windshear conditions) to be a highly unlikely combination of events. In addition, the FAA will evaluate the modified Honeywell windshear computer, once it is developed, to determine compliance with the nuisance alert criteria, discussed above.

Request To Reconsider Compliance Time for Replacement

This same commenter requests that the FAA reconsider the proposed compliance time of 30 months for replacement of the LRU with a modified unit. The commenter points out that Honeywell has neither developed an appropriate modification nor released service bulletins to provide the procedural methods for complying with the requirements of the proposed AD. The commenter notes that the same is true for compliance with AD 96–02–06, amendment 39–9494 (61 FR 2095, January 25, 1996), which requires identical actions as those proposed, but applicable to certain other transport category airplanes.

This commenter also points out that AD 96–02–06 provides for a compliance time of 36 months for the replacement;

the AD also states that, as of 18 months after February 26, 1996 (the effective date of that AD), no unmodified LRU can be installed on any airplane. The proposed AD's compliance times are 30 months for replacement, and 12 months before installation of unmodified units is prohibited.

Although this commenter did not request any specific changes to the proposed rule, the FAA infers from these comments that the commenter is concerned that there will be a problem with parts availability within the compliance time. At the time that AD 96–02–06 was issued in January 1996, the FAA had verified with the manufacturer that the lead time for developing the required LRU and making it available to operators was expected to be longer than 24 months, but not longer than 36 months. Since then, the manufacturer has given the FAA no new information that would change this schedule for availability of the required units; therefore, the FAA finds that the compliance times, as proposed, are appropriate.

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 as proposed.

Cost Impact

There are approximately 200 airplanes of the affected design in the worldwide fleet. The FAA estimates that 100 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision required by this AD on U.S. operators is estimated to be $6,000, or $60 per airplane.

It will take approximately 10 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be supplied by Honeywell at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $60,000, or $600 per airplane.

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

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 adding the following new airworthiness directive:

96–25–15 Boeing; McDonnell Douglas; and British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39–9858. Docket 96–NM–121–AD.

Applicability: The following models and series of airplanes, certificated in any category, equipped with Honeywell Standard Windshear Detection Systems (WSS) having the part numbers indicated below:

Manufacturer and model of airplane	Type of computer	Part No.
Boeing 727–200 series.	Expandable Windshear (Honeywell STC).	4053818–904, -905, or -906.
McDonnell Douglas MD–11 series.	Flight Control Computer (OEM TC).	4059001–906.
British Aerospace Avro 146–RJ70A, -RJ85A, and -RJ100A series.	Flight Control Computer (OEM TC).	4068300–903.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent significant delays in the Honeywell Standard Windshear Detection Systems (WSS) detecting hazardous windshear, which could lead to the loss of flight path control, accomplish the following:

(a) Within 14 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''During sustained banks of greater than 15 degrees or during flap configuration changes, the Honeywell Windshear Detection and Recovery Guidance System (WSS) is desensitized and alerts resulting from encountering windshear conditions will be delayed.''

(b) Within 30 months after the effective date of this AD, replace the currently-installed line replaceable unit (LRU) with a modified LRU having new software that eliminates delays in the WSS detecting windshear when the flaps of the airplane are in transition, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Accomplishment of this replacement constitutes terminating action for the requirements of paragraph (a) of this AD. After the replacement has been accomplished, the AFM limitation required by paragraph (a) of this AD may be revised to read as follows:

''During sustained banks of greater than 15 degrees, the Honeywell Windshear Detection and Recovery Guidance System (WSS) is desensitized and alerts resulting from encountering windshear conditions will be delayed.''

(c) As of 12 months after the effective date of this AD, no person shall install on any airplane an LRU that has not been modified in accordance with paragraph (b) of this AD. However, an unmodified LRU may be installed on the airplane for up to 12 months after the effective date of this AD, provided that, during that time, the AFM limitation required by paragraph (a) of this AD remains in effect.

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

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

(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 January 27, 1997.

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

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–32050 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–99–AD; Amendment 39–9841; AD 96–24–17]

RIN 2120–AA64

Airworthiness Directives; The Don Luscombe Aviation History Foundation Models 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to The Don Luscombe Aviation History Foundation (referred to as Luscombe from hereon) Models 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F airplanes. This action requires installing new inspection holes, modifying the wing tip fairings, and inspecting the wing spars for intergranular corrosion. Reports of intergranular corrosion occurring in the wings prompted this action. The actions specified by this AD are intended to prevent wing spar failure resulting from intergranular corrosion, which, if not detected and corrected, could result in structural failure of the wings and loss of control of the airplane.

DATES: Effective January 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from The Don Luscombe Aviation History Foundation, P. O. Box 63581, Phoenix, Arizona 85082; telephone (602) 917–0969 and facsimile (602) 917–4719. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–99–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: Ms. Lirio L. Liu, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California, 90712; telephone (310) 627–5229; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F airplanes was published in the Federal Register on May 29, 1996 (61 FR 26854). The action proposed to require installing a total of four additional wing inspection holes in the metal covered wings to assist in conducting a more thorough examination of the wing spars, modifying the wing tip fairing so that it is removable, and providing easier access to the interior of the wings. A one time inspection for intergranular corrosion was proposed for both metal covered and fabric covered wings on these Luscombe airplanes in the areas of the front and rear spar extrusions of the wing installations.

Related Service Information

Accomplishment of the proposed action would be in accordance with The Don Luscombe Aviation History Foundation Recommendation #2, dated December 15, 1993, Revised November 21, 1995.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Comments were received from three commenters on the proposed rule and no comments were received on the FAA's determination of the cost to the public. Following are the comments and FAA's response.

The first commenter agreed with the content of the AD, but proposed an alternative method for gaining access to the wing spars of the metal covered wings, rather than installing the four additional inspections holes required by the Don Luscombe Aviation History Foundation Service Recommendation #2.

The FAA concurs and has found the alternative method acceptable. This change is justified based on the submittal of analysis and acceptability of the method to meet the intent of the AD. Therefore, the alternative method procedure suggested by the commenter has been included as an Appendix to this AD as an option to paragraphs (a)(1) and (a)(2) of this AD.

The second commenter states that, based on their empirical field evidence and maintenance experience, a one-time inspection is inadequate and a repetitive inspection on a bi-annual basis should be required.

The FAA does not agree. The corrosive problems prompting this AD are intergranular corrosion. This type of corrosion is an attack along the grain boundaries of a material (reference Advisory Circular (AC) 43–4A, Corrosion Control of Aircraft, dated July 25, 1991). Aluminum alloys which contain appreciable amounts of copper and zinc are highly vulnerable to intergranular corrosion if the alloy is not quenched rapidly during heat treatment or other special treatment. This is the case for the Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F airplane wing spars. The intergranular corrosion is a result of manufacturing, which affected only a small number of wing spars in the fleet. If intergranular corrosion has affected the spars, it should be detectable with a one-time inspection, given the age of the fleet in service.

The third commenter states that the inspection for only intergranular corrosion is inadequate and that a repetitive inspection on a bi-annual basis should be required to inspect for all other forms of corrosion which may be attributed to rodent and bird infestation nest residue, which is corrosive to aluminum.

The FAA partially agrees and partially disagrees with this statement. The FAA

agrees, that while conducting the one-time inspection per the AD, that it be noted that other forms of corrosion may be present and should be repaired as necessary. However, checking for corrosion on a regular basis should be a part of normal care of the airplane. Mandating an inspection for corrosion because of a lack of normal maintenance is not the function of an AD. Therefore, the AD will not be changed to require a repetitive inspection, but the FAA will include a ''Note'' recommending inspecting for other forms of corrosion while performing the required inspection.

FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the additional incorporation of an Appendix with an alternative method of inspection, a Note recommending inspection for other forms of corrosion, and some minor editorial corrections which include changing the model designation from Luscombe Model 8 Series (which was how it was described in the NPRM), to Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F airplanes. This is the way the airplane is described in the type certificate data sheet. Also, the NPRM did not state that if corrosion was found, prior to futher flight, replace the corroded part. This language has been added in paragraph (b) of the AD. The FAA has determined that these corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 2,029 airplanes in the U.S. registry would be affected by this AD, that it would take approximately 7 hours per airplane to accomplish the action, and that the average labor rate is approximately $60 an hour. The Luscombe Installation Kit #8007 costs approximately $125 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,105,805 This figure includes the cost of the installation, modification, and inspection and only applies to Model 8 airplanes that have metal covered wings. For airplanes that have fabric covered wings, the cost will only be for the one-time inspection, which is estimated to take approximately 1 hour per airplane, and does not include labor and parts costs if corrosion is found and a replacement is made.

Luscombe has informed the FAA that these Installation Kits have been distributed to equip approximately 150 airplanes. Assuming that these distributed kits are incorporated on the affected airplanes, the cost of this AD would be reduced by $81,750 from $1,105,805 to $1,024,055.

Compliance Time of This AD

The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition described by this AD is caused by corrosion. Corrosion initiates as a result of airplane operation, but can continue to develop regardless of whether the airplane is in service or in storage. Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours time-in-service (TIS) is required.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–24–17 The Don Luscombe Aviation History Foundation (formerly The Luscombe Aircraft Company): Amendment 39–9841; Docket No. 95–CE–99–AD.

Applicability: Models 8, 8A, 8B, 8C, 8D, 8E, 8F, and T–8F airplanes (all serial numbers), certificated in any category.

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

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent wing spar failure resulting from intergranular corrosion, which, if not detected and corrected, could result in structural failure of the wings and loss of control of the airplane, accomplish the following:

(a) For airplanes with metal covered wings:

(1) Install two additional wing inspection holes (left wing and right wing) using the Don Luscombe Aviation History Foundation (DLAHF) Kit #8007, Wing Access and Inspection Kit, in accordance with the Compliance Procedures section, paragraphs ''1B Metal Covered Wings.'', (a), (a1.) through (a9.), and (b.) of The Don Luscombe Aviation History Foundation Recommendation #2, dated December 15, 1993, Revised November 21, 1995; and,

(2) Modify the wing tip fairing using the DLAHF Kit #8007, Wing Access and Inspection Kit, in accordance with the Compliance Procedures section, paragraphs ''1B Metal Covered Wings.'', (c), and (c1.) through (c5.) of The Don Luscombe Aviation History Foundation Recommendation #2, dated December 15, 1993, Revised November 21, 1995.

(b) For all affected airplanes, inspect one time for intergranular corrosion in the areas of the front and rear spar extrusions of the wing installations and if corrosion is found, prior to further flight, replace the corroded

part in accordance with the Compliance Procedures section, paragraph ''1A. Fabric Covered Wings.'' or paragraph ''2. Inspect'' of The Don Luscombe Aviation History Foundation Recommendation #2, dated December 15, 1993, Revised November 21, 1995, whichever paragraph is applicable to the wing construction of the airplane.

(c) For airplanes with metal covered wings, an alternative method of compliance for the required modification in paragraphs (a)(1) and (a)(2) of this AD can be accomplished in accordance with the procedures contained in the Appendix to this AD.

Note 2: Although not required by this AD, the FAA recommends inspection of the spars for other forms of corrosion which may be a result of nest residue from rodent and bird infestation within the cavity of the wing. If corrosion is detected, it should be treated by the recommended maintenance procedures (reference Advisory Circular 43–4A, Corrosion Control for Aircraft, dated July 25, 1991).

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California, 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

(f) The inspections and modifications required by this AD shall be done in accordance with The Don Luscombe Aviation History Foundation Recommendation #2, dated December 15, 1993, Revised November 21, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Don Luscombe Aviation History Foundation, P. O. Box 63581, Phoenix, Arizona 85082; telephone (602) 917–0969 and fax (602) 917–4719.

Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9841) becomes effective on January 27, 1997.

Appendix to AD 96–24–17

I. Inspection Procedures for Luscombe Model 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F Airplanes That Have Not Accomplished the Inspection in Accordance With the Procedures in the Don Luscombe Aviation History Foundation Recommendation #2, Dated December 15, 1993; Revised November 21, 1995

1. Remove ALL existing wing root fairings, wing inspection hole covers, and wing strut cover plates on both the right and left wing.

2. Loosen the four wing spar root attach bolts on both the right and left wings to permit a small wing angulation.

3. Perform a visual inspection of the extruded rear spar aft face of the left and right wing.

4. Inspect the spar from the root to the spliced sheet metal tip spar at the wing root fairing location.

5. To permit removal of the wing strut, unbolt the wing strut and remove the strut.

Note: In the location under a spar, support the wing half at normal height by any stable means, such as a ladder and padded lashed block. Avoid excess vertical angulation of the wing as this may stress the wing root attach point.

6. Using suitable light and the access gained by the wing strut hole, visually inspect the front of the rear spar and the rear of the front spar for abnormal bulges or erupted spar surfaces. (See also Note 2 in the body of AD 96–24–17)

7. Remove the wing tip fairing by drilling out the rivets (using a #30 drill or smaller), and inspect the spars for abnormal bulges or erupted spar surfaces in the ''U channel attach area'' of each spar, and the outer lengths to the splices of the sheet metal spar extrusions. (See Note 2 in the body of AD 96–24–17)

Note: Inspection of the front of the front spar may be performed by using the existing inspection holes and a ''light trolley'' on the upper aileron cable. The light trolley is made from a standard clear 110 volt bathroom night light connected to a candelabra socket lamp extension cord. Attach the light trolley to the upper aileron cable with a tie wrap, connect a wire of suitable length to the tie wrap and use this as a means to move the light along the face of the spar.

8. Reattach wing tip fairings with approved sheet metal screws or approved pop rivets.

9. Reassemble wing strut on inspected wing, protecting the root joint by avoiding excess vertical deflection. Check the lock nuts for wear and replace as necessary. Torque the strut ends and wing root bolts using adequate torque (do not over torque the attach fittings).

10. If evidence of intergranular corrosion is detected, remove and replace the corroded part with an airworthy part.

11. Upon completion of the inspection, replace the wing root fairings, wing inspection hole covers and wing strut covers.

Issued in Kansas City, Missouri, on November 25, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–30684 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 93–AWA–13]

RIN 2120–AA66

Modification of the Los Angeles Class B Airspace Area; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies the Los Angeles (LAX) Class B airspace area, California (CA). Specifically, this action lowers the ceiling of the LAX Class B airspace area from 12,500 feet mean sea level (MSL) to 10,000 feet MSL; reconfigures and/or raises the lower limits of several existing subareas to provide additional airspace for general aviation (GA) aircraft to navigate outside or under the LAX Class B airspace area; and creates several subareas in order to contain operations within the LAX Class B airspace area. The FAA is taking this action to enhance safety, to reduce the potential for midair collision in this high density traffic area, and to improve the management of air traffic operations into, out of, and through the LAX Class B airspace area.

EFFECTIVE DATE: 0901 UTC, July 17, 1997.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Airspace reclassification, which became effective September 16, 1993, discontinued the use of the term ''Terminal Control Area'' (TCA) and replaced it with the term ''Class B airspace.'' This change in terminology is reflected in this rule.

On May 21, 1970, the FAA published Amendment No. 91–78 to part 91 of the Federal Aviation Regulations (35 FR 7782). This rule provided for the establishment of Class B airspace. Class B airspace was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by

providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a GA aircraft and an air carrier, military, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). The establishment of Class B airspace areas provides a means to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace afford the greatest protection for the greatest number of people by providing air traffic control (ATC) with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of a Class B airspace area contains three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The vertical limit of a Class B airspace area normally does not exceed 10,000 feet MSL, with the floor established at the surface in the inner circular area and at levels appropriate to the containment of operations in the outer circular areas. Class B airspace may be designed using variations of these criteria which are dependent on terrain, adjacent regulatory airspace, and factors unique to the specific terminal area. To date, the FAA has established 29 Class B airspace areas.

The geographic coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.2D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

Related Rulemaking Actions

On June 21, 1988, the FAA published the Transponder with Automatic Altitude Reporting Capability Requirement final rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated Class B primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published the TCA Classification and TCA Pilot and Navigation Equipment Requirements final rule (53 FR 40318). This rule, in part, removed the different classifications of TCA's, and requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student who has received certain documented training.

Public Input

On November 22, 1994, the FAA published a Notice of Proposed Rulemaking in the Federal Register proposing to modify the LAX Class B airspace area (Airspace Docket 93–AWA–13; 59 FR 60244). Interested persons were invited to participate in this rulemaking action by submitting written data, views, or arguments. In response to this notice, the FAA received 33 comments. All comments received were considered before issuing this final rule. An analysis of the comments received in response to this notice is summarized below.

Analysis of Comments

Area B Airspace Boundary

Nineteen commenters opposed lowering the floor of the Class B airspace area from 2,000 feet MSL to 1,500 feet MSL in Area B. These commenters, all helicopter pilots, state that the proposed change would compress VFR GA aircraft with helicopter traffic that normally operates at or below 1,500 feet MSL in Area B, particularly along the Long Beach Freeway. These commenters recommend that the FAA retain the floor of Area B at 2,000 feet MSL.

The FAA agrees with this recommendation, and retains the floor of Area B at 2,000 feet MSL.

Hollywood and Shoreline (H/S) VFR Routes, and Special Federal Aviation Regulation (SFAR) No. 51–1

Several commenters objected to the elimination of the existing VFR transition routes. These commenters state that this action does not address the H/S VFR Routes, or the Special Flight Rules Area which the FAA interprets as SFAR No. 51–1. Many of these commenters state that this change will force them to fly alternate routes over populated and noise-sensitive areas. These commenters request that the FAA take action to preserve the existing VFR transition routes in the final LAX Class B airspace design. The Air Line Pilots Association (ALPA) states that the Shoreline route should be deleted because it is an obstacle to the expeditious flow of traffic departing LAX.

This action does not eliminate SFAR No. 51–1, or the H/S Routes. The FAA finds that the H/S routes and SFAR No. 51–1 pose no impairment to air traffic operations into or out of LAX.

Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Boundaries

Several commenters opposed defining the boundaries of the LAX Class B airspace area exclusively in terms of latitude and longitude (lat/long). These commenters recommended that the boundaries of the LAX Class B airspace area remain defined in terms of VOR/DME (fix/radial/distance) as well as geographical landmarks. The Northern California Airspace Users Working Group (NCAUWG) also believes that several boundary points are not shown on aeronautical charts, and that this will increase cockpit workload. The NCAUWG also states that the lat/long boundary identification method requires certified Global Positioning System (GPS) equipment.

The FAA does not agree. Defining the boundaries in terms of VOR radials and DME arcs would encompass more airspace than is required for the specific LAX Class B airspace area design. In addition, the FAA believes that there are sufficient geographical landmarks to determine the boundaries of the LAX Class B airspace area without GPS equipment.

Terminal and Regional Airspace (TARA) Concept

The Southern California Airspace Users Working Group (SCAUWG) proposed the implementation of the TARA concept as an alternative plan to the LAX Class B airspace area proposal. This concept envisions replacing the existing LAX Class B airspace area with two layers of regulated airspace. Specifically, the TARA configuration would have an upper area between 5,000 and 10,000 feet MSL called regional airspace and a lower area called terminal airspace. This concept is supported by the NCAUWG, ALPA, Aircraft Owners and Pilot Association (AOPA), and other airspace users.

The FAA believes that to implement a significant change such as the recommended TARA concept for the LAX airspace area, or any portion of the National Airspace System, will require additional study and evaluation. The FAA believes that to withdraw the

adopted modification to the LAX Class B airspace area at this point would compromise aircraft safety in and around the LAX area. The FAA believes, with the increase in traffic volume, the adopted modifications detailed in this action are necessary to ensure continued safe operations within the LAX Class B airspace area. Notwithstanding, the FAA has begun further analysis and evaluation of the recommended TARA concept.

Turn Style Philosophy

One commenter suggested that the FAA consider a general ''turn style'' philosophy that includes an inner and outer track, allowing approaches and departures along a tangential route with right hand patterns and the occasional straight-in approach.

The FAA does not agree with this suggestion. The suggested operation is not compatible in view of the Los Angeles Basin topography, traffic flow configurations, other airports, and noise abatement procedures in the Class B airspace area.

LAX Class B Airspace Area Ceiling and Buffer Areas

One commenter suggests lowering the LAX Class B airspace area ceiling to 8,000 feet MSL. This commenter believes that the San Francisco (SFO) Class B airspace area configuration works well with the ceiling at 8,000 feet MSL. In this commenter's opinion, SFO has arrival and departure structures similar to those currently in place at LAX, and this would allow non-turbocharged GA aircraft to overfly the LAX Class B airspace area ''without bothering ATC.''

The FAA does not agree. An 8,000 feet MSL ceiling would not adequately contain departing LAX traffic.

ALPA opposes lowering the LAX Class B airspace area ceiling below 12,000 feet MSL, contending it would allow VFR traffic to fly just above the top of the airspace area without being in contact with ATC. ALPA contends this would reduce safety between aircraft entering and exiting the LAX Class B airspace area, and aircraft operating outside the airspace area.

The FAA does not agree and determined that the 10,000 feet MSL ceiling is sufficient to contain operations within the LAX Class B airspace area.

In addition, ALPA recommends that buffer areas be created between the horizontal and vertical boundaries of the Class B airspace area and the surrounding airspace, specifically, 500 feet from all floor and ceiling altitudes, and one mile from all lateral boundaries. ALPA states that, under current rules, a pilot operating without benefit of ATC guidance can fly up to the very edge of the Class B airspace area, while pilots under ATC guidance are flying at assigned altitudes and routes immediately inside the Class B airspace area.

The FAA does not agree with these recommendations. The LAX Class B airspace area is designed to include only that airspace necessary to contain the operations of participating aircraft. Establishing buffers around the Class B airspace area would eliminate airspace that allows nonparticipating VFR aircraft to circumnavigate the Class B airspace area at prescribed VFR altitudes. Additionally, pilots are required to operate in accordance with the provisions of the Federal Aviation Regulations. These rules afford adequate protection between those aircraft operating within or navigating outside of regulatory airspace. The FAA is not establishing buffer zones around the LAX Class B airspace area.

Class B airspace area Sector Modifications

One commenter recommended that the FAA raise the floor of Area N west of Santa Monica Airport (SMO) to 5,000 feet MSL and consolidate the area with the adjacent Area M 5,000 foot MSL sector. This commenter also suggested realigning the northern boundary of Area A to ''eliminate inadvertent airspace intrusions'' into Area A by aircraft operating southeast of SMO in Area N.

The FAA agrees, in part, with these comments. This action raises the floor of Area N west of SMO to 5,000 feet MSL and adjusts Area M's floor to 7,000 feet MSL to contain aircraft departing to the west. In addition, this action reconfigures a portion of the northern boundary of Area A. This reconfiguration provides additional airspace for aircraft operations southeast of SMO (between SMO and LAX) by raising the floor from the surface to 5,000 feet MSL.

Several commenters recommended modification of the Class B airspace area east of SMO by raising the floor of Area C to 3,000 feet MSL. The FAA disagrees with this recommendation. Raising the floor of Area C to 3,000 feet MSL would have an adverse impact on aircraft executing instrument approach procedures into LAX.

Another commenter opposed raising the floor of Area N from 4,000 to 7,000 feet MSL west of SMO, claiming that this would decrease the margin of safety for aircraft arriving from the north and west. This commenter also states that traffic is often flying at 7,000 feet MSL in the vicinity of the SMO VOR/DME, and the change will allow VFR aircraft to operate below 7,000 feet MSL.

The FAA does not agree with this comment. The modification to Area N and expansion of Area M will not decrease air safety. This action consolidates Area N into one subarea with a floor of 5,000 feet MSL. However, expansion to the west is necessary for traffic arriving from the north and west. In this action, Area M is expanded approximately 10 miles westward with a floor of 7,000 feet MSL. In addition, the floor in Area N is raised to 5,000 feet MSL returning a significant amount of airspace for GA aircraft using the SMO VOR/DME for navigation, and operating into and out of SMO to the west.

Another commenter recommends raising the floor of Area C, or moving the adjoining boundaries of Areas C and N further east in order to allow GA aircraft to climb above SMO's airspace, if necessary.

The FAA agrees, in part, and has moved the adjoining boundary of Areas C and N approximately 1½ NM eastward. This modification supports operations into and out of SMO and contains operations within the LAX Class B airspace area.

One commenter states that the revised Class B airspace area will overlie the Santa Ana (SNA) Class C airspace area surrounding the John Wayne/Orange County Airport. In this commenter's opinion, one can overfly SNA from the northeast to Catalina Island at only one cardinal VFR altitude, 6,500 feet MSL, which makes it difficult for an aviator to plan a VFR return trip.

The FAA does not concur. Area I overlaps a portion of the west side of the SNA Class C airspace area. However, VFR altitudes of 5,500, 6,000 and 6,500 feet MSL are available. In addition, GA aircraft can circumnavigate the revised LAX Class B airspace area by flying to the east approximately 8 NM and above the SNA Class C airspace area. Further, GA operators who choose not to circumnavigate the area can follow standard procedures and enter the LAX Class B or SNA Class C airspace areas.

One commenter states that the FAA erroneously published the lat/long coordinates of the Area C boundary point named ''West Los Angeles College.'' According to this commenter, the published coordinates would locate this boundary point 17 NM south of Santa Catalina Island, in the Pacific Ocean.

The FAA agrees with this commenter, and has corrected the coordinates for Area C (West Los Angeles College) in this final rule.

One commenter states that Areas A and G, as configured, are excessive. In this commenter's opinion, a new area should be created out of the western portion of Area A and the southern portion directly west of Torrance, extending to 3 NM offshore, with its base at 1,000 feet MSL, rather than at the surface. This commenter states that if the airspace design outlined in the NPRM is adopted, aircraft departing Torrance, and aircraft from the southeast following the coastline, may be adversely affected. The commenter suggested that the western and very southern portions of Area A do not need to extend down to the surface. The commenter further states that the designation of Class B airspace around Long Beach/Daugherty Field (LGB) is not necessary, and the western portion of Area G between Hawthorne and Torrance could be completely eliminated since this portion of the airspace is very seldom used by large jet aircraft.

The FAA disagrees with this commenter. The FAA has determined that for the protection of the primary airport, airspace extending from the surface is necessary. The LAX Class B airspace area has been configured to contain heavily loaded jet and turboprop aircraft departing LAX to remain within the Class B airspace area. In addition, this area is designed to control both arriving/departing turboprop and jet aircraft operating in the LAX Class B airspace area, whether the airport is in a east or west operation. The 5,000 foot MSL floor in Area G of the LAX Class B airspace area provides sufficient airspace for GA aircraft operating between Hawthorne and Torrance. Furthermore, the VFR Transition Routes and the SFAR No. 51–1 area provide for VFR aircraft transiting the LAX Class B airspace area.

One commenter states that areas E and F are unnecessarily complex, and suggested that the FAA simplify those areas by lowering the base of Area F to 8,000 feet MSL and combine it with Area E.

The FAA does not agree with this comment or suggestion. The FAA used only the minimum amount of airspace essential to support the Class B requirements and does not believe the Areas E and F are complex in design. In addition, the 9,000 foot MSL floor of Area F is designed to contain arriving and departing aircraft from and to the east.

One commenter states that on VFR flights to Avalon, Catalina, the base altitude and position of Area I might block the ''preferred altitude'' of 7,500 feet MSL that they feel is necessary to glide and land in the event of engine failure.

The FAA does not agree. Area I's 7,000 feet MSL floor is necessary to contain high performance jet and turboprop aircraft departing out of the LAX Class B airspace area to the east and southeast. In addition, GA aircraft can alter their flight paths to the west and fly under Area J and then climb to 7,500 feet MSL, or these pilots can use standard procedures and enter the LAX Class B airspace area.

One commenter recommended modifying the boundary of Area K to remove VOR Federal Airway V25–27 from the LAX Class B airspace area.

The FAA concurs with this recommendation, and in this action modifies the boundary of Area K and L to parallel V25–27 along its western boundary.

The Rule

This amendment to 14 CFR part 71 modifies the LAX Class B airspace area, CA. This action lowers the ceiling of the LAX Class B airspace area from 12,500 feet MSL to 10,000 feet MSL; reconfigures and/or raises the lower limits of several existing subareas to provide additional airspace for GA aircraft to navigate outside or under the LAX Class B airspace area; and creates several subareas in order to contain operations within the LAX Class B airspace area. The FAA is taking this action to enhance safety, to reduce the potential for midair collision in this high density traffic area, and to improve the management of air traffic operations into, out of, and through the LAX Class B airspace area. The modifications are depicted on the attached chart.

Regulatory Evaluation Summary

Final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on small entities. In conducting these analyses, the FAA has determined that this final rule: (1) will generate benefits that justify its minimal costs and is not ''a significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized below.

A. Costs

The final rule will alter several existing areas and lateral boundaries, as well as create several new areas within the limits of the LAX Class B airspace area. All of the changes to the revised LAX Class B airspace area occur entirely within the Los Angeles Mode C veil centered around LAX. The FAA has determined that altering the LAX Class B airspace area will impose minimal, if any, additional cost to either the agency or aircraft operators. The FAA has concluded this for several reasons. First, the FAA can absorb any additional workload with existing personnel and equipment. Second, the FAA routinely and periodically updates aeronautical charts; therefore, alterations in LAX Class B airspace area aeronautical charts will not impose any additional cost. Third, aircraft operating in the expanded areas of Class B airspace will already have two-way communication capability and Mode C transponders. Fourth, pilots can avoid the expanded areas of the Class B airspace area with only small deviations from their current flight paths.

B. Benefits

The FAA has determined the final rule will improve traffic flow while enhancing safety. Enhancements to safety come in the lowered risk of midair collisions (despite the rise in traffic density) due to increased control in those subareas where Class B airspace will be expanded. The final rule will benefit GA aircraft operators by modifying the size of various subareas of the Class B airspace area. In addition, the alterations of the Class B airspace will simplify airspace boundaries.

C. Conclusion

In view of the minimal cost of compliance and benefits of enhanced aviation safety and increased operational efficiency, the FAA has determined that the final rule will be cost beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility

Analysis to determine if a final rule will have ''significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA.

The small entities that may be affected by the implementation of the final rule are unscheduled operators of aircraft for hire owning nine or less aircraft. Only those unscheduled aircraft operators without the capability to operate under IFR conditions will be potentially affected by the final rule. The FAA contends that all of the potentially affected unscheduled aircraft operators will already be equipped to operate under IFR conditions. Therefore, the FAA contends that the final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The final rule will not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States (U.S.). This assessment is based on the fact that the final rule will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

Unfunded Mandate Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more adjusted annually for inflation in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, (of $100 million adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 3000—Subpart B-Class B Airspace

* * * * *

AWP CA B Los Angeles, CA [Revised]

Los Angeles International Airport (Primary Airport)
(lat. 33°56′33″N, long. 118°24′29″W)

Boundaries

Area A. That airspace extending upward from the surface to 10,000 feet MSL bounded by a line beginning at lat. 34°00′08″N, long. 118°45′01″W; to lat. 34°00′33″N, long. 118°32′56″W; to lat. 33°57′42″N, long. 118°27′23″W (Ballona Creek/Pacific Ocean); to lat. 33°57′42″N, long. 118°22′10″W (Manchester/405 Fwy); to lat. 34°01′00″N, long. 118°15′00″W; to lat. 33°55′48″N, long. 118°13′54″W; to lat. 33°55′51″N, long. 118°26′05″W (Imperial Hwy/Pacific Ocean); to lat. 33°45′34″N, long. 118°27′01″W (LIMBO intersection); to lat. 33°45′14″N, long. 118°32′29″W (INISH intersection); to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°01′00″N, long. 118°15′00″W; to lat. 34°00′01″N, long. 118°07′58″W (Garfield Washington Blvd); to lat. 33°56′10″N, long. 118°07′21″W (Stonewood Center); to lat. 33°55′48″N, long. 118°13′54″W (V16/V370 10 DME); to the point of beginning.

Area C. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°06′00″N, long. 118°14′27″W (Railroad Freight Yard); to lat. 34°06′00″N, long. 118°11′23″W (Ernest E. Debs Regional Park); to lat. 34°02′03″N, long. 118°03′39″W (Legg Lake); to lat. 33°58′40″N, long. 118°01′49″W (Whittier College); to lat. 33°54′10″N, long. 118°01′49″W; to lat. 33°53′35″N, long. 118°10′55″W (Dominguez High School); to lat. 33°55′48″N, long. 118°13′54″W(V16/V370 10 DME); to lat. 33°56′10″N, long. 118°07′21″W (Stonewood Center); to lat. 34°00′01″N, long. 118°07′58″W (Garfield/Washington Blvd); to lat. 34°01′00″N, long. 118°15′00″W (V264 10 DME); to lat. 33°57′42″N, long. 118°22′10″W (Manchester/405 Fwy); to lat. 34°00′20″N, long. 118°23′05″W (West Los Angeles College); to lat. 34°02′49″N, long. 118°21′48″W; to the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°02′03″N, long. 118°03′39″W (Legg Lake); lat. 34°06′00″N, long. 118°11′23″W (Ernest E. Debs Regional Park); to lat. 34°00′45″N, long. 117°54′03″W; to lat. 33°57′40″N, long. 117°53′35″W; to lat. 33°54′26″N, long. 117°54′21″W (Brea Municipal Golf Course); to lat. 33°54′10″N, long. 118°01′49″W; to lat. 33°58′40″N, long. 118°01′49″W (Whittier College); to the point of beginning.

Area E. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°02′19″N, long. 117°59′13″W ; to lat. 34°02′50″N, long. 117°50′43″W (Mt. San Antonio College); to lat. 33°59′28″N, long. 117°50′42″W (SUZZI Intersection); to lat. 33°54′34″N, long. 117°52′10″W (Imperial Golf Course); to lat. 33°54′26″N, long. 117°54′21″W (Brea Municipal Golf Course); to lat. 33°57′40″N, long. 117°53′35″W; to lat. 34°00′45″N, long. 117°54′03″W; to the point of beginning.

Area F. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°02′50″N, long. 117°50′43″W (Mt. San Antonio College); to lat. 34°03′15″N, long. 117°47′00″W (General Dynamics); to lat. 33°59′55″N, long. 117°45′55″W (ARNES Intersection/Water Tower); to lat. 33°54′39″N, long. 117°46′57″W; to lat. 33°54′34″N, long. 117°52′10″W (Imperial Golf Course); to lat. 33°59′28″N, long. 117°50′42″W (SUZZI Intersection); to the point of beginning.

Area G. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°55′51″N, long. 118°26′05″W (Imperial Hwy/Pacific Ocean); to lat. 33°55′52″N, long. 118°16′43″W (Broadway/Imperial Hwy); to lat. 33°53′35″N, long. 118°10′55″W (Dominguez High School); to lat. 33°54′10″N, long. 118°01′49″W; to lat. 33°47′00″N, long. 118°03′17″W (Seal Beach VORTAC/Los Alamitos Armed Forces Reserve Center); to lat. 33°46′28″N, long. 118°11′54″W (Long Beach VA Hospital); to lat. 33°45′34″N, long. 118°27′01″W (LIMBO Intersection); to the point of beginning.

Area H. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°54′10″N, long. 118°01′49″W; to lat. 33°54′26″N, long. 117°54′21″W (Brea

Municipal Golf Course); to lat. 33°47′23″N, long. 117°57′40″W (Garden Grove Mall); to lat. 33°47′00″N, long. 118°03′17″W (Seal Beach VORTAC/Los Alamitos AFRC); to point of beginning.

Area I. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°47′00″N, long. 118°03′17″W (Seal Beach VORTAC/Los Alamitos AFRC); to lat. 33°47′23″N, long. 117°57′40″W (Garden Grove Mall); to lat. 33°28′56″N, long. 117°51′49″W; to lat. 33°26′40″N, long. 118°00′54″W; to lat. 33°34′42″N, long. 118°07′48″W; to lat. 33°46′28″N, long. 118°11′54″W (Long Beach VA Hospital); to the point of beginning.

Area J. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°45′34″N, long. 118°27′01″W (LIMBO Intersection); to lat. 33°46′28″N, long. 118°11′54″W (Long Beach VA Hospital); to lat. 33°34′42″N, long. 118°07′48″W; to lat. 33°35′58″N, long. 118°25′39″W; to the point of beginning.

Area K. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°45′34″N, long. 118°27′01″W (LIMBO Intersection); to lat. 33°35′58″N, long. 118°25′39″W; to lat. 33°33′50″N, long. 118°33′23″W; to lat. 33°44′27″N, long. 118°42′23″W; to lat. 33°45′14″N, long. 118°32′29″W (INISH Intersection); to the point of beginning. Area L. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°45′14″N, long. 118°32′29″W (INISH Intersection); to lat. 33°44′27″N, 93–AWA–13 5 long. 118°42′23″W; to lat. 33°59′44″N, long. 118°55′22″W; to lat. 34°00′08″N, long. 118°45′01″W; to the point of beginning.

Area M. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°06′00″N, long. 118°56′33″W; to lat. 34°06′00″N, long. 118°47′06″W; to lat. 34°00′08″N, long. 118°45′01″W; to lat. 33°59′44″N, long. 118°55′22″W; to the point of beginning.

Area N. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°06′00″N, long. 118°47′06″W; to lat. 34°06′00″N, long. 118°14′27″W (Railroad Freight Yard); to lat. 34°02′49″N, long. 118°21′48″W; to lat. 34°00′20″N, long. 118°23′05″W (West Los Angeles College); to lat. 33°57′42″N, long. 118°22′10″W (Manchester/405 Hwy); to lat. 33°57′42″N, long. 118°27′23″W (Ballona Creek/Pacific Ocean); to lat. 34°00′33″N, long. 118°32′56″W; to lat. 34°00′08″N, long. 118°45′01″W; to the point of beginning.

* * * * *

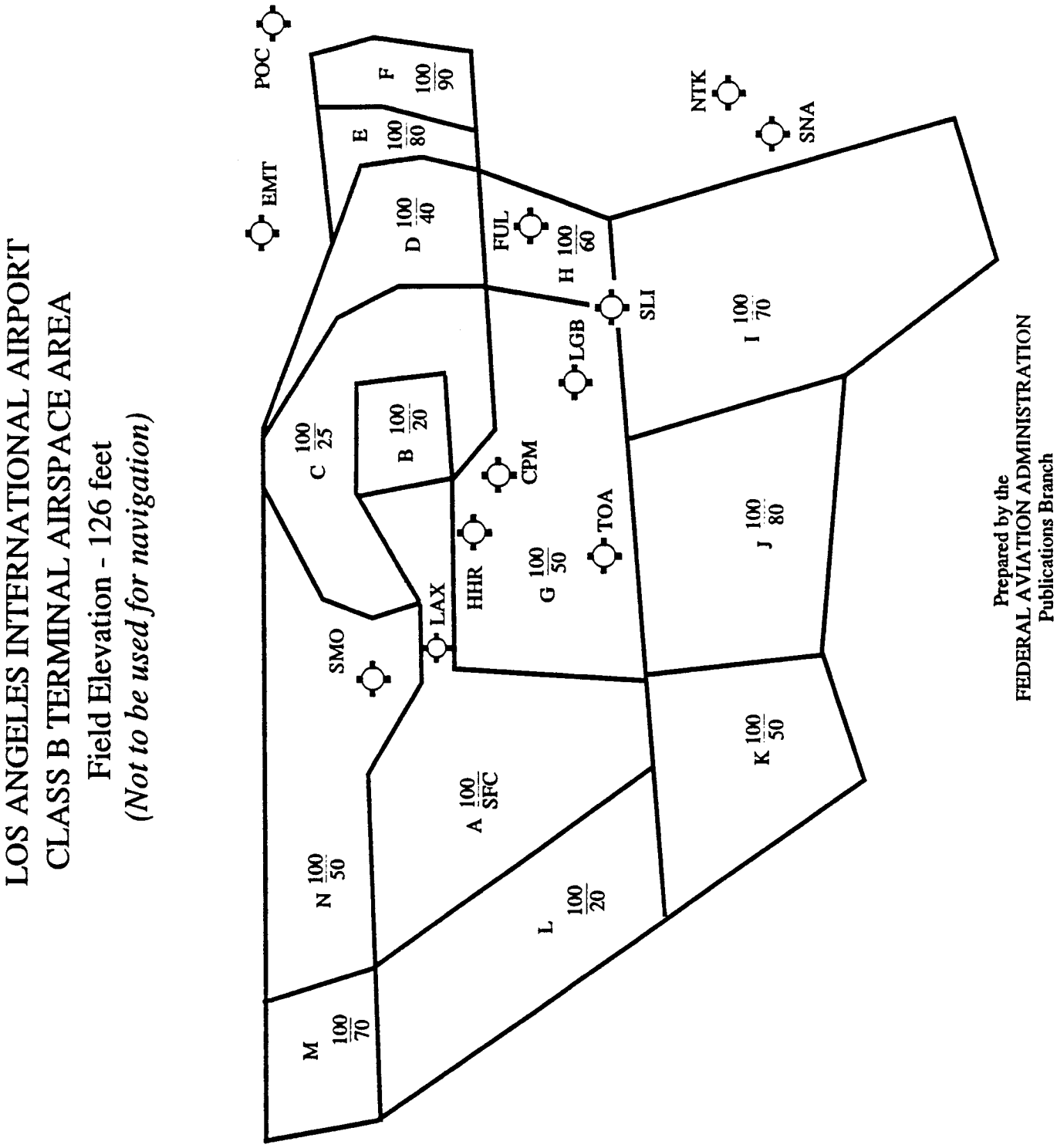
Issued in Washington, DC, on December 6, 1996

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

Appendix

Note: This appendix will not appear in the Code of Federal Regulations.



[FR Doc. 96–32109 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–C

14 CFR Part 71

[Airspace Docket No. 96–ANE–44]

Removal of Class D and E Airspace; South Weymouth, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action removes the Class D and Class E airspace areas at South Weymouth, MA due to the closure of the South Weymouth Naval Air Station (KNZW).

DATES: Effective 0901 UTC, January 30, 1997. Comments for inclusion in the

Rules Docket must be received on or before January 21, 1997.

ADDRESSES: Send comments on the rule to: Manager, Operations Branch, ANE–530, Federal Aviation Administration, Docket No. 96–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

The official docket file may be examined in the Office of the Assistant Chief Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Operations Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: As of October 1, 1996, the Department of the Navy has ceased air operations at the South Weymouth Naval Air Station, South Weymouth, MA, and closed the airport traffic control tower at that location. The Class D airspace area, and the associated Class E airspace, at the South Weymouth Naval Air Station (KNZW), are no longer required. Class D airspace designations, and Class E airspace designations for airspace areas designated as extensions to Class D surface areas are published in paragraphs 5000 and 6004, respectively, 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 and E airspace designations listed in this document will be removed subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, 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 under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this 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 action 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–ANE–44.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for 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.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Subpart D—Class D Airspace

* * * * *

ANE MA D South Weymouth, MA [Removed]

* * * * *

Subpart E—Class E Airspace

* * * * *

Paragraph 6004–Class E airspace areas designated as extensions to Class D surface areas

ANE MA E4 South Weymouth, MA [Removed]

* * * * *

Issued in Burlington, MA, on December 12, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–32255 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–28]

Amendment to Class E Airspace; Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action modifies the Class E airspace at Lebanon, NH (LEB) by removing the Class E airspace extending upward from the surface, effective during the time when the Airport Traffic Control Tower (ATCT) is not operating. This action results from the elimination of continuous weather reporting at Lebanon Municipal Airport.

EFFECTIVE DATE: The rule is effective on 0901 UTC, November 7, 1996.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the Federal Register on September 10, 1996 (61 FR 47672). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 7, 1996. No adverse comments were received, and thus this notice confirms that this final rule became effective on that date.

Issued in Burlington, MA, on December 12, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–32253 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–29]

Amendment of Class E Airspace; Old Town, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action revises the Class E airspace at Old Town, ME (KOLD) to provide for adequate controlled airspace for those aircraft using the new GPS RWY 12 and GPS RWY 30 Instrument Approach Procedures to Dewitt Field, Old Town Municipal Airport.

EFFECTIVE DATE: The rule is effective on 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, Operations Branch, ANE–530.6, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (617) 238–7536; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the Federal Register on October 24, 1996 (61 FR 55091). The FAA uses the direct final rulemaking procedures for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 5, 1996. No adverse comments were received, and thus this notice confirms that this final rule became effective on that date.

Issued in Burlington, MA, on December 12, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–32254 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–45]

Removal of Class E Airspace; Fall River, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action removes the Class E airspace area at Fall River, MA due to the closure of the Fall River Municipal Airport (KFLR) and the cancellation of the standard instrument approach procedure to that airport.

DATES: Effective 0901 UTC, January 30, 1997.

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

ADDRESSES: Send comments on the rule to: Manager, Operations Branch, ANE–530, Federal Aviation Administration, Docket No. 96–ANE–45, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

The official docket file may be examined in the Office of the Assistant Chief Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Operations Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: As of February 18, 1996, the City of Fall River, Massachusetts closed the Fall River Municipal Airport (KFLR) to all aviation activity, and the only standard instrument approach procedure to Fall River, the NDB RWY 24, was canceled as of August 9, 1996. Accordingly, Class E airspace at Fall River, MA is no longer required. 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 will be removed subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment

period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this 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 action 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–ANE–45.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for 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.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

§ 71.1 [Amended]

Subpart E—Class E Airspace

* * * * *

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

ANE MA E5 Fall River, MA [Removed]

* * * * *

Issued in Burlington, MA, on December 12, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–32256 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ANE–46]

Amendment to Class E Airspace; Springfield/Chicopee, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace at Springfield/Chicopee, MA by removing the Class E airspace extending upward from the surface, effective during the times when the Airport Traffic Control Tower (ATCT) is not operating. This action results from the elimination of continuous weather reporting at Westover ARB/Metropolitan Airport (KCEF).

DATES: Effective 0901 UTC, January 30, 1997.

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

ADDRESSES: Send comments on the rule to: Manager, Operations Branch, ANE–530, Federal Aviation Administration, Docket No. 96–ANE–46, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7534; fax (617) 238–7596.

The official docket file may be examined in the Office of the Assistant Chief Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Operations Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: Sandra V. Bogosian, Operations Branch, ANE–530.4, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: On May 16, 1994, the FAA published a modification to the Class D airspace at Westover ARB/Metropolitan Airport (KCEF), Springfield/Chicopee, MA (59 FR 25300, effective June 23, 1994) to reflect a change in the operating hours for the Airport Traffic Control Tower (ATCT) at Westover. Although the ATCT no longer operates continuously, 24-hour weather reporting remained, thus the FAA also established a Class E airspace area extending upward from the surface at Westover. That Class E airspace, effective during the hours when the ATCT did not operate, provides controlled airspace from the surface upward based on the availability of continuous weather reporting from Westover.

The FAA has been advised that continuous surface weather observations are no longer provided at Westover. Accordingly, the FAA must remove the Class E airspace area that

extended upward from the surface during the times when the ATCT does not operate. This action does not affect the Class E airspace area that extends upward from 700 feet above the surface, which remains in place to provide adequate controlled airspace for those aircraft operating under instrument flight rules in the vicinity of Westover when the ATCT is closed.

Class E airspace designations for airspace areas extending upward from the surface of the earth are published in paragraph 6002 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 will be removed subsequently from this order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this 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 action 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–ANE–46.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for 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.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Subpart E—Class E Airspace

* * * * *

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

ANE MA E2—Springfield/Chicopee, MA [Removed]

* * * * *

Issued in Burlington, MA, on December 12, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–32257 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–2]

RIN 2120–AA66

Removal of J–532

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action removes Jet Route 532 (J–532) which currently runs from the United States/Canadian border to Humboldt, MN. The FAA is taking this action because the jet route is no longer necessary for navigation between Canada and the United States.

DATES: *Effective date:* 0901 UTC, March 27, 1997.

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

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 96–AGL–2, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief

Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekends, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: J–532 originally was established to provide a transition route for operations in the Canadian airspace. As a result of a recent airspace review, Transport Canada and the United States agreed that the jet route is no longer necessary for navigation and should be removed. On April 25, 1996, Transport Canada removed that portion of J–532 within the Canadian airspace from Red Lake, Ontario, Canada, to the United States/Canadian border. The FAA is taking this action to remove the remaining segment of J–532 which currently runs from the United States/Canadian border to Humboldt, MN. Jet routes are published in paragraph 2004 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 jet route listed in this document will be removed subsequently from the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. This docket action is a technical amendment which is necessary to eliminate chart clutter, and, therefore, no adverse or negative comments are anticipated. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 under the caption ''**ADDRESSES**.'' All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this 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 action 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–AGL–2.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for 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.

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 follow:

Paragraph 2004—Jet Routes

* * * * *

J–532 [Removed]

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Issued in Washington, DC, on December 12, 1996.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

[FR Doc. 96–32110 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 992

[Docket No. 950222055–6228–03]

RIN 0648–AH92

Regulation To Prohibit the Attraction of White Sharks in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration is amending the regulations governing the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to prohibit the attraction of white sharks in the nearshore areas of the Sanctuary. The prohibition is intended to ensure that Sanctuary resources and qualities are not adversely impacted and to avoid conflicts among various users of the Sanctuary.

DATES: This final rule is effective January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Ed Ueber at 415–561–6622 or Elizabeth Moore at 301–713–3141.

SUPPLEMENTARY INFORMATION:

I. Background

In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the MBNMS was designated on September 18, 1992. SRD issued final regulations, effective January 1, 1993, to implement the Sanctuary designation (15 CFR Part 922 Subpart M). The MBNMS regulations at 15 CFR 922.132(a) prohibit a relatively narrow range of activities primarily to protect Sanctuary resources and qualities.

In January 1994, SRD became aware that chum was being used to attract white sharks for viewing by SCUBA divers while in underwater cages. This activity occurred in the nearshore area off of Año Nuevo in the MBNMS during the time of year white sharks come to feed. SRD received expressions of concern over this activity and inquiries as to whether attracting sharks for viewing and other purposes is allowed in the MBNMS. NOAA's Sanctuaries and Reserves Division (SRD), with assistance from the MBNMS Advisory Council, and a number of interested parties, identified a number of concerns regarding the subject of attracting white sharks within the MBNMS. The following concerns were identified throughout NOAA's review of this issue: (1) behavioral changes in the attracted species (e.g., feeding and migration); (2) increased risk of attack to other Sanctuary users (e.g., surfers, windsurfers, swimmers, divers, kayakers, and small craft operators), increased user conflicts in the area of the activity, and potential health hazards of the activity; and (3) adverse impacts to other Sanctuary resources and qualities (e.g., disruption of the ecosystem, aesthetic impacts). While California State law makes it unlawful to directly take (e.g., catch, capture, or kill) white sharks in State waters, it does not address attraction of white sharks.

On February 28, 1995, SRD issued an advance notice of proposed rulemaking (ANPR; 60 FR 10812), an optional step in the rulemaking process, to inform the public that SRD was considering restricting or prohibiting attracting sharks within the Sanctuary and to invite submission of written information, advice, recommendations, and other comments. The comment period for the ANPR ended on April 14, 1995. SRD received 302 letters and several petitions. Further, SRD held a public hearing in Aptos, California on March 22, 1995, where 35 oral comments were received. Most comments (over 90%) favored restricting or prohibiting chumming for or otherwise attracting white sharks in some fashion in the MBNMS. On February 12, 1996, SRD issued a proposed rule (61 FR 5335) to prohibit attracting white sharks in State waters of the Sanctuary.[1] The comment period for the proposed rule ended on March 31, 1996. SRD received 51 letters. Further, SRD held a public hearing in El Granada, California on March 1, 1996, where 16 oral comments were received. Most comments (88%) supported the proposed rule; 5% opposed the regulation; and the remaining 7% did not express a clear stand on the issue of white shark attraction.

II. Comments and Responses

The following is a summary of comments received on the proposed rule and NOAA's responses.

(1) *Comment:* Artificially attracting white sharks causes short-term behavioral changes in white sharks, and many cause long-term changes.

Response: NOAA agrees. As stated in the preamble to the proposed rule, research clearly supports that using attractants (e.g., chum) causes short-term behavioral changes in white sharks. This is further evidenced by the fact that artificial shark attraction methods have been successful in bringing sharks into a targeted area for divers in cages to view. Both direct and indirect (e.g., more white sharks remain in a particular area longer, a situation which could alter predator-prey relationships) behavioral changes can result from attracting white sharks in nearshore waters of the Sanctuary. In addition, while few studies have been conducted on the long-term impacts of artificial attraction on white sharks, scientific studies and observations indicate that using human manipulation to attract other species of wild organisms has resulted in behavioral changes.

A report prepared by the Research Activity Panel (RAP Report), a working group of the Sanctuary Advisory Council, indicates that sharks are known to be drawn to a specific area based on sensory (hearing and olfactory) changes in their environment. Some sharks have been trained to respond to both of these stimuli, but the success of that training depends on sufficient frequency. Evidence strongly indicates white shark affinity to the Farallon Islands and Año Nuevo Island areas due to the frequency that they are found in these areas and the continued seasonality of their use of these areas. It has been found that individual white sharks often feed at the same location at similar times during successive years.

It has also been found that white sharks at Dangerous Reef in Southern Australia show a clear tendency to revisit the places where they were previously observed, suggesting a relatively high degree of site attachment. The white sharks exhibited an ''island patrolling'' pattern which may represent a home-ranging pattern. Shark feeding behavior seems to be indiscriminate; white sharks may take learned ''prey-shaped'' items as long as the target ''matches'' a known prey item (e.g., a surfer lying prone on a surfboard has a silhouette similar to a seal). Other findings from studies at Dangerous Reef suggest that white sharks select their prey by shape. However, at the Farallon Islands, it has been documented that white sharks select prey of various shapes and sizes. The RAP Report found that sharks have been observed to alter their feeding behavior based on external clues (e.g., learned behavior). The Fisheries Division of the Southern Australia Department of Primary Industries has recommended that legislation be enacted to prohibit chumming at Dangerous Reef because of changes in the white shark's behavior resulting from chumming activities. Moreover, the Great Barrier Reef Marine Park Authority (Authority) has a policy that permits will not be issued for the feeding or attracting of sharks, identifying reasons similar to those NOAA has regarding its plan to prohibit attraction of white sharks in the nearshore areas of the Sanctuary,

[1] The ANPR and proposed rule also proposed to clarify the traditional fishing exception to the discharge prohibition in the existing regulations, as the shark attraction issue had raised a question as to the applicability of the exception as it pertained to shark attraction activities. Because the shark attraction prohibition fully addresses the concerns raised regarding this issue, NOAA will not address the clarification at this time.

including change in behavior caused by the activity.

Concern about the feeding of or attracting of other species of wild organisms has been addressed in other areas. Dolphin-feeding cruises in the Gulf of Mexico are one example of the use of attractants that has been determined to cause significant negative behavioral changes in marine mammals. NOAA's National Marine Fisheries Service (NMFS) banned dolphin-feeding cruises in 1991 based on the scientific risks to both dolphins and humans. The ban was imposed based on evidence that feeding cruises exposed wild animals to disease and physical danger, and could alter their migratory and feeding behavior. The U.S. Court of Appeals for the Fifth Circuit upheld the ban in 1993, *Strong* v. *U.S.*, 5 F.3d 905 (5th Cir. 1993). The Court agreed with NMFS that scientific evidence supported that feeding activities disturb normal behavior and, therefore, it was reasonable for the agency to restrict or prohibit the feeding of wild dolphins.

Other changes in animal behavior, resulting from people altering the natural feeding methods or locations, have been documented, including changes in prey items, location of feeding, and changes in behavioral patterns. Examples include feeding of bison in Yellowstone National Park, feeding of bear and deer in Parks, polar bears at Churchill, Canada, and feeding of fish in Hawaii. In all cases, the ensuing behavioral changes prompted regulators to prohibit feeding activities to protect the animals and the people feeding them. In the Hawaii example, the feeding resulted in increases in selected fish species and thus affected natural community structure on the reefs. While not directly applicable to white sharks, these examples show that longer-term behavioral changes can and do result from using human-manipulated means to attract (in these instances, feed) wild organisms.

(2) *Comment:* Artificially attracting sharks in nearshore areas creates a risk to other users of those areas.

Response: NOAA agrees. As stated in the preamble to the proposed rule, NOAA considers that even a single instance of white shark attraction conducted near an area where other people are recreating in the water can increase the risk of harm to those individuals from white shark attrack. While the exact potential for increased risk is difficult to assess, and may be an area for further research, most experts on shark biology agree that enhanced risk is probable where attraction is occurring. The American Elasmobranch Society, whose members include professional researchers studying sharks and rays, conducted a survey of its members in 1994 which included questions on shark baiting and the protection of sharks. One of the questions asked was: ''In regard to shark-diving operations which involve regular baiting, is there a cause for concern (re: shark attack) if such shark diving operations are conducted relatively close to bathing or surfing beaches?'' The response resulted in 46% yes, 48% it depends, and 6% no answer. The Great Barrier Marine Park Authority also cited risks to other users as one of the reasons it adopted a policy not to issue permits for the feeding or attracting of sharks. The Authority indicated that if the policy had not been adopted, then shark attracting activities would have been prohibited through regulation.

Therefore, while people that spend time in the water in areas near those known to be inhabited by white sharks are exposed to the possibility of dangerous interactions, the use of attractions in areas frequented by people may increase the likelihood of these interactions.

(3) *Comment:* Artificially attracting white sharks has adverse impacts on Sanctuary resources in general.

Response: NOAA agrees that the potential exists to cause harm to Sanctuary resources and qualities from white shark attraction activities. As stated in the preamble to the proposed rule, altering white shark behavior can result in disruption of the local population and the associated ecosystem (e.g., change in predation rate of target species). Further, attraction of white sharks in nearshore areas can result in adverse impacts to the aesthetic and recreational qualities for which the Sanctuary was designated (e.g., the presence of an oily slick in areas where chumming had occurred was noted by several commenters on the ANPR).

(4) *Comment:* One interpretation of the proposed regulation to prohibit attraction of white sharks might stop traditional recreational water uses that may inadvertently attract white sharks. NOAA should revise the regulation to clarify that it only applies to activities intended to attract white sharks.

Response: NOAA does not intend the prohibition against attracting white sharks to restrict activities (e.g., swimming, diving, surfing, boating) that may lure white sharks by virtue of the mere presence of human beings (e.g., swimmers, divers, surfers, boaters, kayakers). This is the primary reason the regulation is tailored specifically to ''attract or attracting,'' and not a broader prohibition against ''taking.'' However, to ensure that the narrow scope of the prohibition is clear, NOAA has revised the definition of ''attract or attracting'' to indicate that it does not include luring white sharks by the mere presence of human beings.

(5) *Comment:* The area where white shark attraction activities are banned needs to be clarified.

Response: NOAA agrees. The shark attraction prohibition in the proposed regulation applied to State waters of the MBNMS, defined as three miles seaward of the mean high tide line, because, in part, the regulation was prepared in such a way as to supplement the existing State white shark regulation. The proposed definition, however, did not accurately characterize State waters, and left out those areas that may extend beyond three nautical miles from mean high tide, such as is the case with Monterey Bay itself. Therefore, the regulation has been revised to clarify that it applies from mean high tide to the seaward limit of State waters, as established under the Submerged Lands Act (SLA), 43 USC § 1301 *et seq.*, defined for purposes of the regulation as:

> Seaward to a line three nautical miles distant from the coastline of the State of California, where the coastline is the line of ordinary low water along the portion of the coast in direct contact with the open sea. The Coastline for Monterey Bay, which is inland waters, is the straight line marking the seaward limit of the Bay, determined by connecting the following two points: 36°57′6″ N, 121°01′45″ W and 36°38′16″ N, 121° 56′3″ W.

(6) *Comment:* Expand the area where white shark attraction activities would be banned to six nautical miles from shore. The current three nautical miles from shore area does not provide sufficient protection to Sanctuary resources.

Response: NOAA does not believe expanding the area beyond the seaward limit of State waters is warranted at this time. A large part of NOAA's concerns are based on the possible interactions between human users and white sharks, and human users are predominantly found in the nearshore waters of the Sanctuary. However, there will be some areas up to six nautical miles from shore where white shark attraction activities will be banned (see Response to (5) above).

(7) *Comment:* Limit the restriction on white shark attraction to only those areas where white sharks are known to congregate (i.e., use a zoned approach).

Response: NOAA disagrees. There is evidence indicating that, although white sharks may congregate in certain areas

(e.g., Añ Nuevo and the Farallon Islands), white sharks are found all along the coast of the Sanctuary. NOAA believes that the area described in the rule is warranted.

(8) *Comment:* NOAA needs to clarify that white sharks are present in the nearshore areas of the Sanctuary year-round, not only in the fall and winter seasons.

Response: NOAA agrees. While white sharks are in the nearshore areas predominantly during the fall and winter seasons when they congregate near seal and sea lion rookeries, white shark attacks in the nearshore areas of the Sanctuary have been documented at all times of years, indicating a year-round presence of white sharks.

(9) *Comment:* Criteria for research or education permits for attraction of white sharks should be clearly spelled out.

Response: Criteria for permit application consideration are listed in the MBNMS regulations at 15 CFR §§ 922.48 and 922.133.

(10) *Comment:* The criteria for permits are so high that it is highly unlikely permits will ever be issued for research or education activities that involve attracting white sharks. Therefore, the regulation amounts to an all-out prohibition as opposed to a restriction in some areas.

Response: NOAA disagrees. The regulatory procedures and criteria for obtaining a Sanctuary permit, described in the notice of proposed rulemaking and found at 15 CFR §§ 922.48 and 922.133, have been in place since the regulations were promulgated in 1992. The Sanctuary issues a number of permits each year for the conduct of activities that further research related to Sanctuary resources and/or further the educational resource value of the Sanctuary. Applications for permits to conduct white shark attraction activities in the Sanctuary will be assessed on a case-by-case basis based on the regulatory criteria.

(11) *Comment:* Divers, kayakers, and small craft operators need to be added to the list of users who are at risk for white shark attacks.

Response: NOAA agrees. The listing of users in the background portion of the rule has been revised. It should be noted, however, that this listing is intended to be illustrative, not exhaustive.

(12) *Comment:* NOAA should add acoustical and visual types of attractants to the definition of ''attract or attracting''.

Response: The definition of ''attract or attracting'' has been revised to add as examples acoustical and visual attractants. It should be noted, however, that this listing in intended to be illustrative, not exhaustive.

(13) *Comment:* NOAA ignored information in the RAP Report that indicated that concern that non-marine chum acting as a vector for the transfer of terrestrial viruses was not really a concern.

Response: NOAA acknowledges that the RAP Report states it is unlikely that non-marine chum can act as such a vector. The RAP report, however, does not preclude the possibility.

(14) *Comment:* The proposed rule misapplies information (i.e., the response and comment section of the proposed rule contained information regarding the impacts of a fisherman killing four white sharks on the entire white shark population).

Response: NOAA disagrees. The occurrence was offered as an example of how sensitive the white shark population is to human disturbance.

(15) *Comment:* The proposed rule treats a rapidly expanding pinniped population as if it is in balance with a low birth rate shark population.

Response: NOAA believes that the commenter misinterpreted the statement. The preamble to the proposed rule stated ''Consequently, any disruption to the species can have a profound long-term adverse impact. This was evidenced in 1982, when a fisherman killed four adult white sharks off of the Farallon Islands. Researchers documented a significant decline in the occurrence of white sharks attacks on prey species (e.g., seals and sea lions) in that area between 1983–1985. This is significant because research indicates that white shark predation takes approximately 8–10% of the local elephant seal populations and an unknown percentage of California sea lion populations; this is enough of a predation rate to maintain a natural balance in fish and seabird populations.'' The statement was made as an example of how the predation rate of white sharks contributed to keeping a natural balance in fish and seabird populations.

(16) *Comment:* The idea of expanding the taking prohibition in the ESA and MMPA to white sharks is unsettling, when white sharks are not listed under either of those acts.

Response: One option NOAA considered early during this process was expanding the scope of the taking prohibition to include white sharks. NOAA's original definition of ''taking'' was derived from the Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA), and the current taking prohibition applies only to marine mammals, sea turtles, and seabirds. However, NOAA may use any legal tool at its discretion to protect Sanctuary resources, including expanding current Sanctuary regulations. Extending the ''taking'' prohibition to include white sharks was considered but was not chosen for a variety of reasons (see response to (4)).

(17) *Comment:* The proposed rule is based on emotional arguments that have no place in objective decision-making by a Federal agency, or makes statements not supported by the evidence.

Response: NOAA disagrees. NOAA relied on published scientific literature, the written and oral testimony of acknowledged white shark experts, and the expertise of its own Sanctuary Advisory Council's Research Activity panel, in its decision making process and believes that the regulation is well-supported by accurate and objective information.

(18) *Comment:* The proposed rule changes the standard for acceptable activities, without public review of such a fundamental change (i.e., NOAA is appearing to require that activities provide a benefit with which NOAA will agree).

Response: NOAA is unsure as to what ''standard'' the comment refers. The NMSA requires that NOAA facilitate multiple uses that are compatible with the primary mandate of resource protection. This is the primary factor that NOAA uses in determining what activities are acceptable within Sanctuary boundaries. As regards public review, NOAA has developed this rule through notice and comment rulemaking as required under the Administrative Procedure Act. Further, NOAA added the optional steps of issuing an advance notice of proposed rulemaking and holding public hearings on the advance notice and proposed rule to maximize public input into this rulemaking.

(19) *Comment:* The proposed rule ignores the narrow intent of the California State law (i.e., to prevent the catching, capturing, or killing of white sharks).

Response: NOAA disagrees. This rule is intended to supplement State law based on NOAA's concerns regarding the practice of artificial attraction of white sharks within the Sanctuary boundary, and has been formulated to address those concerns.

(20) *Comment:* The proposed rule does not present a compelling need for Sanctuary regulations as opposed to local laws.

Response: Existing State law prohibits only the direct take (e.g., catch, capture, or kill) of white sharks and does not

prohibit attraction. NOAA requested whether the State would expand its restriction but the State indicated that although legislation was a possible option, such an action could not occur until at least 1997 and that a rule was more appropriately initiated by the Sanctuary and its Advisory Council. Additionally, in promulgating a rule, SRD is under no obligation to present a compelling need for Sanctuary regulations as opposed to State or local laws. Consequently, NOAA decided it was necessary to address this issue through a Sanctuary regulation.

(21) *Comment:* As the boundaries of the Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries are contiguous, this regulation should be enacted in all three.

Response: NOAA believes that similar regulations for the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries are not necessary at this time.

III. Summary of Regulations

This final rule amends 15 CFR 922.132(a) by adding a prohibition against attracting any white shark in that part of the Sanctuary out to the seaward limit of State waters, as established under the Submerged Lands Act, 43 U.S.C. 1301 *et seq.* In defining the seaward limit of State waters, the final regulation uses the term ''nautical mile'' in place of the SLA term ''geographical mile'' because ''nautical mile'' is a more commonly used term. However, these terms have the same definition which is a measure of length or distance that contains 6,080 feet. Section 922.131 is also amended by adding a definition of ''attract or attracting.'' This regulation is necessary to protect the white shark and other Sanctuary resources (e.g., pinnipeds); to minimize user conflict in the nearshore areas of the Sanctuary; and to protect the ecological, aesthetic, and recreational qualities of the Sanctuary. Concentration of white sharks, associated species, and people make nearshore areas of the Sanctuary uniquely susceptible to adverse impacts from attracting white sharks in such areas. The regulation is narrowly tailored to attraction of white sharks in order to complement existing California law that prohibits the direct take of white sharks in California waters, and so as not to prohibit divers from viewing white sharks in their natural state without the use of attractants.

There has been some concern expressed that NOAA make clear that activities not intended to attract white sharks, but that could incidentally attract them are not included in the prohibition. To address these concerns, NOAA has revised the definition of ''attract or attracting'' in the final rule as follows: ''the conduct of any activity that lures or may lure white sharks by using food, bait, chum, dyes, acoustics, or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).''

IV. Miscellaneous Rulemaking Requirements

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

When this rule was prepared, 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 that this rule, if adopted as proposed, would not be expected to have a significant economic impact on a substantial number of small entities. A prohibition against white shark attraction in the nearshore areas of the Sanctuary would not have a significant economic impact on a substantial number of small entities because: the number of commercial operators presently engaging in this activity is small; white shark attraction is not likely the sole source of business for such commercial operators because white sharks only reliably inhabit the nearshore areas during part of the year; and commercial operators would not be prohibited from bringing divers to dive in cages to observe white sharks in their natural state without the use of attractants. The changes to the final rule and the comments on the proposed rule did not cause the reasons for this certification to change. Accordingly, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This final rule does not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

National Environmental Policy Act

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 6, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

PART 922—[AMENDED]

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart M—Monterey Bay National Marine Sanctuary

2. Section 922.131 is amended by adding the following definition in alphabetical order to read as follows:

§ 922.131 Definitions.

* * * * *

Attract or *attracting* means the conduct of any activity that lures or may lure white sharks by using food, bait, chum, dyes, acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

* * * * *

3. Section 922.132 is amended by adding new paragraph (a)(10) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(10) Attracting any white shark in that part of the Sanctuary out to the seaward limit of State waters. For the purposes of this prohibition, the seaward limit of State waters is a line three nautical miles distant from the coastline of the State, where the coastline is the line of ordinary low water along the portion of the coast in direct contact with the open sea. The coastline for Monterey Bay, which is inland waters, is the straight line marking the seaward limit of the Bay, determined by connecting the following two points: 36°57′6″ N, 121°01′45″ W and 36°38′16″ N, 121°56′3″ W.

* * * * *

[FR Doc. 96–32111 Filed 12–18–96; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 96F–0205]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the additional safe use of 3,9-bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane as an antioxidant and/or stabilizer in propylene homopolymer and high-propylene olefin copolymer articles intended for use in contact with food. This action is in response to a petition filed by Sumitomo Chemical America, Inc.

DATES: Effective December 19, 1996; written objections and requests for a hearing by January 21, 1997.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 3, 1996 (61 FR 34853), FDA announced that a food additive petition (FAP 6B4510) had been filed by Sumitomo Chemical America, Inc., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the additional safe use of 3,9-bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, that the food additive will have the intended technical effect, and therefore, that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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.

Any person who will be adversely affected by this regulation may at any time on or before January 21, 1997, 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.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) for the entry ''3,9-Bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane'' by adding a new entry ''3.'' under the heading ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
3,9-Bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane (CAS Reg. No. 90498–90–1).	* * * 3. At levels not to exceed 0.3 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, and 3.2, where the copolymers complying with items 3.1 and 3.2 contain not less than 85 weight percent of polymer units derived from propylene. The finished polymer is to be used in contact with food of types I, II, IV–B, VI–A, VI–B, VI–C, VII–B, and VIII under conditions of use A through H described in Tables 1 and 2 of § 176.170(c) of this chapter.
* * *	* * * *

Dated: December 4, 1996.

Fred R. Shank,

Director, Center for Safety and Applied Nutrition.

[FR Doc. 96–32126 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administation

21 CFR Parts 606 and 610

[Docket No. 91N–0152]

RIN 0910–AA05

Current Good Manufacturing Practices for Blood and Blood Components: Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection; Correction of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction of effective date.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule on current good manufacturing practices for blood and blood components, that appeared in the Federal Register of September 9, 1996 (61 FR 47413). The document was published with an incorrect effective date. The effective date had been inadvertently switched with the comment deadline for the information collection requirements. This document corrects those errors.

DATES: Effective September 9, 1996, the effective date of the regulation published at 61 FR 47413 is corrected to February 7, 1997. The deadline for written comments on the information collection requirements of the final rule published at 61 FR 47413 is corrected to November 8, 1996.

ADDRESSES: Submit written comments on the information collection 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: Sharon Carayiannis, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

In FR Doc. 96–22709, appearing at page 47413 in the Federal Register of Monday, September 9, 1996, the following correction is made: On page 47413, in the 3d column, in the ''DATES'' section, in the 2d line ''November 8, 1996'' is corrected to read ''February 7, 1997''; and in the 5th line, ''February 7, 1997'' is corrected to read ''November 8, 1996.''

Dated: December 12, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32271 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

42 CFR Parts 412, 413, and 489

[BPD–847–FCN]

RIN 0938–AH34

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates; Corrections

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

ACTION: Final rule; correction.

SUMMARY: In the August 30, 1996 issue of the Federal Register (61 FR 46166), we published a final rule revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. In the addendum to that final rule, we announced the amounts and factors for determining prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs applicable to discharges occurring on or after October 1, 1996, and set forth rate-of-increase limits for hospitals and hospital units excluded from the prospective payment systems. This document corrects errors made in that document.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips, (410) 786–4548.

SUPPLEMENTARY INFORMATION: In publishing Table 3C of the Addendum to the August 30, 1996 final rule (61 FR 46166), we inadvertently failed to incorporate a number of wage data revisions that had been transmitted to the Hospital Cost Report Information System (HCRIS) before mid-August 1996 as part of the process for verifying wage data. This document corrects the published average hourly wages for affected hospitals. Also, in the final rule, we indicated that if a hospital believes its wage index value was incorrect as a result of an intermediary or HCFA error that the hospital could not have known about before reviewing data made available in mid-August, the hospital must notify the intermediary and HCFA in writing, to be received no later than September 16, 1996 (see 61 FR 46179). As a result of this process, we have corrected the wage data for seven hospitals. Accordingly, the wage index values for several areas have changed and are corrected in this document.

The August 30, 1996 final rule also contained other technical and typographical errors. Therefore, we are making the following corrections to the final rule:

1. On page 46236, third column, last paragraph, the date ''October 1, 1994'' is corrected to read ''October 1, 1993''.

2. On page 46240, the title ''Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1995'' is corrected to read ''Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1995 and Hospital Average Hourly Wages for Federal Fiscal Year 1997 Wage Index''.

3. On pages 46240 through 46255, in Table 3C the column heading ''Avg. hour wage'' is corrected to read ''Avg. hourly wage''.

4. On pages 46240 through 46255, in Table 3C the average hourly wage for specified providers is corrected to read as follows:

Provider	Case mix index	Avg. hourly wage	Corrected avg. hourly wage
050021	01.4226	23.40	23.75
050080	01.2370	16.56	22.05
050093	01.5911	22.35	22.40
050136	01.3787	21.89	22.75
050263	01.2879	24.44	24.24
050469	01.0927	17.33	17.36
050591	01.2961	22.97	27.01
050630	01.3492	21.26	22.00
050701	01.3067	27.13	27.42
060042	01.0563	15.65	18.09
060057	01.0526	21.45	21.11
100049	01.3205	18.04	18.04
100092	01.4493	16.91	16.20
100129	01.2547	17.45	17.49
100179	01.6547	19.03	18.61
100183	01.3672	19.33	19.24
100209	01.6581	22.39	.....
100255	01.3326	19.11	19.00
110036	01.6813	.....	22.81
110183	01.3677	17.07	19.70
140024	01.0188	13.59	13.73
140082	01.5017	22.10	21.20
140252	01.4282	21.53	21.25
140253	01.4398	.....	16.57
150038	01.2712	16.65	16.27
150066	01.0006	12.89	13.75
150114	01.0253	13.44	13.37
160080	01.2094	15.46	15.50
160082	01.7526	17.09	17.17
160093	01.1433	15.20	13.86
160098	01.0813	13.90	13.78
170004	01.0839	13.18	12.65
170017	01.1668	16.76	15.46
170024	01.1563	12.71	12.32
170108	01.9468	10.88	10.46
170109	01.0494	14.67	14.50
170124	01.9495	12.10	11.92
170144	01.6225	18.74	15.14
180001	01.2298	16.16	16.24
180015	01.2422	14.91	15.01
180018	01.2225	15.73	14.16
180058	01.0125	12.85	12.59
190001	00.9354	16.67	16.35
190006	01.2839	14.07	14.50
190010	01.1104	15.31	14.69
190011	01.1162	14.08	14.05
190029	01.1364	14.09	13.50
190036	01.6581	21.15	19.08
190046	01.4846	16.87	17.16
190079	01.2606	13.61	14.76
190081	00.8818	9.70	9.89
190122	01.2732	12.96	13.85
190183	01.1310	13.81	13.43
190197	01.2631	19.05	18.80
190208	00.8210	10.20	10.36
220046	01.3991	21.48	21.50
230015	01.1305	18.28	19.53
230106	01.1730	18.07	18.31
230230	01.5400	20.38	20.45
260042	01.4179	15.65	15.82
260062	01.1677	19.89	17.72
260066	01.0907	12.78	13.19
260074	01.2444	11.49	14.81
260085	01.5653	18.92	18.57
260105	01.8722	19.18	19.47
260123	01.0309	11.17	11.56
270011	01.1240	16.46	16.06
270028	01.0735	14.91	15.41
270040	01.0819	17.60	16.77
270049	01.8369	18.19	18.17
280030	01.7482	23.06	23.13
310005	01.2257	19.20	19.96
310006	01.2209	19.02	20.36
310010	01.2966	21.05	21.06
310019	01.6444	20.84	21.05
310038	01.9189	22.82	23.48
310070	01.3980	22.16	22.21
310075	01.2933	21.67	21.71
310076	01.3854	28.16	28.51
310084	01.2622	20.43	20.61
310090	01.1884	22.86	22.97
310108	01.3940	21.08	21.14
310111	01.2536	19.70	19.78
310115	01.1954	19.78	20.03
330006	01.3128	24.11	24.15
330080	01.4167	24.95	24.92
330127	01.3974	25.01	25.99
330128	01.3390	25.26	25.74
330136	01.2620	20.45	20.56
330195	01.6272	29.02	28.90
330196	01.3367	25.53	25.57
330199	01.4635	24.80	24.33
330202	01.4872	25.07	26.80
330204	01.4236	24.90	25.19
330209	01.1871	21.17	21.15
330222	01.2611	15.28	16.35
330231	01.1364	27.57	27.55
330234	02.1947	24.17	28.46
330240	01.3472	26.47	25.60
330385	01.1735	29.27	29.06
330396	01.2740	25.30	26.13
340047	01.9028	17.98	18.09
350011	01.9090	17.37	17.35
360147	01.2662	.....	15.55
360176	01.1811	15.62	15.53
370011	01.0616	12.47	12.51
370012	00.8457	10.05	9.22
370042	00.8626	11.22	10.56
370048	01.1790	13.46	13.39
370049	01.3544	16.07	15.77
370083	00.9505	10.95	10.91
370084	01.0351	8.88	8.95
390012	01.1943	19.15	19.13
400031	01.1362	8.00	8.10
400048	01.1349	7.30	7.35
400061	01.6729	11.80	12.62
400087	01.3682	7.87	8.18
400110	01.1163	7.65	7.69
400112	01.2541	6.01	6.52
410007	01.6598	20.37	20.96
420018	01.7297	18.63	18.94
420049	01.1758	14.55	14.60
430004	01.0941	17.25	16.64
430009	01.0881	11.86	12.21
450450	01.0892	16.43	.....
450758	01.2161	13.21	.....

5. On pages 46256 through 46261, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas, the wage index values and the GAFs for specified areas are corrected to read as follows:

	Urban area	Wage index	GAF	Corrected wage index	Corrected GAF
1640	*Cincinnati, OH-KY-IN	0.9568	0.9702	0.9570	0.9704
2840	Fresno, CA	1.1177	1.0792	1.1183	1.0796
3120	*Greensboro-Winston-Salem-High Point, NC	0.9314	0.9525	0.9332	0.9538
6580	Punta Gorda, FL	0.8353	0.8841	0.8796	0.9159
7320	*San Diego, CA	1.2154	1.1429	1.2156	1.1430
7500	Santa Rosa, CA	1.2487	1.1643	1.2526	1.1668

6. On page 46260, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas, the third set of columns, first column, the tenth Metropolitan Statistical Area(MSA), ''Providence-Warwick-Pawtucket, RI'' is corrected to read ''*Providence-Warwick-Pawtucket, RI''.

7. On page 46261, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas, the second set of columns, first column, tenth line, the county ''Andrews, MO'' is corrected to read ''Andrew, MO''.

8. On page 46262, in Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas, the wage index value and the GAF for Iowa are corrected to read as follows:

Nonurban area	Wage index	GAF	Corrected wage index	Corrected GAF
Iowa	0.7366	0.8111	0.7373	0.8116

9. On page 46263, in Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified, the wage index values and the GAFs for Specified areas are corrected to read as follows:

Area reclassified to	Wage index	GAF	Corrected wage index	Corrected GAF
Cincinnati, OH-KY-IN	0.9568	0.9702	0.9570	0.9704
Greensboro-Winston-Salem-High Point, NC	0.9314	0.9525	0.9332	0.9538
San Diego, CA	1.2154	1.1429	1.2156	1.1430
Santa Rosa, CA	1.2363	1.1563	1.2399	1.1586

10. On pages 46264 through 46265, in Table 4D—Average Hourly Wage for Urban Areas, the average hourly wage for specified areas is corrected to read as follows:

	Urban area	Average hourly wage	Corrected average hourly wage
1640	Cincinnati, OH-KY-IN	18.7085	18.7122
2840	Fresno, CA	21.8549	21.8673
3120	Greensboro-Winston-Salem-High Point, NC	18.2112	18.2468
6580	Punta Gorda, FL	16.3323	17.5952

11. On page 46265, in Table 4E—Average Hourly Wage for Rural Areas, the average hourly wage for Iowa is corrected to read as follows:

Nonurban area	Average hourly wage	Corrected average hourly wage
Iowa	14.4039	14.4174

12. On page 46316, Table III—Impact of Final Changes for FY 1997 on Payments per Discharge is corrected to read as follows:

TABLE III.—IMPACT OF FINAL CHANGES FOR FY 1997 ON PAYMENTS PER DISCHARGE

	Number of hospitals	Discharges	Adjusted Federal payment	Average Federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change
FY 1996 payments per discharge									
Low Cost Hospitals	3,363	6,868,405	$411.84	54.85	$200.68	$15.75	$18.28	$646.55	.....
Fully Prospective	1,548	3,287,821	375.12	50.00	237.10	.....	11.40	623.62	.....
Rebase—Fully Prospective	1,483	2,743,898	371.61	50.00	218.24	.....	27.88	617.74	.....
Rebase—100% Federal Rate	228	643,922	793.64	100.00	.....	.....	0.25	793.89	.....
Rebase—Hold Harmless	104	192,764	335.30	46.29	.....	561.32	59.11	955.72	.....
High Cost Hospitals	1,741	4,288,642	668.50	86.23	.....	145.12	19.59	833.21	.....
100% Federal Rate	1,135	3,010,570	785.30	100.00	.....	.....	2.23	787.53	.....
Hold Harmless	606	1,278,072	393.38	52.33	.....	486.95	60.48	940.81	.....
Total Hospitals	5,104	11,157,046	510.50	67.15	123.54	65.48	18.78	718.30	.....
FY 1997 payments per discharge									
Low Cost Hospitals	3,363	7,056,653	467.97	63.97	156.10	12.43	40.87	677.38	4.77
Fully Prospective	1,548	3,377,933	437.83	60.00	184.43	.....	30.98	653.24	4.75
Rebase—Fully Prospective	1,483	2,819,103	434.86	60.00	169.76	.....	55.13	659.76	6.80
Rebase—100% Federal rate	238	677,500	773.08	100.00	.....	.....	2.69	775.77	−2.28
Rebase—Hold Harmless	94	182,117	404.20	56.47	.....	481.80	145.72	1,031.72	7.95
High Cost Hospitals	1,741	4,406,184	688.38	89.61	.....	118.29	50.40	857.07	2.86
100% Federal Rate	1,167	3,151,900	773.93	100.00	.....	.....	11.66	785.59	−0.25
Hold Harmless	574	1,254,284	473.40	62.81	.....	415.55	147.74	1,036.69	10.19
Total Hospitals	5,104	11,462,838	552.69	74.12	96.10	53.13	44.53	746.45	3.92

13. On pages 46317 through 46318, Table IV—Distribution by Method of Payment (Hold-Harmless/Fully Prospective) of Hospitals Receiving Capital Payments is corrected to read as follows:

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	5,104	13.1	27.5	59.4
Large urban areas (populations over 1 million)	1,584	15.5	34.7	49.9
Other urban areas (populations over 1 million of fewer)	1,275	16.0	32.7	51.3
Rural areas	2,245	9.8	19.6	70.7
Urban hospitals	2,859	15.7	33.8	50.5
0–99 beds	697	16.6	27.1	56.2
100–199 beds	941	19.6	36.6	43.9
200–299 beds	576	14.4	36.6	49.0
300–499 beds	478	10.3	34.5	55.2
500 or more beds	167	10.2	34.1	55.7
Rural hospitals	2,245	9.8	19.6	70.7
0–49 beds	1,175	7.1	14.5	78.5
50–99 beds	656	12.5	21.6	65.9
100–149 beds	241	13.7	30.7	55.6
150–199 beds	98	15.3	22.4	62.2
200 or more beds	75	8.0	41.3	50.7
By Region:				
Urban by Region	2,859	15.7	33.8	50.5
New England	160	6.9	25.0	68.1
Middle Atlantic	434	10.1	29.7	60.1
South Atlantic	418	20.3	40.0	39.7
East North Central	480	9.6	30.0	60.4
East South Central	162	22.8	34.6	42.6
West North Central	190	18.4	27.4	54.2
West South Centeral	367	28.1	45.8	26.2
Mountain 5	126	16.7	41.3	42.1
Pacific	474	13.1	30.8	56.1
Puerto Rico	48	10.4	25.0	64.6
Rural by Region	2,245	9.8	19.6	70.7
New England	53	7.5	15.1	77.4
Middle Atlantic	84	10.7	15.5	73.8
South Atlantic	297	11.8	26.6	62.6
East North Central	304	10.2	11.8	78.0
East South Central	278	9.7	31.3	59.0
West North Central	525	7.2	15.0	77.7
West South Central	347	9.2	24.8	66.0
Mountain	211	12.3	15.2	72.5
Pacific	141	11.3	15.6	73.0
Large urban areas (populations over 100 million)	1,779	15.3	34.3	50.4
Other urban areas (populations of 1 million or fewer)	1,180	16.1	31.9	51.9
Rural areas	2,145	9.6	19.4	71.0
Teaching Status:				
Non-teaching	4,019	13.7	26.5	59.8
Few than 100 Residents	850	11.3	32.4	46.4
100 or more Residents	235	9.4	27.7	63.0
Disproportionate share hospitals (DSH:)				
Non-DSH	3,178	12.4	23.9	63.7
Urban DSH:				
100 or more beds	1,409	15.5	35.9	48.5
Less than 100 beds	100	17.0	23.0	60.0
Rural DSH:				
Sole Community (SCH/EACH)	156	11.5	18.6	69.9
Referral Center (RRC/Each)	27	7.4	37.0	55.6
Other Rural:				
100 or more beds	83	8.4	45.8	45.8
Less than 100 beds	151	7.3	25.8	66.9
Urban teaching and DSH:				
Both teaching and DSH	692	11.1	32.2	56.9
Teaching and no DSH	339	11.2	29.8	59.0
No teaching and DSH	817	19.5	37.5	43.1
No teaching and no DSH	1,111	16.9	32.3	50.9
Rural Hopital Types:				
Non special status hospitals	1,372	7.7	19.5.	72.8
RRC/REACH	90	10.0	34.4	55.6
SCH/REach	645	13.3	17.2	69.5

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
SCh, RRC and Each	38	13.2	21.1	65.8
Type of Ownership:				
Voluntary:				
Voluntary	2,951	12.4	27.5	60.1
Proprietary	696	23.7	46.4	29.9
Government	1,366	8.8	17.5	73.7
Medicare Utilization as a Percent of Inpatient Days:				
0–50	258	15.1	25.2	59.7
25–50	1,284	14.6	33.3	52.1
50–65	2,097	13.1	27.8	59.1
Over 65	1,374	10.9	21.5	67.5

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance; and No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: December 11, 1996.

Michael W. Carelton,

Acting Deputy Assistant Secretary for Information Resource Management.

[FR Doc. 96–32094 Filed 12–18–96; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATE: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Executive Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Duval (FEMA Docket No. 7183).	City of Jacksonville	Apr. 15, 1996, Apr. 22, 1996, *The Florida Times-Union*.	The Honorable John A. Delaney, Mayor of the City of Jacksonville, 220 East Bay Street, 14th Floor, Jacksonville, FL 32202–3495.	Apr. 8, 1996	120077 E
Florida: Lake (FEMA Docket No. 7178).	Unincorporated Areas	Mar. 26, 1996, Apr. 2, 1996, *The Lake Sentinel*.	Ms. Sue Whittle, Lake County Manager, P.O. Box 7800, Tavares, FL 32778.	Mar. 18, 1996	120421 B
Illinois: LaSalle and Livingston (FEMA Docket No. 7186).	City of Streator	May 7, 1996, May 14, 1996, *The Times Press*.	The Honorable Robert Lee II, Mayor of the City of Streator, 204 South Bloomington Street, P.O. Box 517, Streator, IL 61364.	May 2, 1996	170408 B
Indiana: Lake (FEMA Docket No. 7178).	Town of Schererville ...	Mar. 27, 1996, Apr. 3, 1996, *Post-Tribune*.	Mr. Stephen Z. Kil, Manager of the Town of Schererville, 833 West Lincoln Highway, Scher-erville, IN 46375.	July 2, 1996	180142 B
New York: Allegany (FEMA Docket No. 7174).	Town of Wellsville	Mar. 14, 1996, Mar. 21, 1996, *The Wellsville Daily Reporter*.	Mr. Michael T. Baldwin, Supervisor of the Town of Wellsville, Municipal Building, 156 North Main Street, Wellsville, NY 14895.	Sept. 6, 1996	360035 B
New York: Allegany (FEMA Docket No. 7174).	Village of Wellsville	Mar. 14, 1996, Mar. 21, 1996, *The Wellsville Daily Reporter*.	The Honorable Susan C. Goetschius, Mayor of the Village of Wellsville, Municipal Building, 156 North Main Street, Wellsville, NY 14895.	Sept. 6, 1996	360036 B
North Carolina: Dare (FEMA Docket No. 7178).	Unincorporated Areas	Apr. 2, 1996, Apr. 9, 1996, *The Coastal Times*.	Mr. Robert V. Owens, Chairman of the Dare County Board of Commissioners, P.O. Box 1000, Manteo, NC 27954.	Mar. 25, 1996	375348 E
Ohio: Lorain (FEMA Docket No. 7186).	City of Avon	Apr. 30, 1996, May 7, 1996, *The Morning Journal*.	The Honorable James A. Smith, Mayor of the City of Avon, 36774 Detroit Road, Avon, OH 44011.	Apr. 18, 1996	390348C
Ohio: Fairfield (FEMA Docket No. 7186).	Unincorporated Areas	May 7, 1996, May 14, 1996, *Eagle-Gazette*.	Mr. Allan Reid, President of the Fairfield County Board of Commissioners, Fairfield County Courthouse, 210 East Main Street, Room 301, Lancaster, OH 43130.	Apr. 30, 1996	390158 D

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Puerto Rico (FEMA Docket No. 7178).	Commonwealth	Mar. 19, 1996, Mar. 25, 1996, *El Nuevo Dia.*	Ms. Norma N. Burgos-Andujar, Chairwoman of the Puerto Rico, Planning Board, Minillas Station, P.O. Box 41119, San Juan, PR 00940–9985.	Sept. 13, 1996	720000 C
Tennessee: Shelby (FEMA Docket No. 7186).	City of Germantown	May 2, 1996, May 9, 1996, *Germantown News.*	The Honorable Sharon Goldsworthy, Mayor of the City of Germantown, 1930 South Germantown Road, P.O. Box 38809, Germantown, TN 38183–0809.	Apr. 23, 1996	470353 E

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 10, 1996.

Craig S. Wingo,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 96–32263 Filed 12–18–96; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7197]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Executive Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Fairfield	Town of Darien	Sept. 12, 1996, Sept. 19, 1996, *Darien News-Review.*	Mr. Hank Sanders, First Selectman of the Town of Darien, 2 Renshaw Road, Town Hall, Darien, CT 06820.	Sept. 5, 1996	090005D
Illinois: Will and DuPage Counties.	City of Naperville	Dec. 13, 1995, Dec. 20, 1995, *The Naperville Sun.*	The Honorable A. George Pradel, Mayor of the City of Naperville, 400 South Eagle Street, Naperville, IL 60540.	Dec. 5, 1995	170213C
Indiana: Hendricks	Unincorporated areas	Sept. 19, 1996, Sept. 26, 1996, *Hendricks County Flyer.*	Mr. John D. Calmpitt, President of the Hendricks County Board of Commissioners, P.O. Box 188, Danville, IN 46122.	Dec. 25, 1996	180415B
Indiana: Johnson	Unincorporated areas	Sept. 16, 1996, Sept. 23, 1996, *Daily Journal.*	Mr. Alfred Chappel, Chairman of the Johnson County Board of Commissioners, 86 West Court Street, Courthouse Annex, Franklin, IN 46131.	Sept. 9, 1996	180111C
New Jersey: Middlesex.	Borough of South River	Sept. 9, 1996, Sept. 16, 1996, *The Home News & Tribune.*	The Honorable Thomas J. Toto, Mayor of the Borough of South River, 64–66 Main Street, South River, NJ 08882.	Mar. 3, 1997	340280C
North Carolina: Durham.	City of Durham	Aug. 30, 1996, Sept. 6, 1996, *The Herald-Sun.*	The Honorable Sylvia Kerckhoff, Mayor of the City of Durham, 101 City Hall Plaza, Durham, NC 27701.	Aug. 23, 1996	370086G
North Carolina: Durham.	Unincorporated areas	Aug. 30, 1996, Sept. 6, 1996, *The Herald-Sun.*	Mr. David F. Thompson, Durham County Manager, 200 East Main Street, 2d floor, Durham, NC 27701.	Aug. 22, 1996	370085G
Ohio: Summit	City of Hudson	Aug. 28, 1996, Sept. 4, 1996, *Hudson Hub.*	The Honorable Harold L. Bayleff, Mayor of the City of Hudson, 27 East Main Street, Hudson, OH 44236.	Aug. 22, 1996	390660B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 10, 1996.

Craig S. Wingo,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 96–32264 Filed 12–18–96; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
CONNECTICUT	
Granby (town), Hartford County (FEMA Docket No. 7179)	
Dismal Brook:	
Upstream side of East Street ..	*279
At the Massachusetts State boundary	*370
East Branch Salmon Brook:	
Approximatey 1,830 feet downstream of Silver Street Dam	*533
At State boundary	*219
Creamery Brook:	
Approximately 2,000 feet upstream of the confluence with East Branch Salmon Brook	*219
Approximately 875 feet upstream of Creamery Hill Road	*252
Hungary Brook:	
At upstream side of Notch Road	*202
Approximately 0.87 mile upstream of Quarry Road	*230
Bradley Brook:	
At upstream side of Meadowbrook Road	*216
Approximately 760 feet upstream of East Street	*278
West Branch Bradley Brook:	
Approximately 1,125 feet downstream of Twilight Drive	*226
Approximately 1,685 feet upstream of Stardust Drive	*255
East Branch Bradley Brook:	
At the confluence with Bradley Brook	*217
Approximately 150 feet upstream of East Street	*259
East Fork of East Branch Bradley Brook:	
At confluence with East Branch Bradley Brook	*243
Approximately 170 feet upstream of East Street	*259
Maps available for inspection at the Granby Town Hall, 15 North Granby Road, Granby, Connecticut.	
FLORIDA	
Monroe County (unincorporated areas) (FEMA Docket No. 7168)	
Gulf of Mexico:	
Approximately 600 feet northwest of intersection of Evergreen Avenue and Evergreen Terrace	*13
Approximately 370 feet northwest of intersection of Evergreen Avenue and Evergreen Terrace	*11
Torch Ramrod Channel:	
Approximately 700 feet north of the intersection of Mariposa Road and Lesronde Drive along Lesronde Drive	*8
Approximately 1,000 feet north of the intersection of Mariposa Road and Lesronde Drive along Lesronde Drive	*10
Maps available for inspection at the Monroe County Growth Management Building, 2798 Overseas Highway, Marathon, Florida.	
ILLINOIS	
Aurora (city), Kane and DuPage Counties (FEMA Docket Nos. 7149 and 7175)	
Blackberry Creek:	
At Jericho Road	*666
Approximately 0.8 mile upstream of confluence of Blackberry Creek Tributary A	*676
Blackberry Creek Tributary A:	
At confluence with Blackberry Creek	*674
Approximately 0.4 mile upstream of Indian Trail Road	*674
Blackberry Creek Tributary H:	
Approximately 0.7 mile downstream of Prairie Street	*666
At Galena Boulevard	*673
Mastadon Lake:	
Entire shoreline within the community	*662

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Planning Department, City Hall, 44 East Downer Place, Aurora, Illinois.	
KENTUCKY	
Daviess County (unincorporated areas) (FEMA Docket No. 7105)	
Ohio River:	
At downstream county boundary	*384
Approximately 1 mile upstream of upstream corporate limits	*395
Panther Creek:	
At confluence with Green River	*386
At confluence of North and South Forks Panther Creeks	*392
Pup Creek:	
At the confluence with the Ohio River	*391
At downstream side of State Route 405	*391
Persimmon Ditch Tributary:	
At confluence with Persimmon Ditch	*403
Approximately 900 feet upstream of confluence with Persimmon Ditch	*403
Persimmon Ditch:	
Approximately 0.3 mile upstream of Ewing Road	*399
Downstream side of U.S. Route 60	*403
Devins Ditch:	
Approximately 500 feet upstream of Wayside Drive	*391
Approximately 1,600 feet upstream of Audubon Parkway west entrance ramp	*401
Big Ditch:	
At confluence with Panther Creek	*392
At confluence of Carter Ditch	*395
Carter Ditch:	
At confluence with Big Ditch	*395
At U.S. Route 60 Bypass	*397
Scherm Ditch:	
At confluence with Carter Ditch	*396
Approximately 1,500 feet upstream of U.S. Route 60 Bypass	*398
Tamarack Ditch:	
At confluence with Big Ditch	*395
At storm sewer outlet	*395
Goetz Ditch:	
At confluence with Panther Creek	*392
Upstream side of U.S. Route 60 Bypass	*396
Harsh Ditch:	
Approximately 110 feet upstream of confluence with Horse Fork	*393
Downstream side of 27th Street	*398
West Tributary of Harsh Ditch:	
At confluence with Harsh Ditch	*395
Downstream side of Abandoned Railroad (outlet of storm drain)	*396
Horse Fork:	
At confluence with Panther Creek	*392
Approximately 0.2 mile upstream Fairview Road	*418
Unnamed Tributary 46 Horse Fork:	
At confluence with Horse Fork	*412
Approximately 0.5 mile upstream of confluence with Horse Fork	*415
Yellow Creek:	
At confluence with Ohio River	*391
Approximately 317 feet upstream of Daniels Lane	*403
Gilles Ditch:	
Upstream side of Lyddane Bridge Road	*387
Approximately 0.3 mile upstream of U.S. Route 60	*413
North Fork Panther Creek:	
At the confluence with Panther Creek	*392
Downstream side of State Route 298	*392
Maps available for inspection at the Daviess County Courthouse, 212 St. Ann Street, Owensboro, Kentucky.	
MISSISSIPPI	
Pearl (city), Rankin County (FEMA Docket No. 7187)	
Conway Slough Tributary 2:	
Approximately 0.1 mile upstream of Pearson Road culvert	*271
Approximately 0.1 mile upstream of Lionel Road	*284
Neely Creek (Left Channel):	
Approximately 30 feet downstream of North Biederman Road	*271
At downstream side of Old Brandon Road	*282
Neely Creek Tributary 2:	
At downstream side of North Biederman Road	*271
Approximately 1.2 miles upstream of Illinois Central Gulf Railroad	*280
Richland Creek:	
Approximately 1,050 feet upstream of Old Pearson Road	*284
Approximately 1.3 miles upstream of confluence of Richland Creek Tributary 1	*288
Richland Creek Tributary 1:	
At confluence with Richland Creek	*285
Approximately 400 feet downstream of Illinois Central Gulf Railroad	*287
Maps available for inspection at the Pearl City Hall, Department of Community Development, 2420 Old Brandon Road, Pearl, Mississippi.	
NEW YORK	
Bayville (village), Nassau County (FEMA Docket No. 7179)	
Mill Neck Creek/Oyster Bay Harbor:	
Approximately 600 feet northeast of Bayville Bridge enters community	*15
Maps available for inspection at the Village Hall, 34 School Street, Bayville, New York.	
Canandaigua (town), Ontario County (FEMA Docket No. 7187)	
Lake Canandaigua:	
Approximately 200 feet east of intersection of Cribb and West Lake Roads	*692
Approximately 1,800 feet east of the intersection of Coy and West Lake Roads	*692
Mud Creek:	
Approximately 2,000 feet downstream of downstream corporate limits	*683
Approximately 200 feet upstream of upstream corporate limits	*706
Maps available for inspection at the Town of Canandaigua Planning Department, 5440 Route 5 and 20 West, Canandaigua, New York.	
Cedarhurst (village), Nassau County (FEMA Docket No. 7179)	
Head of Bay/Motts Creek:	
Intersection of Oxford Road and Arlington Place	*8
Maps available for inspection at the Village Hall, 200 Cedarhurst, Cedarhurst, New York.	
East Rockaway (village), Nassau County (FEMA Docket No. 7179)	
Mill River:	
At intersection of Rhame Avenue and Althouse Avenue	*7
At intersection of Williamson Street and 6th Avenue	*7
Maps available for inspection at the East Rockaway Village Hall, 376 Atlantic Avenue, East Rockaway, New York.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Elmira (city), Chemung County (FEMA Docket No. 7190)	
Newtown Creek:	
Approximately 100 feet downstream of East Water Street	*849
Approximately 680 feet upstream of confluence with Diven Creek	*861
Interior Ponding Area:	
Approximately 50 feet south of the intersection of Judson Street and East Water Street	*849
Approximately 400 feet north of the intersection of Harriet Street and East Church Street	*849
McCann's Tributary:	
At its confluence with Diven Creek	*861
Approximately 325 feet upstream of its confluence with Diven Creek	*861
Maps available for inspection at the Elmira City Hall, Engineering Department, 317 East Church Street, Elmira, New York.	
Freeport (village), Nassau County (FEMA Docket No. 7179)	
Atlantic Ocean/Baldwin Bay:	
Approximately 200 feet west of intersection of Suffolk Street and South Long Beach Avenue	*8
Baldwin Bay:	
Approximately 150 feet south of intersection of Morris Avenue and Meister Boulevard	*8
Hudson Bay:	
Approximately 1,750 feet southeast of intersection of Anchorage Way and South Grove Avenue	*9
Maps available for inspection at the Freeport Village Building Department, 46 North Ocean Avenue, Freeport, New York.	
Great Neck (village), Nassau County (FEMA Docket No. 7179)	
Manhasset Bay:	
Approximately 200 feet southeast of the intersection of East Shore Road and Vista Hill Road	*14
Maps available for inspection at the Great Neck Village Hall, 61 Baker Hill Road, Great Neck, New York.	
Great Neck Plaza (village), Nassau County (FEMA Docket No. 7179)	
Russells Creek:	
Approximately 1,640 feet downstream of Clent Road	*63
At Clent Road	*75
Maps available for inspection at the Village Hall, Building Department, 2 Gussack Plaza, Great Neck, New York.	
Gouverneur (village), St. Lawrence County (FEMA Docket No. 7187)	
Oswegatchie River:	
At corporate limits	*395
Approximately 0.74 mile upstream of State Route 58	*411
Maps available for inspection at the Village Clerk's Office, Gouverneur Municipal Building, 33 Clinton Street, Gouverneur, New York.	
Hempstead (town), Nassau County (FEMA Docket No. 7179)	
Head of Bay:	
Approximately 250 feet west of intersection of West Avenue and Baker Avenue	*8
Hewlett Bay/Macy Channel:	
Approximately 700 feet east of intersection of Elinor Road and Cedar Avenue	*7
Brosewere Bay:	
Approximately 500 feet south of intersection of Woodmere Boulevard and Hickory Road	*8
Valley Stream:	
Approximately 300 feet west of the intersection of Mill Road and Sidney Place	*10
Hewlett Bay:	
Approximately 50 feet south of West Boulevard extended	*9
East Rockaway Inlet:	
Approximately 200 feet west of intersection of Bay Boulevard and Granada Street	*10
Atlantic Ocean:	
Approximately 500 feet south of Malone Avenue extended	*15
At intersection of Bay Boulevard and Bermuda Street	*10
Approximately 550 feet south of intersection of Ocean Boulevard and Wayne Avenue	*15
Reynolds Channel:	
Approximately 1,200 feet north from intersection of Yates Avenue and West Beach Street	*8
Approximately 500 feet north of Bay Boulevard and Albany Boulevard	*8
Freeport Creek:	
Approximately 1,000 feet southeast of the end of South Main Street	*7
Maps available for inspection at the Engineering Department, 350 Front Street, Hempstead, New York.	
Hewlett Bay Park (village), Nassau County (FEMA Docket No. 7179)	
Hewlett Bay: Macy Channel:	
At intersection of Everett Avenue and Seawane Drive	*7
Approximately 650 feet east of intersection of Piermont Avenue and Veeder Drive	*7
Maps available for inspection at the Village Hall, 30 Piermont Avenue, Hewlett, New York.	
Hewlett Harbor (village), Nassau County (FEMA Docket No. 7179)	
Hewlett Bay: Thixton Creek:	
Approximately 500 feet southeast of intersection of Harbor Road and Thixton Drive	*9
Hewlett Bay: Macy Channel:	
Intersection of Everett Avenue and Seawane Drive	*7
Maps available for inspection at the Hewlett Harbor Village Hall, 449 Pepperidge Road, Hewlett Harbor, New York.	
Hewlett Neck (village), Nassau County (FEMA Docket No. 7179)	
Brosewere Bay: Georges Creek:	
Approximately 600 feet southeast of the intersection of Dolphin Drive and Curtis Road	*7
Approximately 50 feet east of Adams Cane cul-de-sac	*7
Hewlett Bay: Georges Creek:	
Approximately 300 feet east of intersection of Hewlett Neck Road and Dolphin Lane	*7
Maps available for inspection at the Village Hall, 30 Piermont Avenue, Hewlett, New York.	
Island Park (village), Nassau County (FEMA Docket No. 7179)	
Wreck Lead Channel:	
Approximately 500 feet southwest of intersection of Railroad Place and Bridge Plaza	*8

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Hog Island Channel:	
Approximately 475 feet north of intersection of Island Parkway and Sherborne Place	*8
Maps available for inspection at the Village Hall, 127 Long Beach Road, Island Park, New York.	
Lawrence (village), Nassau County (FEMA Docket No. 7179)	
Brosewere Bay:	
Approximately 1,000 feet south of the intersection of Burton Lane and Albro Lane	*7
Approximately 1,000 feet southeast from intersection of Burton Lane and Albro Lane	*9
Broad Channel:	
Approximately 1,000 feet southeast of confluence with Post Lead	*9
Reynolds Channel:	
Approximately 250 feet southeast from 2nd Street extended	*10
Bannister Creek:	
Intersection of North Street and Monroe Street	*7
Approximately 1,000 feet south of intersection of Rock Hall Road and Nassau Expressway	*10
Maps available for inspection at the Lawrence Village Building Department, 196 Central Avenue, Lawrence, New York.	
Long Beach (city), Nassau County (FEMA Docket No. 7179)	
Atlantic Ocean:	
Approximately 850 feet southeast of the intersection of East Broadway and Roosevelt Boulevard	*15
Reynolds Channel:	
Approximately 500 feet north of intersection of Lindell Boulevard and West Bay Drive	*8
Maps available for inspection at the City Hall, 1 West Chester Street, Long Beach, New York.	
Malverne (village), Nassau County (FEMA Docket No. 7179)	
Motts Creek:	
At Motley Street	*24
Approximately 220 feet upstream of Franklin Avenue	*30
Maps available for inspection at the Village Hall, 99 Church Street, Malverne, New York.	
Massapequa Park (village), Nassau County (FEMA Docket No. 7179)	
Atlantic Ocean: South Oyster Bay:	
Approximately 350 feet south of the intersection of Skylark Road and Whitewood Drive	*9
Approximately 125 feet southwest of the intersection of Knell Drive and Harbor Lane East	*8
Massapequa Creek:	
Approximately 250 feet downstream of Southern State Parkway	*38
At Clark Street	*18
Maps available for inspection at the Village Hall, 151 Front Street, Massapequa Park, New York.	
North Hempstead (town), Nassau County (FEMA Docket No. 7179)	
Little Neck Bay:	
Approximately 200 feet southwest of the intersection of Shorecliff Place and Bayside Road	*13
Approximately 400 feet northwest of intersection of Woodland Place and Bayview Avenue	*13
Manhasset Bay:	
Approximately 175 feet west of West Shore Drive and Bayview Avenue	*16
Russells Creek:	
Approximately 700 feet upstream of Melbourne Road	*115
Maps available for inspection at the North Hempstead Town Hall, 220 Plandome Road, Manhasset, New York.	
Oyster Bay (town), Nassau County (FEMA Docket No. 7179)	
Hempstead Harbor:	
Approximately 100 feet west of the intersection of Glenwood Road and Shore Road	*16
Atlantic Ocean: South Oyster Bay:	
Approximately 525 feet west of the intersection of Atwater Place and West Shore Drive	*9
Approximately 250 feet southeast of the intersection of Sunset Boulevard and Bay Drive	*8
Beaver Lake:	
Approximately 950 feet northeast of Kentuck Lane	*12
Maps available for inspection at the Oyster Bay Town Department of Planning and Development, 74 Audry Avenue, Oyster Bay, New York.	
Plandome (village), Nassau County (FEMA Docket No. 7179)	
Manhasset Bay:	
Approximately 600 feet west of intersection of Shoreview Lane and Plandome Road	*14
Approximately 750 feet west of intersection of Shoreview Lane and Plandome Road	*16
Maps available for inspection at the Plandome Village Hall, 65 South Drive, Plandome, New York.	
Plandome Heights (village), Nassau County (FEMA Docket No. 7179)	
Manhasset Bay:	
Approximately 100 feet west of the waterway and Shore Drive at the intersection of Shore Drive and The Beachway	*14
At northern corporate limits approximately 500 feet west of intersection of The Beachway and Shore Drive	*16
Maps available for inspection at the Plandome Heights Village Office, 34 Grandview Circle, Manhasset, New York.	
Plandome Manor (village), Nassau County (FEMA Docket No. 7179)	
Manhasset Bay:	
Approximately 750 feet west of intersection of Lake and Bayview Roads	*16
Maps available for inspection at the Plandome Manor Village Hall, 1526 North Plandome Road, Plandome Manor, New York.	
Rockville Centre (village), Nassau County (FEMA Docket No. 7179)	
Mill River:	
Approximately 360 feet west of intersection of River Avenue and Demott Place	*7

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Rockville Centre Village Engineer's Office, 110 Maple Avenue, Rockville Centre.	
Sands Point (village), Nassau County (FEMA Docket No. 7179)	
Sandspoint/Hempstead Harbor:	
Approximately 800 feet east of intersection of Harbor Road and Todd Drive	*10
Maps available for inspection at the Sands Point Village Hall, Tibbits Lane, Port Washington, New York.	
Thomaston (village), Nassau County (FEMA Docket No. 7179)	
Manhasset Bay:	
Approximately 500 feet northeast of Colonial Road and East Shore Road	*15
Russells Creek:	
At Clent Road	*74
Approximately 0.15 mile upstream of Clent Road	*92
Maps available for inspection at the Thomaston Village Hall, 100 East Shore Road, Great Neck, New York.	
Valley Stream (village), Nassau County (FEMA Docket No. 7179)	
Motts Creek:	
Approximately 120 feet northeast of the intersection of Hungry Harbor Road and Rosedale Road	*8
Maps available for inspection at the Valley Stream Village Hall, 123 South Central Avenue, Valley Stream, New York.	
Windham (town), Greene County (FEMA Docket Nos. 7112 and 7187)	
Batavia Kill:	
Approximately 1.6 miles upstream of County Route 56	*2,345
At downstream corporate limits	*1,466
Maps available for inspection at the Windham Town Hall, Route 296, Hensonville, New York.	
Woodsburgh (village), Nassau County (FEMA Docket No. 7179)	
Woodmere Channel:	
At intersection of Meadow Drive and Channel Road	*7
Approximately 500 feet south of intersection of Channel Road and Meadow Drive	*7
Brosewere Bay:	
Approximately 450 feet southeast of intersection of Bay Drive and Hickory Road	*9
Maps available for inspection at the Woodsburgh Village Hall, 30 Piermont Avenue, Hewlett, New York.	
PENNSYLVANIA	
York Springs (borough), Adams County (FEMA Docket No. 7172)	
Gardner Run:	
At corporate limits	*585
Approximately 65 feet upstream of Business U.S. Route 15	*587
Tributary 1:	
Approximately 440 feet downstream of Latimore Street	*598
Approximately 320 feet upstream of Latimore Street	*606
Tributary 2:	
At confluence with Tributary 1	*605
At corporate limits	*639
Maps available for inspection at the York Springs Borough Office, 311 Main Street, York Springs, Pennsylvania.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 10, 1996.

Craig S. Wingo,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 96–32262 Filed 12–18–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, 51 and 90

[CC Docket No. 96–98, CC Docket No. 95–185, GN Docket No. 93–252; FCC 96–476]

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Implementation of Sections 3(n) and 332 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Final rule; Petition for reconsideration.

SUMMARY: This document summarizes the Reconsideration released December 13, 1996 which clarifies the statutory requirements of the Telecommunications Act of 1996 (the 1996 Act) as it pertains to incumbent local exchange carrier's (LEC) provision of access for requesting telecommunications carriers to Operations Support Systems (OSS) functions. The intended effect is to clarify the Commission's rules published August 29, 1996 (61FR 45476) regarding the provision of access to OSS functions.

EFFECTIVE DATE: This clarification is effective December 19, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa Gelb, Attorney, Common Carrier Bureau, Policy and Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration adopted December 13, 1996 and released December 13, 1996. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text may also be obtained through the World Wide Web at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96476.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Regulatory Flexibility Analysis

There are no new rules or modifications to existing rules are adopted in this Order.

Paperwork Reduction Act

There are no new or modified collections of information required by this Order.

Synopsis of Second Order on Reconsideration

1. In this Order, we address two petitions for reconsideration of the *First Report and Order* in this proceeding that question the Commission's rule concerning the obligation of incumbent local exchange carriers (LECs) to provide access to their operational support systems (OSS) functions by January 1, 1997. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96–98, First Report and Order, FCC 96–325 (released August 8, 1996), 61 FR 45476 (August 29, 1996)

(*First Report and Order*), Order on Reconsideration, 11 FCC Rcd 13042 (1996) (*First Reconsideration*), *further recon. pending, pet. for review pending sub nom. and partial stay granted, Iowa Utilities Board* v. *FCC*, No. 96–3221 and consolidated cases (8th Circuit filed September 6, 1996), *partial stay lifted in part, Iowa Utilities Board* v. *FCC*, No. 96–3321 and consolidated cases, 1996 WL 589284 (8th Circuit October 15, 1996). Because these petitions raise issues that are particularly time sensitive, we address them in this order. We will address petitions for reconsideration of other aspects of our August 8, 1996 Order, including other issues relating to access to OSS functions, in the future.

2. In the *First Report and Order*, the Commission concluded that an incumbent LEC is required to provide access to OSS functions pursuant to its obligation to offer access to unbundled network elements under section 251(c)(3) as well as its obligation to furnish access on a nondiscriminatory basis to all unbundled network elements and services made available for resale, under section 251(c)(3) and (c)(4). In this *Second Order on Reconsideration*, we decline to extend the January 1, 1997 date established in the *First Report and Order*. In the *First Report and Order*, we based our determination that incumbent LECs must provide access to OSS functions on two distinct requirements in section 251(c). First, under section 251(c)(3), for purposes of providing access to OSS functions as a network element, an incumbent must be able to provide, upon request, access to OSS functions pursuant to an implementation schedule developed through negotiation or arbitration. Second, under section 251(c)(3) and (c)(4), in order to comply with the requirement to provide nondiscriminatory access to unbundled elements and services for resale, incumbent LECs also are required, by January 1, 1997, to offer nondiscriminatory access to OSS functions. If an incumbent uses electronic interfaces for its own internal purposes, or offers access to electronic interfaces to its customers or other carriers, the incumbent must offer at least equivalent access to requesting telecommunications carriers.

3. Section 251(c)(3) of the Communications Act of 1934, as added by the Telecommunications Act of 1996, requires incumbent LECs ''to provide, to any requesting telecommunications carriers for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.'' The Commission was charged with identifying network elements and determining whether it is technically feasible for incumbent LECs to provide access to such elements on an unbundled basis. The Commission identified OSS functions as a network element, and determined that it is technically feasible for incumbent LECs to provide access to OSS functions for unbundling and resale. The Commission defined OSS functions as consisting of pre-ordering, ordering, provisioning, maintenance and repair, and billing. *First Report and Order* at paragraph 523 n.1273. *See also* 47 CFR 51.319. This determination reflects the Commission's conclusion that access to OSS functions is necessary for meaningful competition, and that failing to provide such access would impair the ability of requesting telecommunications carriers to provide competitive service.

4. In the *First Report and Order*, we concluded that obligations imposed by section 251(c)(3) to provide access to unbundled network elements require the incumbent LEC to make modifications to the extent necessary to accommodate a request from a telecommunications carrier. In the case of access to OSS functions, we recognized that, ''although technically feasible, providing nondiscriminatory access to operations support systems functions may require some modifications to existing systems necessary to accommodate such access by competing providers.'' For example, incumbent LECs may need to decide upon interface design specifications and modify and test software.

5. We further concluded in the *First Report and Order*, based on the record, that January 1, 1997 was a reasonable date by which most, if not all, incumbent LECs could provide access to OSS functions. We concluded that:

> in order to comply fully with section 251(c)(3) an incumbent LEC must provide, upon request, nondiscriminatory access to operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing of unbundled network elements under section 251(c)(3) and resold services under section 251(c)(4). Incumbent LECs that currently do not comply with this requirement of section 251(c)(3) must do so as expeditiously as possible, but in any event no later than January 1, 1997.

The Commission found it ''reasonable to expect that by January 1, 1997, new entrants will be able to compete for end user customers by obtaining nondiscriminatory access to operations support systems functions.'' Thus, under our rules, incumbent LECs must have made modifications to their OSS necessary to provide access to OSS functions by January 1, 1997.

6. In order to comply with its obligation to offer access to OSS functions as an unbundled network element by January 1, 1997, an incumbent LEC must, at a minimum, establish and make known to requesting carriers the interface design specifications that the incumbent LEC will use to provide access to OSS functions. Information regarding interface design specifications is critical to enable competing carriers to modify their existing systems and procedures or develop new systems to use these interfaces to obtain access to the incumbent LEC's OSS functions. For example, if an incumbent LEC adopted the Electronic Data Interchange (EDI) standard to provide access to some or all of its OSS functions, it would need to provide sufficiently detailed information regarding its use of this standard so that requesting carriers would be able to develop and maintain their own systems and procedures to make effective use of this standard. As with all other network elements, the obligation arises only if a telecommunications carrier has made a request for access to OSS functions pursuant to section 251(c)(3), and the actual provision of access to OSS functions by an incumbent LEC must be governed by an implementation schedule established through negotiation or arbitration.

7. The issue of nondiscrimination under several provisions of sections 251 (c)(3) and (c)(4) is independent of the issue of access to unbundled network elements under section 251(c)(3). We concluded in the *First Report and Order* that section 251 establishes a separate basis for requiring incumbent LECs to provide access to their OSS functions. Specifically, we found that the obligation to offer access to OSS functions was an essential component of an incumbent LEC's duty to offer nondiscriminatory access to all network elements under section 251(c)(3), and to provide services for resale without conditions or limitations that are unreasonable or discriminatory under section 251(c)(4). We observed that the ''just, reasonable and nondiscriminatory'' standard of section 251(c)(3) requires incumbent LECs to provide network elements on terms and conditions that ''provide an efficient competitor with a meaningful opportunity to compete.'' Incumbent

LECs must offer network elements on terms and conditions equally to all requesting carriers, and, where applicable, those terms and conditions must be equal to the terms and conditions on which an incumbent LEC provisions such elements to itself or its customers. Therefore, we held that the duty to provide nondiscriminatory access imposed by section 251(c)(3) and the duty to provide resale services under nondiscriminatory conditions imposed by section 251(c)(4) mandates equivalent access to OSS functions that an incumbent uses for its own internal purposes or offers to its customers or other carriers. By January 1, 1997, to the extent that an incumbent LEC provides electronic pre-ordering, ordering, provisioning, maintenance and repair, or billing to itself, its customers, or other carriers, the incumbent LEC must provide at least equivalent electronic access to requesting carriers in the provision of unbundled network elements or services for resale that it is obligated to provide pursuant to an agreement approved by the state commission.

8. In the *First Report and Order*, we noted the progress that had been made by several incumbent LECs toward meeting their obligation to provide nondiscriminatory access to OSS functions to requesting carriers. We are encouraged by reports that this progress has continued since the release of our Order. Further, for the most part, incumbent LECs have set implementation schedules for themselves that would bring them into compliance with section 251(c) by early 1997. Therefore, we find no basis in the record for postponing the date by which access to OSS must be offered. We believe that many individual carriers are taking actions to modify their systems to provide the necessary access to OSS functions required by the 1996 Act. We also note that several state arbitrations completed thus far have adopted schedules that require substantial implementation of access to OSS functions by January 1, 1997.

9. Although the requirement to provide nondiscriminatory access to network elements and services for resale includes an obligation to provide access to OSS functions no later than January 1, 1997, we do not anticipate initiating enforcement action against incumbent LECs that are making good faith efforts to provide such access within a reasonable period of time, pursuant to an implementation schedule approved by the relevant state commission. We do not, however, preclude initiating enforcement action where circumstances warrant. We further note that providing access to OSS functions is a critical requirement for complying with section 251, and incumbent LECs that do not provide access to OSS functions, in accordance with the *First Report and Order*, are not in full compliance with section 251. *See, e.g.*, 47 U.S.C. 271(c)(2)(B) (requiring compliance with provisions of section 251 as a precondition for Bell Operating Company (BOC) entry into in-region interLATA markets).

10. We also note that, if an incumbent LEC with fewer than two percent of the subscriber lines nationwide is unable to offer nondiscriminatory access to OSS functions by January 1, 1997, it may seek a suspension or modification of this requirement from the relevant state commission. 47 U.S.C. 251(f)(2). In addition, rural telephone companies are exempt from the requirements of section 251(c), as set forth in section 251(f)(1), except when and to the extent otherwise determined by state commissions. 47 U.S.C. 251(f)(1).

11. Finally, it is apparent from arbitration agreements and ex parte submissions that access to OSS functions can be provided without national standards. See supra para. 10. We therefore reject the petitions of LECC and Sprint to delay the requirement to provide nondiscriminatory access to OSS functions until national standards have been fully developed. We conclude that such a requirement would significantly and needlessly delay competitive entry. In the *First Report and Order*, we stated that, in order to ensure continued progress in establishing national standards, we would ''monitor closely the progress of industry organizations as they implement the rules adopted in this proceeding.'' We continue to encourage parties to develop national standards for access to OSS functions, but decline to condition the requirement to provide access to OSS functions upon the creation of such standards.

12. Accordingly, it is ordered that, pursuant to sections 1–4, 201–205, 214, 251, 252, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 251, 252, and 303(r), the Second Order on Reconsideration is Adopted.

13. It is further ordered, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.106 of the Commission's rules, 47 CFR 1.106 (1995), that the petitions for reconsideration filed by the Local Exchange Carrier Coalition and the Sprint Corporation are DENIED, to the extent that they seek deferral of the January 1, 1997 date regarding access to OSS functions.

List of Subjects

47 CFR Part 1

Communications common carriers, Telecommunications.

47 CFR Part 20

Communications common carriers.

47 CFR Part 51

Communications common carriers, Telecommunications.

47 CFR Part 90

Common carriers.

Federal Communications Commission.
Shirley S. Suggs,
Chief, Publications Branch.

[FR Doc. 96–32321 Filed 12–18–96; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No.950830222–6274–03; I.D. 011696D]

RIN 0648–AH89

Sea Turtle Conservation; Revisions to Sea Turtle Conservation Requirements; Restrictions to Shrimp Trawling Activities

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

ACTION: Final rule.

SUMMARY: NMFS is issuing a final rule to amend the regulations protecting sea turtles. This final rule: Requires that turtle excluder devices (TEDs) be installed in try nets with a headrope length greater than 12 ft (3.6 m) and a footrope length greater than 15 ft (4.6 m), applicable December 19, 1997; removes the approval of the Morrison, Parrish, Andrews, and Taylor soft TEDs, applicable December 19, 1997 (if improvements or modifications can be and are made to any of these soft TED designs so that they exclude turtles effectively, NMFS will institute a rulemaking to continue or reinstate the approval of any such soft TEDs as improved or modified); establishes Shrimp Fishery Sea Turtle Conservation Areas (SFSTCAs); and, within the SFSTCAs, imposes the new TED requirement for try nets, removes the approval of soft TEDs, and modifies the requirements for bottom-opening hard TEDs, effective March 1, 1997. This

final rule is necessary to enhance the effectiveness of the regulations protecting sea turtles in reducing sea turtle mortality resulting from shrimp trawling in the Atlantic and Gulf Areas in the southeastern United States.

EFFECTIVE DATE: March 1, 1997.

ADDRESSES: Requests for a copy of the environmental assessment and regulatory impact review (EA/RIR) and biological opinion prepared for this final rule, or the report on TED testing should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Barbara A. Schroeder, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles, as a result of shrimp trawling activities, have been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions set forth at 50 CFR 227.72. The incidental taking of turtles during shrimp trawling in the Gulf and Atlantic Areas is excepted from the taking prohibition if the conservation measures specified in the sea turtle conservation regulations (50 CFR part 227, subpart D) are employed. The regulations require most shrimp trawlers operating in the Gulf of Mexico and Southeast U.S. Atlantic to have a NMFS-approved TED installed in each net rigged for fishing, year round.

In 1994, coinciding with heavy nearshore shrimp trawling activity, unusually high numbers of dead sea turtles stranded along the coasts of Texas, Louisiana, Georgia, and northeast Florida. As a result of these strandings, NMFS reinitiated consultation on the shrimp fishery pursuant to section 7 of the ESA, and concluded in its November 14, 1994, Biological Opinion (Opinion) that the long-term operation of the shrimp fishery, resulting in mortality of Kemp's ridleys at levels observed in 1994, was likely to jeopardize the continued existence of the Kemp's ridley population and could prevent the recovery of the loggerhead population. The major cause of the 1994 strandings was determined to be the improper use of TEDs by shrimpers in the Gulf of Mexico. Other causes identified were: (1) Certification of TEDs that are ineffective or incompatible with net types; and (2) intensive ''pulse'' fishing in areas of high sea turtle abundance during the spring and summer of 1994. The simultaneous occurrence of intensive fishing effort and Kemp's ridley sea turtles may have led to the repeated submergence of individual turtles in short time periods, which may have contributed to the high level of mortality.

The Opinion contained a Reasonable and Prudent Alternative and Incidental Take Statement (ITS) that required NMFS to develop and implement a Shrimp Fishery Emergency Response Plan (ERP) to respond to future stranding events and to ensure compliance with sea turtle conservation measures. As a general statement of policy, the ERP provided for elevated enforcement of TED regulations and identified management measures to be implemented in the event of elevated strandings or observed noncompliance with the regulations. The ERP identified specific stranding levels at which management measures may be implemented. A detailed discussion of the ERP was first published in a notice of availability (60 FR 19885, April 21, 1995) and again when it was revised (60 FR 52121, October 5, 1995) and is not repeated here.

Under existing regulatory authority and as described under the guidance of the ERP, NMFS implemented 30-day additional gear restrictions through temporary rulemakings four times in 1995: Twice in the Gulf of Mexico and twice in the Atlantic. The 30-day requirements included all, or some combination of, the following: Prohibition of the use of soft TEDs and bottom-opening hard TEDs, prohibition of the use of a webbing flap completely covering the escape opening on a TED, and prohibition of the use of large try nets (over 12 ft (3.6 m) headrope length) without a NMFS-approved hard TED installed. Details regarding sea turtle strandings, shrimping effort, and other sources of mortality during periods for which temporary restrictions were imposed or considered are contained in Federal Register publications (60 FR 21741, May 3, 1995; 60 FR 26691, May 18, 1995; 60 FR 31696, June 16, 1995; 60 FR 32121, June 20, 1995; 60 FR 42809, August 17, 1995; 60 FR 43106, August 18, 1995; 60 FR 44780, August 29, 1995), and supporting documents and are not repeated here.

In 1996, temporary restrictions have been implemented only once. Due to an unprecedented number of strandings and in anticipation of nearshore shrimping effort with the reopening of State waters to shrimp fishing on June 24, 1996, NMFS implemented similar restrictions to those imposed in 1995 for a 30-day period along the Georgia coast (61 FR 33377, June 27, 1996). Details regarding sea turtle strandings, shrimping effort, and other sources of mortality are contained in the temporary rule and are not repeated here.

On September 13, 1995 (60 FR 47544), an Advance Notice of Proposed Rulemaking (ANPR) announced that NMFS was considering regulations that would identify special sea turtle management areas in the southeastern Atlantic and Gulf of Mexico and impose additional conservation measures to protect sea turtles in those areas. At the same time, NMFS also announced receipt of a petition for rulemaking from the Texas Shrimp Association (TSA) to revise the current sea turtle conservation requirements for the shrimp trawl fishery in the southeastern United States. The petition was based on a report: ''Sea Turtle and Shrimp Fishery Interactions—Is a New Management Strategy Needed?'' prepared by LGL Ecological Research Associates, Inc., for TSA (LGL Report).

After extensive review of over 900 responses to the request for comments on the ANPR and the petition for rulemaking, NMFS published a proposed rule to amend the regulations protecting sea turtles to enhance their effectiveness in reducing sea turtle mortality resulting from shrimp trawling in the Atlantic and Gulf Areas in the southeastern United States (61 FR 18102, April 24, 1996; hereinafter referred to as the proposed rule). Proposed amendments were: Removing the approval of all soft TEDs, effective December 31, 1996; requiring by December 31, 1996, the use of NMFS-approved hard TEDs in try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.6 m); establishing SFSTCAs in the northwestern Gulf of Mexico consisting of the offshore waters out to 10 nm (18.5 km) along the coasts of Louisiana and Texas from the Mississippi River South Pass (west of 89°08.5′ W. long.) to the U.S.-Mexican border, and in the Atlantic consisting of the inshore waters and offshore waters out to 10 nm (18.5 km) along the coasts of Georgia and South Carolina from the Georgia-Florida

border to the North Carolina-South Carolina border; and, within the SFSTCAs, removing the approval of all soft TEDs, imposing the new TED requirement for try nets, and prohibiting the use of bottom-opening hard TEDs, effective 30 days after publication of the final rule.

NMFS reinitiated consultation on the November 14, 1994, Opinion based on the proposed rule, stranding-based incidental take levels that were exceeded, and new information, including preliminary analyses of the sea turtle expert working group (TEWG). On June 11, 1996, NMFS concluded that the continued, long-term operation of the shrimp fishery in the southeastern United States under the sea turtle conservation regulations as proposed to be amended by the proposed rule published on April 24, 1996, establishment of a vessel registration system, maintenance of the TED enforcement team and the TED technology transfer program is not likely to jeopardize the continued existence of Kemp's ridley and loggerhead sea turtles. Unlike the ITS in the November 14, 1994, Opinion that provided specific stranding levels for which NMFS would be required to take step-wise actions, the June 11, 1996, Opinion ITS did not make taking action contingent on specific stranding triggers. Rather, the new ITS specified that NMFS must respond to stranding events that reach unacceptable levels based on historical events.

NMFS held 10 public hearings on the proposed rule throughout the southeastern United States. In addition, NMFS reopened the comment period to provide further opportunity to submit comments and review additional analyses, including the preliminary report that was submitted July 2, 1996, by the TEWG. The formation of this group of scientists to analyze existing databases to determine sea turtle population abundance, population trends, and sustainable take levels is an important function in developing and implementing recovery plans as specified under section 4(f) of the ESA and was a requirement of the November 14, 1994, Opinion.

NMFS has conducted additional tests and investigations on trawl gear performance and sea turtle interactions that confirm information presented in the proposed rule. In particular, NMFS has further examined try nets, the use of TEDs with try nets, the function of commercial Andrews soft TEDs, and the effects of various configurations of hard TEDs on turtle exclusion efficiency. NMFS modified the proposed rule based on the results of these investigations (see below under Recent Gear Testing).

On October 1, 1996, President Clinton signed H.R. 3610, ''The Omnibus Consolidated Appropriations Act, 1997.'' The Conference Report accompanying the Act at page 819 contains language directing NMFS ''not to decertify any turtle excluder devices until every effort has been made, working with industry and others, to improve or modify existing devices to increase turtle escapement.'' Therefore, the final rule has been further modified to not remove the approval of existing soft TEDs until 1 year after the date of publication of this final rule. This will allow all presently approved soft TEDs to be used outside of the SFSTCAs for 1 year and provide time for the development and testing of improvements or modifications to existing soft TEDs (or new soft TEDs) in cooperation with the shrimp fishing industry. In addition, NMFS will work with industry to seek solutions for improving the turtle exclusion rates of soft TEDs, and will make and publish its findings prior to the 1-year removal of approval. If NMFS finds that improved or modified soft TEDs (or new soft TEDs) can effectively exclude turtles, NMFS will amend the regulations to approve such soft TEDs and allow their use.

Recent Gear Testing

Try Nets

In the preamble to the proposed rule, NMFS presented results of try net capture rates of turtles during experimental trawling at Cape Canaveral, FL, in September 1994. Those results indicated that small try nets were much less likely to capture sea turtles than large try nets. In March 1996, additional tests were conducted at Cape Canaveral to examine more carefully the relationship of particular try net sizes to turtle capture rates. In this most recent study, 100 experimental tows were made, simultaneously pulling 3 try nets of different sizes. The try nets used were mongoose design nets with headrope lengths of approximately 12 ft (3.67 m), 15 ft (4.57 m), and 20 ft (6.10 m). In 100 tows of 30–minute duration, the 20–ft (6.10–m) try net captured 17 turtles, the 15–ft (4.57–m) try net captured 10 turtles, and the 12–ft (3.67–m) try net captured 8 turtles. The turtle catch-per-unit-effort, when adjusted for the amount of headrope, was approximately the same for the three net sizes, and a linear relationship between increasing try net size and increasing turtle captures appears to exist. These testing results reconfirm that large try nets, without TEDs, will capture more turtles than small try nets.

NMFS gear experts also investigated the practical implications of installing hard TEDs in try nets of various sizes. As set forth at 50 CFR 227.72, single-grid hard TEDs must be of a certain minimum size, depending on the area where they are used: In the Gulf Area, the minimum size is 28 inches (71 cm) wide by 28 inches (71 cm) high, and in the Atlantic Area, the minimum size is 30 inches (76 cm) wide by 30 inches (76 cm) high. Gulf and Atlantic Area minimum size hard TEDs were successfully installed in try nets with 20–ft (6.10–m), 15–ft (4.57–m), and 12–ft (3.67–m) headrope lengths. Even in a 10–ft (3.05–m) headrope length try net, a Gulf minimum-size TED could be successfully installed. While all of these installations could be readily accomplished, the gear experts noted that installation of a hard TED in a try net will frequently require use of a tube of webbing to size-up the amount of webbing available in the trawl to attach to the TED extension webbing, and that the additional piece of tubing must be an appropriate length to ensure proper water flow in the try net.

Properly installed TEDs produced no significant operational difficulties. The TED-equipped try nets did exhibit a slight loss of net spread, averaging 4 percent for all tested try nets. This narrower spread could be easily compensated by the use of a slightly larger pair of trawl doors. Deployment and retrieval of TED-equipped try-nets were also assessed. Due to the low frame weight of the minimum-size, hard TEDs (a 28–inch (71–cm) single grid hard TED weighed 4.5 lb (2.05 kg)), little additional effort was needed to retrieve the tailbag of a TED-equipped try net. Finally, try nets with TEDs installed were tested for efficiency at excluding turtles. Twelve immature loggerhead turtles were released into the 3 smallest size try nets examined; all 12 turtles escaped through the TEDs.

Andrews Soft TED

In the fall of 1994, NMFS conducted underwater inspections and sea turtle exclusion testing on commercially available Morrison soft TEDs. That study revealed a high level of variability in soft TED installation among commercial net suppliers. That variability included a number of poorly installed TEDs that, despite meeting regulatory requirements, had slack areas and pockets that entangled sea turtles. NMFS believes that proper installation of soft TEDs is extremely difficult and that net makers are unable to evaluate

their own soft TED installations without the benefit of in-water examinations. In part, this was a reason for NMFS' proposal to remove the approval of all soft TEDs.

The Andrews soft TED is constructed of 5–inch (12.7–cm) stretched-mesh webbing, the smallest mesh size of any approved soft TED. Over the years, the Andrews soft TED has been tested with a variety of larger webbing sizes, but only the 5–inch (12.7–cm) design has been approved TED. The Andrews soft TED also employs a ''net-within-a-net'' design, whereas the other soft TED designs employ a panel separating the top and bottom of the trawl. The panel design of the other soft TEDs means that the edges of the excluder panel are attached to different parts of the trawl and that any changes in fishing configuration, even due to normal operations, can result in changes in the shape and therefore the effectiveness of the soft turtle excluder panel. The mouth and the exit opening of the Andrews TED's inner net is attached to the main trawl, with the top, sides, and bottom of the inner net unattached. This is referred to as a four-panel design. Also, some Andrews soft TEDs are installed using the bottom panel of the main trawl as the bottom panel of the inner net—a three-panel design. The shape of the inner net of the Andrews TED was believed to be less dependent on the shape of the main net because of the net-within-a-net design, and the smaller mesh size of the Andrews soft TED was believed to generate more drag and, consequently, a more consistent shape than other soft TED designs.

In June 1996, NMFS conducted in-water evaluations of commercially available Andrews soft TEDs to determine whether the Andrews soft TED was less susceptible than other types of soft TEDs to installation variability with consequent slack webbing and pocketing that might entangle turtles. Five identical style nets were purchased from commercial industry net suppliers. Two were equipped with three-panel Andrews TEDs, and three were equipped with four-panel Andrews TEDs. Diver observations found that four of the five Andrews soft TEDs had some areas of slack webbing and pockets, with varying degrees of severity. Only one installation exhibited smooth webbing throughout. The five Andrews soft TED installations were tested for effectiveness at sea turtle exclusion, using the small turtle TED testing protocol (55 FR 41092, October 9, 1990). A total of 42 turtles were introduced into the Andrews TED-equipped nets; 21 were captured and failed to escape during the allotted 5–minute escape time. The rate of turtle capture in the different Andrews soft TED installations did not appear to be strongly influenced by the quality of the installations or the degree of slack and pocketing in the inner net. Rather, a very high proportion of the turtles became captured when they encountered the wing panels (the side portions) of the inner nets. For turtles that entered the trawl to the left or right of the center of the net, 21 out of 30 became captured when they became impinged or entangled in the wing panels. For turtles that entered the trawl at top dead center, 12 out of 12 escaped the trawl easily, as they only encountered the top panel of the inner net. The small turtle TED testing protocol requires the use of a control TED, against which the performance of the candidate TED is measured. The control TED accounts for the possibility of variability in the testing conditions and the fitness of the turtles which may affect the observed escape rate for a candidate TED and serves as the standard whose performance must be equaled or exceeded (within statistical limits governed by the sample size) by a candidate TED. During the June 1996 test period, the control TED released 25 out of 25 turtles, with turtles being released into the trawl at center positions and positions left and right of center. The 50 percent capture rate (21 out of 42 turtles) documented for the five Andrews soft TED installations was significantly higher than for the control TED. The performance of each Andrews soft TED installation, when taken separately, was also statistically significantly worse than the control TED.

The results of the Andrews soft TED testing revealed a problem with soft TEDs that had previously not been considered, but that confirms basic design problems with soft TEDs generally. The extremely high capture rates for turtles that encountered the wing panels were apparently independent of the quality of the TED installation. Likewise, the high escape rates of turtles that traveled along the top panel of the inner net also appeared to be independent of the quality of the TED installation. The quality of the installation appeared to have less impact on turtle capture than the basic design of the TED. The wing panels in the Andrews soft TED inner net have a high angle of incidence with the water flow through the trawl. This angle is a result of the sharp tapering of the wing panels from the sides of the mouth of the main trawl (which may spread up to 50 ft (15.2 m) or more) to the exit hole in the throat of the main net. The top panel, on the other hand, has a very low angle of incidence to water flow, as it tapers from a height of approximately 2–4 ft (0.61–1.22 m) (up to a maximum net mouth height of 10–11 ft (3.05–3.35 m)) down to the exit hole in the bottom of the main net. Turtles that only encountered the top panel of the Andrews TED's inner net slid easily along its gradual slope. Turtles which encountered the wing panels, however, were impinged against the webbing due to the high angle of incidence to the water flow, and were unable to exert any effective force against the flexible webbing of the excluder panel to remove themselves. The angle of incidence of the wing panels to the water flow was approximately 45° in these Andrews TED installations, which is the recommended angle of incidence for single-grid hard TEDs. With hard TEDs, however, turtles are able to push effectively against the rigid deflector bars and avoid impingement.

Single-Grid Hard TEDs

The relative efficiency of various installations of a curved bar single-grid hard TED (Super Shooter style) and a straight bar single-grid hard TED (Georgia Jumper style) were evaluated through diver observations and small turtle release testing in June 1996. The purpose of these evaluations was to determine whether TED design and installation variables such as grid angle and flap length are significant factors in the exclusion of sea turtles. Previous studies that only examined curved bar style TEDs had shown that turtles required longer to escape from bottom-opening hard TEDs than top-opening hard TEDs and that reducing the flap length on top-opening hard TEDs further reduced the average turtle escape time.

The June 1996 testing generally reconfirmed the earlier results of faster escape times for top- vs. bottom-opening hard TEDs and for TEDs with a shortened webbing flap over the escape opening. The June 1996 testing also revealed differences in turtle exclusion effectiveness based on the style of grid used and the grid angle. The curved bar grid TED was more effective at excluding turtles than the straight bar grid TED when both were installed at a 53° angle to the water flow (near the maximum 55° allowed under the current regulations) and equipped with a webbing flap (as defined at 50 CFR 227.72) over the escape opening of 24 inches (70.0 cm—the maximum length allowed under the current regulations). In a top-opening configuration, the curved bar TED successfully excluded

25 out of 25 turtles, while the straight-bar TED excluded 8 out of 10 turtles. In a bottom-opening configuration, the curved bar TED excluded 9 out of 10 turtles, while the straight-bar TED excluded only 1 out of 8 turtles. The turtle escape time required was not significantly different between the curved and straight bar grids in each configuration. To further examine the factors affecting the observed poor performance of the bottom-opening, straight bar grid TED, the TED was reinstalled with a 43° angle to the water flow. This angle change significantly improved the turtle escape success to six out of nine turtles, without a significant change in escape time. Next, the straight bar TED was tested at a 43° angle with the webbing flap shortened to extend no further than the bars of the TED. The shortened flap length improved the turtle escape success to eight out of nine turtles and significantly reduced the average escape time required from 114.2 seconds to 44.9 seconds. The effect of a shortened webbing flap was also examined with the bottom-opening, curved bar TED, installed at 55°. Relative to the full-length flap, this modification increased the turtle escape success to 10 out of 10 turtles, but did not significantly change the average escape time required. A curved bar TED was also tested at a very low installation angle of 30°, in a bottom-opening configuration with a full-length flap. The very low angle of installation did significantly reduce the average escape time required from 86.2 to 31.4 seconds, compared to a 55° installation, but it did not change the turtle escape success, which remained at 9 out of 10 turtles. Finally, both the curved bar TED and the straight bar TED were tested in bottom-opening configurations with the webbing flaps shortened, the required floats removed, and the TEDs riding on the sea floor. When riding on the bottom, the curved bar TED excluded zero out of five turtles, whereas the straight bar TED excluded four out of five turtles.

A complete report of the June 1996 TED testing results has been prepared by the NMFS Southeast Fisheries Science Center. Interested parties may request a copy (see **ADDRESSES**).

Comments on the Proposed Rule

NMFS received approximately 5,600 responses to the request for comments on the proposed rule, both at the public hearings and by letter. NMFS reviewed all comments and has grouped them for response according to general subject matter. References are made only to some organizations or associations and not to all of the groups or private individuals who may have made similar comments. Many comments were received that essentially repeated comments that had been given regarding the ANPR and to which NMFS responded in the preamble to the proposed rule. NMFS has reviewed its responses to those comments (61 FR 18102, April 24, 1996) based on this most recent round of comments and new information, and reconfirms those responses except as otherwise noted below.

Justification for the Final Rule

Comment 1: More than 5,200 comments were received that expressed strong support for additional sea turtle protections, including the measures contained in the proposed rule. Supporters of additional sea turtle protections pointed to the still critically low number of nesting Kemp's ridley sea turtles, the apparent lack of recovery of loggerhead sea turtles, and the continued association of high sea turtle strandings with high shrimping effort. A large number of commenters, however, mostly from within the shrimping industry, questioned the need for any additional protection for turtles from the impacts of shrimp fishing. Opponents of additional protective measures discussed the increasing number of Kemp's ridley nests and the probable role that prior TED use has played in that increase, the high levels of observed compliance with TED requirements in the shrimp industry, and alleged that unacceptable costs would accrue to the shrimp industry from the measures in the proposed rule.

Response: The report from the TEWG confirmed that the number of Kemp's ridley nests has been increasing since 1987, and there also appears to be an increase in the survival rates of benthic immature and adult Kemp's ridleys after 1989, corresponding with the beginning of widespread TED-use. The TEWG estimated the total adult female population of Kemp's ridleys in 1995 to be 1,500 individuals, dramatically fewer than the 40,000 females that were observed nesting on a single day less than 50 years ago and far less than the delisting criterion to attain a population of at least 10,000 nesting females specified in the recovery plan. For loggerheads, the TEWG found that the sub population, which nests from northeast Florida through North Carolina (the South Atlantic shrimping grounds), is not recovering. The south Florida loggerhead sub-population was found to have increased over the past 25 years, but no significant population trends were seen over the last 7 years. In addition, the decreasing proportion of immature loggerheads in this sub-population may have negative future implications for the recovery of loggerheads.

NMFS is responsible under section 7(a)(1) of the ESA to use its authorities to conserve listed species. NMFS is also responsible for developing and implementing recovery plans and protective regulations under section 4 of the ESA. Thus, a series of regulatory actions and biological opinions have recognized and attempted to address the continued problem of high sea turtle strandings associated with shrimp fishing (see Background). Among the identified causes of the continued strandings have been the improper use of TEDs and the use of inefficient TEDs by shrimp fishermen. Even with high regulatory compliance in the shrimp industry, the use of ineffective TEDs will undermine sea turtle protective measures, perpetuate turtle strandings related to shrimp trawling, and create the need for intermittent, reactive measures to manage negative shrimp trawling/sea turtle interactions.

NMFS considered a variety of management options for reducing sea turtle mortality in the shrimp fishery. The EA/RIR for this final rule (see **ADDRESSES**) fully evaluates all the considered alternatives, and the measures selected for this final rule were determined to have the least adverse impact on the shrimp trawling industry, while accomplishing the objectives of reducing shrimp fishing-related turtle mortality.

Comment 2: Many commenters questioned the proposed rule's focus on enhancing the effectiveness of approved TEDs and recommended that shrimp trawling effort be reduced in addition to, or instead of, the measures of the proposed rule. More than 5,200 proponents of the proposed rule also stated that the proposed measures did not go far enough to address problems of excess effort in the shrimp fishery. An industry organization, TSA, commented that introduction of changes to the present TED requirements was inappropriate and that measures to reduce nearshore shrimping effort should be adopted instead. Specifically, TSA again urged adoption of its petition for rulemaking (LGL Report).

An additional fishing effort-reduction proposal was given by the Georgia Fishermen's Association and multiple Georgia fishermen who urged NMFS to adopt a nighttime closure of Federal waters off Georgia to shrimping that would be complementary to current state closures.

Response: NMFS had previously sought public comments on the LGL

Report and responded to those in the proposed rule for this action (61 FR 18102, April 24, 1996; see comments 6 through 9). NMFS has further considered the petition in light of comments received on the proposed rule and analyzed its components as alternatives in the EA/RIR prepared for this final rule (see **ADDRESSES**).

NMFS agrees that heavy nearshore shrimping effort contributes to sea turtle mortality. Management measures that would reduce nearshore shrimping effort likely would also reduce sea turtle strandings. If nearshore shrimping effort results in sea turtle mortality, it is because turtles are either being entrapped in ineffective TEDs, being submerged for an excessive period of time in trawls with TEDs with slow release times, or being captured in try nets that are not equipped with TEDs. Repeated capture under any of these conditions would further increase the likelihood of sea turtle mortality. The shrimp fishery effort limitation plans that have been proposed to NMFS to date would have significant catch allocation consequences and possible widespread socio-economic ramifications. Some sectors of the fishing industry would bear significant adverse economic impacts without a significant improvement to the protection of sea turtles. Most of the effort-reduction measures considered have already generated significant controversy in the shrimp industry. NMFS will continue to evaluate the feasibility and benefits of various means to reduce intense nearshore shrimping effort, but does not believe that current information on biological benefits and socio-economic impacts is sufficient to justify implementing major effort reduction measures at this time. NMFS believes that the modifications to the gear requirements made by this final rule will lessen the adverse impacts from heavy nearshore shrimping effort. Effort reduction measures should be considered after available technological solutions are exhausted.

Soft TEDs

Some comments regarding soft TEDs were general, either supporting or opposing their prohibition. Most commenters who made remarks on soft TEDs, though, specifically addressed particular soft TED designs, especially the Andrews soft TED.

Comment 3: Fishermen and shrimp industry representatives, particularly from the southwest Florida area, objected strongly to removing the approval of the Andrews soft TED. Some argued that the evidence presented in the preamble to the proposed rule to support the prohibition of soft TEDs was applicable to the Morrison and Taylor TEDs, but not to the Andrews TED. They stated that the Andrews TED, due to its design, could be consistently installed correctly. Other commenters recommended that, if proper installation is critical for Andrews soft TEDs, a limited number of net makers be allowed to continue making Andrews TEDs if they pass a certification test that proves their ability to consistently install the TEDs correctly. Fishermen stated that the Andrews TED was the only type of TED that would work in the southwest Florida fishery because of its ability to exclude the large sponges that are encountered there. Some commenters stated that, even if all soft TEDs are prohibited, an exemption should be created to allow the continued use of the Andrews TED in the southwest Florida area. Other advocates of the Andrews TED pointed to its valuable bycatch reduction characteristics as justification for its continued use. Some commenters discounted the Andrews TED's high shrimp loss rates as a problem, asserting that shrimpers should be allowed to select their own gear type regardless of its performance.

Response: NMFS conducted additional testing to evaluate the performance of commercially available soft TEDs (see Recent Gear Testing above). In those tests, the Andrews soft TED performed poorly at excluding turtles. In four out of five commercially produced Andrews soft TEDs, there were significant pockets and slack areas in the webbing. The excessive level of turtle captures in the Andrews TEDs appeared to be independent of the quality of the TED's installation, however. While poor, inconsistent installation did appear to be a problem with the Andrews soft TED, inherent problems with the use of soft webbing were responsible for the turtle captures observed. The turtles' inability to free themselves from flexible webbing, even when the webbing is taut with a mesh size as small as 5–inch (12.7–cm) stretched mesh, is illustrative of the inherent difficulties with using webbing as an excluder panel. Certification of net makers to ensure consistent installation of Andrews TEDs would not address that problem.

The Andrews TED has been the TED of choice in the southwest Florida fishing grounds. The Andrews TED has a large exit opening out of the bottom of the trawl and can exclude the large sponges encountered in that fishing area. Bottom-opening hard TEDs are equally able to exclude sponges and large debris. In southwest Florida, increasing numbers of vessels are using very large bottom-opening hard TEDs with curved bars. When the webbing flap over the escape opening is shortened or split, these TEDs also get rid of the sponge debris that is unique to the southwest Florida shrimping grounds. Hard TEDs also have much better shrimp retention than the Andrews TED. Consequently, viable options do exist to the use of the Andrews soft TED in southwest Florida.

NMFS is aware of the Andrews soft TED's excellent finfish reduction characteristics, but the primary purpose of TEDs is the exclusion of sea turtles incidentally captured in trawls. The most recent testing data show that the Andrews soft TED, as presently designed, is ineffective at excluding turtles. Bycatch reduction devices have been designed that work in conjunction with approved hard TEDs and that result in much lower shrimp loss than the Andrews soft TED. While NMFS has dual charges to conserve endangered species as well as commercially valuable marine resources, the ESA requires that Federal actions, including fisheries management, be conducted in a manner that minimizes impacts to endangered and threatened species and promotes their recovery.

Comment 4: Some commenters stated that problems with soft TEDs resulting from improper installation, unrepaired holes in nets, and illegal webbing sizes should be addressed through enhanced enforcement and not through elimination of this TED type.

Response: NMFS is concerned about the difficulty of inspecting soft TEDs aboard trawlers and enforcing regulatory compliance for soft TEDs. Holes are frequently cut in soft TEDs through normal wear and tear, and fishermen have reported that turtles are sometimes captured when they pass through them. The suggestion that improved enforcement efforts could solve all of these problems has proven impracticable. The most recent testing data, however, have shown that basic design problems may result in more turtle captures in the Andrews soft TED than improper installation or holes in the webbing.

Comment 5: Several commenters objected to the elimination of the provision of the regulations which allow new soft TED designs to become approved. Future approval of new soft TED designs should be permitted to allow for innovations that may prove effective in excluding turtles.

Response: NMFS believes that the problems inherent in using soft webbing material as a turtle excluder are serious and widespread. These problems have

been demonstrated in the currently approved soft TEDs. NMFS recognizes, however, that there are positive attributes of soft TEDs. These positive attributes include their low purchase cost (although that low cost is offset by more frequent repairs and replacements), their collapsibility and ease of stowage, and, in the case of the Andrews TED, excellent rates of bycatch reduction. NMFS is also mindful of a strong desire, expressed by shrimp fishermen and the Congress, to continue using soft TEDs.

Since the currently approved soft TEDs have been shown to be ineffective at excluding sea turtles, improvements or modifications to existing soft TEDs to increase sea turtle escapement must be made to allow shrimp fishermen to continue using these existing soft TED designs for a long term. NMFS intends to undertake intensive efforts to identify technical solutions or modifications for soft TEDs that will make them effective at excluding sea turtles. NMFS will seek the advice of a panel of gear experts and industry and environmental stakeholders to propose solutions for soft TEDs (see comment 15 below). This process should produce multiple initiatives for further evaluation, possibly including entirely new soft TED designs. If any of these initiatives produce a soft TED that is demonstrated to effectively exclude turtles, it will be approved for use without delay. If no solutions can be found to improve the performance of soft TEDs, this final rule automatically will remove the approval of those TEDs in 1 year. Delaying removing the approval of soft TEDs for 1 year, allows shrimpers to continue to use for that period the presently approved soft TEDs in all areas outside of the SFSTCAs. This 1-year period may allow the shrimp industry to develop innovations that will significantly improve the effectiveness of soft TEDs in excluding turtles. It would also avoid adverse impacts to fishermen who could continue to use their preferred gear for 1 year and, if effective modifications to their soft TEDs are developed, thereafter. Thirty days prior to the end of the 1-year period, NMFS will publish a notification of the results of the soft TED improvement initiatives and associated testing. This notification will include a determination regarding existing soft TEDs for which no improvements or solutions are found and for which the approval will be removed by this rule. Improvements or modifications to existing soft TED designs which effectively exclude sea turtles will also be identified and addressed in that notification. NMFS intends that successful improvements and modifications to existing soft TEDs that result in such TEDs effectively excluding sea turtles will be incorporated in the TED regulations through rulemaking.

Under the current process of TED approval, two scientific testing protocols have been approved by NMFS determining whether a TED excludes turtles at a 97 percent or greater rate. These two protocols were published previously (52 FR 24262, June 29, 1987; and 55 FR 41092, October 9, 1990) and are referenced in the existing regulations at 50 CFR 227.72(e)(5). As discussed above, soft TEDs have deficiencies which are not addressed by the existing protocols. Consequently, NMFS will no longer use strictly these protocols in testing soft TEDs. While no generic protocol has yet been developed for testing soft TEDs, NMFS will expeditiously test soft TEDs on a case-by-case protocol basis that addresses the problems identified in the preamble of this rule, and thus assures that any soft TED subsequently approved will adequately exclude turtles (i.e. will exclude turtles at a 97 percent rate or statistical equivalent).

NMFS is interested in possible innovations that can provide sea turtle protection from the adverse impacts of shrimp trawling. These innovations may include alternatives beyond simply introducing improved soft TED designs. In fact, NMFS has solicited proposals from academic institutions and the shrimp industry for the development of alternatives to the use of TEDs for sea turtle protection. The solicitation was published in the Commerce Business Daily on July 30, 1996. NMFS will be continuing this initiative to develop alternatives to TEDs, while also working intensively to identify improvements or modifications for soft TEDs.

Comment 6: One commenter stated that problems observed with the Morrison soft TED are, in part, attributable to its regulatory specifications and problems with turtle capture only occur in certain types of straight wing flat nets and in a type of tongue trawl under certain adjustments.

Response: This comment underscores several problems with soft TEDs in general, not just the Morrison TED. NMFS has found that soft TEDs that meet regulatory specifications can vary greatly due to differences in installation techniques and the size and style of trawl nets in which they are installed. Trawl nets are often custom-made for each fisherman. The potential number of combinations of trawl styles and sizes is tremendous. Specifying soft TED dimensions and installation procedures for each combination would be impossible, as would be testing each of these combinations for its effectiveness at excluding turtles. The shape of each net and soft TED excluder panel can then be further modified during shrimping operations through the addition of floats to the headrope, changing trawl door sizes or trawl speed, or adjusting center bridle tension. NMFS agrees that the types of trawls mentioned by the commenter are incompatible with the Morrison TED. Many other sizes and styles of nets are also likely to be incompatible with the Morrison TED, but determining which ones would be a very difficult task. Efforts to develop effective soft TEDs will likely have to address the problems with soft TEDs highlighted by this comment.

Try Nets

Comment 7: Most comments regarding the proposed removal of the exemption of large try nets from required TED use were specific to the try net size criteria. Recommendations were made that TEDs should be required in try nets ranging from 15–18 ft (4.6–5.5 m) headrope length. These sizes were suggested because they were more in keeping with the size of try nets traditionally used by fishermen in various areas. Many fishermen stated that TEDs could not be installed in, or would not work in, try nets as small as 12 ft (3.6 m) headrope length and 15 ft (4.6 m) footrope length. In addition, some fishermen stated that 12–ft (3.6–m) try nets cannot be used to sample shrimp catches. Some fishermen stated that, particularly when fishing for white shrimp, a large try net is used, often with extra flotation or a tongue or bib, to sample a large amount of the water column, and a small try net would not be an effective replacement. Some commenters argued that TEDs should not be required in try nets of any size because fishermen limit their tow-times with try nets.

Response: NMFS conducted gear testing (see Gear Testing Results), which demonstrated that hard TEDs can be installed in try nets as small as 12 ft (3.6 m) headrope length. Use of TEDs in small try nets was found to pose no significant operational problems.

Many commenters showed a slight misconception of the proposed changes in the TED exemption for try nets; some objected to prohibitions of large try nets or requiring TEDs in very small try nets. Try nets with a headrope length of 12 ft (3.6 m) or less and a footrope length of 15 ft (4.6 m) or less would not require a TED under the measures of the proposed rule. NMFS expects that

fishermen using this size of try net will elect not to install a TED in that size try net, even though it is technically and operationally possible. Fishermen who can effectively use a small try net, or those who do not wish to use a TED in a try net, will likely use try nets with a 12–ft (3.6–m) or smaller headrope length. Contrary to the assertions of some commenters, small try nets are effective at sampling catch rates. In fact, the States of Mississippi and Alabama require that try nets used in their inshore waters be no larger than 12 ft (3.6 m) and 10 ft (3.0 m) headrope length, respectively. Fishermen who believe that a larger try net is necessary may use a try net of any size they wish, but a TED must installed. NMFS specifically tested large try nets equipped with tongues, which was the preferred gear specified by some commenters for sampling white shrimp. These large try nets worked well with TEDs.

NMFS disagrees with the rationale that the size of TED-exempt try nets should be selected based on the size of try nets preferred by most fishermen. The use of larger try nets without TEDs in commercial shrimping results in captures of turtles with no possibility of escape. These captures contribute significantly to the number of documented turtle takes and likely contribute to continued shrimping-associated strandings of sea turtles. While NMFS strives to minimize the number of fishermen impacted by regulatory changes, selection of a TED-exempt try net size that would produce no effective change in the gear used in the commercial fleet nor its impacts on turtles would be of little value. NMFS has determined that TED exemptions can be continued for try nets of 12 ft (3.6 m) or less headrope length and 15 ft (4.6 m) or less footrope length. This size will provide reasonable options for fishermen to use gear without TEDs, while minimizing the possibility of turtle capture. To minimize effects on the shrimping industry, NMFS is implementing the changes to the TED-exemption for try nets through a phase-in approach.

Bottom-opening Hard TEDs

Most commenters who provided comments specific to the proposed measure of prohibiting the use of bottom-opening hard TEDs in the SFSTCAs were opposed, at least in part, to this measure. Multiple reasons were given and are responded to separately.

Comment 8: Bottom-opening hard TEDs are a necessary option for fishing in certain conditions. Commenters at the public hearings in Charleston, SC, and Brunswick, GA, in particular, objected to the proposal to prohibit the use of bottom-opening hard TEDs in the SFSTCAs. Fishermen from other areas, some environmental organizations, and some state natural resource agencies also spoke in favor of bottom-opening hard TEDs. Many commenters stated that bottom-opening TEDs are required to allow the exclusion of heavy debris that occurs in certain fishing areas. If debris cannot be excluded in top-opening hard TEDs, they argued, the turtle escape opening may become clogged, hindering sea turtle release and causing shrimp loss.

Response: NMFS recognizes that the ability of bottom-opening hard TEDs to exclude debris is a desirable quality for many fishermen. Many items like sponges, horseshoe crabs, shells, and pieces of wood can be excluded, reducing the fisherman's catch-culling time and the potential for damage to gear from wear and tear. This advantage of bottom-opening TEDs may only provide enhanced turtle exclusion under limited circumstances, as a large amount of these small debris items would have to accumulate to obstruct a top-opening TED. Fishermen cited certain types of large debris, such as abandoned crab traps, tree stumps, and empty drums as posing a threat to turtles in top-opening hard TEDs. In fact, these types of debris are more likely to obstruct the escape opening of a bottom-opener since they will lie in the bottom of the trawl, and it is not certain that large pieces of debris will passively find their way through the escape opening in a bottom-opening hard TED using an optional webbing flap of the maximum allowable length. Turtles may still be able to go over a large piece of debris to escape through a top-opening TED. Very large debris items that completely obstruct the throat of the trawl net are unlikely to be excluded from a top- or a bottom-opening hard TED and may result in turtle captures.

Comment 9: Some commenters also argued that slower escape times from bottom-opening hard TEDs compared with top-openers are not important contributors to turtle mortality and that NMFS testing data showed that properly floated bottom-opening hard TEDs were effective at releasing turtles. Some commenters criticized NMFS' methods of testing TEDs as unrepresentative of actual commercial trawling conditions, and thus, as unrepresentative of the actual escape times for sea turtles.

Response: NMFS agrees that its TED testing methods are not completely representative of commercial trawling conditions. The possibility for turtle capture in a TED under commercial trawling conditions may be greater under some circumstances, such as the presence of debris in the trawl and the weight of catch or mud forcing the TED to ride on the sea floor. Under commercial trawling conditions, turtles are captured after already being submerged for an unknown length of time and after some are exhausted from fleeing the trawl that overtakes them. Turtles captured under commercial trawling conditions may have little or no visual means to find a TED's escape opening, due to turbid water or night. These difficulties are not present during NMFS' testing of TEDs. On the other hand, TED testing uses small turtles, slightly larger than the minimum size turtles that strand in the southeast United States. Adult or large juvenile turtles may be better able to escape under some conditions due to their greater strength. The small turtle TED testing protocol requires the use of a control TED, against which the performance of candidate TED is measured. The control TED accounts for the possibility of variability in the testing conditions and the fitness of the turtles, which may affect the observed escape rate for a candidate TED, and serves as the standard whose performance must be equaled or exceeded (within statistical limits governed by the sample size) by a candidate TED.

In TED testing conducted during May 1995, NMFS observed that small turtles require almost twice as long to escape from a bottom-opening TED vs. a top-opening TED (an average of 125.6 seconds vs. an average of 68.8 seconds). These tests were conducted using a curved-bar style grid TED, under ideal conditions, and the TED had a perfect turtle exclusion record in both the top-opening and bottom-opening configuration. The June 1996 TED trials included comparisons to examine more closely the effects of various single-grid hard TED configurations on TED efficiency (see Gear Testing Results). The June 1996 tests revealed previously unknown problems with turtle capture in straight-bar, bottom-opening TEDs installed at high angles and fitted with long webbing flaps. Shortening the webbing flaps and lowering the angles of straight-bar, bottom-opening TEDs reduced the turtle capture rate and the mean TED escape time. Shortening the webbing flap on the curved-bar bottom-opening hard TEDs also reduced the turtle capture rate. These changes allowed the performance of the bottom-opening hard TEDs to approach that of the control, top-opening curved-bar

style TED, which had a perfect turtle exclusion rate and a fast mean TED escape time.

The June 1996 TED testing revealed that some configurations of bottom-opening hard TEDs may have a problem with high turtle capture rates. Obviously, turtle capture in a TED poses a greater threat to a turtle than a longer escape time. By reducing the straight-bar, bottom-opening TED's angle and shortening its flap, however, both the turtle escape success and the average escape time were improved, and with the curved-bar TEDs, shortening the webbing flap resulted in 100 percent turtle-escape success. NMFS is still concerned that repeat captures and forced submergences in shrimp trawls, compounded by longer release times from TEDs, could be producing stress and blood acidosis levels that are contributing to the mortality of sea turtles, particularly small juveniles and sub-adults. The June 1996 TED testing showed, however, the need to take measures that will minimize the possibility of turtle captures in TEDs, not just reducing escape times. These measures are justified based on turtle capture rates alone, regardless of the physiological effects of forced submergence.

Comment 10: Comments from some fishermen and environmental organizations distinguished between the need for bottom-opening hard TEDs in the Atlantic and the Gulf of Mexico. These commenters stated that the bottom types (either soft mud or sand) and the presence of sand waves, high tides, and large amounts of debris in the Atlantic necessitated the use of bottom-opening hard TEDs. In addition, they pointed to the use of bottom-opening hard TEDs with bar spacings of only 2 inches (5.1 cm) by some shrimpers in the Atlantic, and stated that these types of TEDs were less likely to catch sea turtles. An environmental organization stated that the average size of turtles in the Atlantic shrimping area is larger than in the Gulf, and restrictions on bottom-opening TEDs are therefore not necessary in the Atlantic.

Response: NMFS disagrees. Fishermen in the Gulf of Mexico also must contend with a variety of bottom-types, large amounts of debris in certain areas, and high flow areas, especially near the Mississippi River. The straight-bar grid TED that was tested by NMFS in June 1996 had a 2–inch (5.1–cm) bar spacing, and it exhibited some problems with turtle captures before modifications were made (see Gear Testing Results). There may be a higher proportion of small turtles, particularly juvenile Kemp's ridleys, in the Gulf than in the Atlantic, but juvenile ridley, loggerhead, and green turtles occur in the Atlantic shrimping grounds. Strandings suggest that shrimping in the Atlantic continues to impact these juvenile turtles, too.

Comment 11: Some commenters from industry and environmental groups and state natural resource agencies suggested that, if restrictions to bottom-opening hard TEDs are necessary, the webbing flap over the escape opening be shortened to reduce sea turtle escape time and the possibility of entrapping a turtle when the TED rides on the sea floor. Some Georgia shrimpers stated that they already use bottom-opening hard TEDs with shortened flaps to allow large debris to drop out.

Response: NMFS agrees. The June 1996 TED testing results showed that shortening the webbing flap is necessary for bottom-opening hard TEDs to achieve acceptable turtle capture rates and average turtle escape times. Additionally, the testing showed that turtle escape is still possible from a straight-bar TED with a shortened webbing flap, even when the TED is riding on the sea floor. Although there may be some concern among shrimpers about shrimp loss with a shortened webbing flap, NMFS believes that allowing the continued use of bottom-opening hard TEDs with a shortened webbing flap is responsive to the comments and preferences of many fishermen. This measure is necessary to ensure adequate turtle exclusion performance of bottom-opening hard TEDs. The current use of shortened webbing flaps in the industry indicates that shrimp-loss problems are not a major concern, at least in comparison with the desirability of excluding debris.

Comment 12: Some commenters stated that the required use of top-opening hard TEDs in the Atlantic SFSTCA would result in extensive damage to gear because top-opening, hard TEDs will become buried and cause the tailbag of the net to be torn off.

Response: Reports of gear damage related to top-opening, hard TEDs have come mostly from shrimpers in the Atlantic. In some Atlantic shrimping areas, fishermen operate in very small areas and must turn their vessels tightly and frequently to work a given area. NMFS investigated the possibility that this fishing method may contribute to the reported problems. When a trawler conducts a very sharp turn, the trawls may come to a complete stop. Divers observed that top-opening TEDs, when not equipped with flotation, settled to touch the bottom when the trawl stopped. In a soft mud bottom, the TED may sink into the mud. When the trawl again takes the strain of the tow cable, there may be considerable drag and possible gear damage if the TED has become buried in sediments. The divers also observed that top-opening hard TEDs, when equipped with optional flotation, stayed well clear of the sea floor when the trawl stopped. NMFS recommends that fishermen using top-opening hard TEDs use flotation to minimize the possibility of damage to the TEDs and nets from contact with the sea floor.

Establishment of SFSTCAs

Comment 13: Numerous comments were received regarding the geographical constructs and the need for the proposed SFSTCAS, or the alternative areas recommended in the LGL Report. These concerns, such as the need for including inshore waters of the Gulf of Mexico, or excluding Louisiana due to the lack of strandings, were addressed in the proposed rule and are not repeated here (61 FR 18102, April 24, 1996, see comments 10 and 11). However, one commenter suggested that the Gulf SFSTCA should include waters out to 7 fathoms (9 m) to be consistent with Texas state regulations which prohibit nighttime shrimping out to 7 fathoms (9 m).

Response: NMFS established the 10–nm (18.5 km) distance from shore to encompass important nearshore habitat for benthic immature and subadult sea turtles, particularly Kemp's ridleys. A standard distance from shore in the SFSTCAs also allows for consistency of application across state jurisdiction. Further, NMFS believes that a distance-from-shore criterion is more easily enforced, since depth topography varies by location.

Comment 14: Several commenters were concerned that some areas of high importance of sea turtles may have been inappropriately excluded from the SFSTCAs. They urged NMFS to increase enforcement efforts, shrimp trawler observers, and stranding coverage in areas adjacent to the SFSTCAs to determine whether enhanced sea turtle protections are also necessary outside of the SFSTCAs.

Response: The proposed SFSTCAs were based on the importance of the areas for sea turtles in conjunction with the likelihood of negative interactions with heavy shrimp trawling activity. NMFS agrees that information from enforcement, observers, and strandings is useful for determining the potential level of turtle-shrimping interactions. NMFS considered all of these factors in determining the proposed SFSTCAs and does not anticipate that collection of

further information would change these decisions. Nonetheless, NMFS intends to maintain high enforcement efforts to improve the stranding monitoring network and to place observers aboard shrimp vessels, so that the incidental take of turtles in the shrimp fishery can be monitored. These actions have been requirements of the June 11, 1996, Opinion, and all subsequent Biological Opinions considering the shrimp fishery. These efforts will be directed both at the SFSTCAs and areas outside of the SFSTCAs.

Shrimp Industry Panel

Comment 15: Although not a proposed regulatory measure, NMFS solicited comments on the establishment of a shrimp industry panel and specifically on methods to identify and select shrimp industry representatives to serve on the panel that would fairly reflect the interests of the diverse sections of the shrimp trawling fleets. Comments generally supported the establishment of a shrimp industry panel. However, some commenters were concerned that such a panel would be too narrowly focused, and that all stakeholders interested in conserving sea turtle populations should be included.

Response: NMFS originally foresaw several roles for a shrimp industry panel, including review of information and recommendations regarding TED technical matters. The challenge of addressing ways to improve soft TEDs to increase turtle escapement has created a heightened need to address that issue specifically. NMFS intends to move quickly to establish a panel that would focus its efforts on improving or modifying soft TEDs. The panel's primary purposes would be to review existing information on soft TED performance, to provide recommendations and supply new information on possible solutions to identified problems, to examine testing results associated with new soft TED initiatives, and to communicate all relevant developments to the wider community of stakeholders with which individual panel members are associated.

NMFS agrees with the commenters who felt that a broader constituency than just shrimp industry representatives should be included. To ensure the transparency, and the ultimate acceptance and success, of the intensive efforts to develop effective soft TEDs, representatives from the sea turtle conservation community should also be involved. Active participation from the shrimp industry, though, will likely be critical to produce the technical ideas and solutions that are necessary to improve soft TEDs. Gear experts, shrimp industry leaders, and environmental community members will be contacted and asked to participate in the panel. Panel members should have extensive contacts to their respective communities to facilitate the passage of information to all the stakeholders and to attract the greatest number of new ideas and potential solutions for consideration.

A panel focussed entirely on soft TEDs is a narrower application than originally discussed in the proposed rule. No final decisions regarding the formation or implementation of a broader advisory panel are being made at this time, although the soft TED panel will likely provide valuable experience in the functioning of such a panel. Thus, NMFS will reserve response and consider all comments prior to any further actions on a broader shrimp industry advisory panel.

Changes to TED Requirements

Comment 16: Numerous commenters from the shrimp industry objected to any changes to the present TED requirements whatsoever, irrespective of the specific measures of the proposed rule. They criticized NMFS for making frequent changes to the existing requirements. They stated that the changes antagonized fishermen and made them suspicious of the agency's intentions and the quality of data used in management decisions.

Response: NMFS strives to avoid adverse effects on fishermen resulting from changes in regulations. NMFS also agrees that frequent changes to regulations are confusing and should be avoided. The last change to the general gear requirements was over 2 years ago, when fishermen using bottom-opening hard TEDs were required to attach flotation to the TEDs (59 FR 33447, June 29, 1994). Subsequently, temporary restrictions have been necessary in response to continued sea turtle mortality in areas of high shrimping effort (see Background). The commenters' objections to rule changes may, in part, result from frustration with the short notice provided and short duration of those temporary restrictions. NMFS believes that such temporary restrictions are better replaced by permanent measures that provide greater protection for sea turtles and greater certainty for fishermen. In the case of the present rulemaking, NMFS has attempted to inform and involve affected fishermen through extensive opportunities for public comment, informational meetings, and multiple public hearings and to improve the measures needed to protect sea turtles while minimizing the adverse impacts on shrimp fishermen. NMFS believes that the measures of this final rule will have a minimal impact on fishermen. Furthermore, delayed effective dates are being applied to the provisions in some areas to allow fishermen additional time to adapt to new requirements and to purchase any new gear as part of their regular maintenance and repair cycle and to allow additional time to develop effective soft TEDs.

NMFS will continue its efforts to minimize the effects on fishermen as it fulfills its requirements to protect and recover endangered and threatened sea turtles. To the extent possible, NMFS will avoid frequent or repeated changes to the TED requirements. TED technology, however, is constantly evolving. Fishermen frequently report problems with TEDs or offer suggestions to improve the function of TEDs, and new information has arisen on the interaction between sea turtles and shrimp trawling. NMFS is constantly evaluating these problems, ideas, and new information. If changes to the TED requirements become necessary to improve the function of TEDs either for fishermen or to ensure adequate turtle exclusion rates, NMFS will implement those changes.

At the present time, NMFS does foresee the possibility of additional changes to TED requirements. Information from observers and fishermen has identified an installation problem in which weedless-style hard TEDs are sometimes backwards to the mouth of the trawl. Testing with small turtles has shown that TEDs with this installation problem do indeed entrap turtles. In addition, the turtle exclusion problems with some configurations of bottom-opening hard TEDs that were identified in the June 1996 testing may also need to be addressed in areas outside the SFSTCAs. NMFS anticipates that additional information will be developed and a proposed rule may be published addressing these two issues. Additionally, the development of improvements or modifications to soft TEDs that effectively exclude turtles will require amendments to the regulations to implement the changes.

Changes from the Proposed Rule to the Final Rule

Reduce the Size of Try Nets that are Exempt from TED Use

The reduction in the size of try nets that are exempt from required TED use remains unchanged from the proposed rule. Specifically, only try nets with a headrope length not greater than 12 ft (3.6 m) and a footrope length not greater

than 15 ft (4.6 m) are exempt from the TED requirement. However, the effective date outside of the SFSTCAs has been extended from December 31, 1996, to December 19, 1997. NMFS believes that the longer phase-in period will provide opportunity for NMFS to provide technology outreach to shrimpers to ensure that adoption of TEDs in larger try nets is accepted more readily in those areas where shrimpers have not previously operated under this requirement.

Eliminate Existing Soft TEDs as Approved TEDs and Eliminate the Provision of the Regulations Allowing Soft TEDs to be Approved

The proposed rule called for a phase-out of the use of soft TEDs by December 31, 1996, and more immediately, a prohibition of their use in the proposed SFSTCAs. The final rule removes the approval of the Morrison TED, Parrish TED, Andrews TED, and Taylor TED, applicable December 19, 1997, except in the SFSTCAs where the use of all soft TEDs is prohibited, effective March 1, 1997. The removing of approval period for soft TEDs outside the SFSTCAs has been extended well beyond the proposed date of December 31, 1996, and will provide time for NMFS, in cooperation with gear experts, the shrimp industry, and the environmental community, to undertake initiatives to develop effective soft TEDs. Fishermen will also have greater opportunity to replace their existing gear and adapt to the use of hard grid TEDs. The final rule also addresses the need to provide immediate measures to reduce mortality in areas where they are most needed. The delayed effective date for the prohibitions on soft TEDs outside the SFSTCAs until 1 year after the publication of the final rule is also consistent with Congressional directives in the FY97 Appropriations Bill and will allow further testing and development of modified and improved soft TEDs in cooperation with the shrimp fishing industry prior to any prohibition of soft TED use.

The proposed rule would also have eliminated the authority to test and approve new soft TED designs starting in 1997. In response to comments received, this final rule maintains the authority to test and approve new soft TED designs.

Enhancing TED Effectiveness in the SFSTCAs

The prohibition on the use of soft TEDs and the reduction in the size of try nets that are exempt from TED requirements remain unchanged within the SFSTCAs. However, the proposed prohibition on bottom-opening hard grid TEDs is not implemented. Instead, two modifications to bottom-opening hard grid TED requirements are made: If the optional webbing flaps are installed, the flap must not extend beyond the posterior edge of the TED; and the angle of the deflector bars at the bottom of the TED must not exceed 45°, effective March 1, 1997. Further testing of single-grid hard TEDs has shown that these modifications provided adequate sea turtle exclusion and significantly reduced the average escape time of sea turtles (see Recent Gear Testing section).

In summary, these modifications to the bottom-opening hard TED requirements allow such TEDs to approach the level of protection to sea turtles as that attributed to top-opening hard grid TEDs, which have excellent turtle exclusion rates and fast mean TED escape times.

Provisions of the Final Rule

Based on the review of comments received during the public hearings and the comment period, new information provided in the TEWG Report, and further testing of gear types in the proposed measures (see Recent Gear Testing section), the final rule:

1. Exempts from the TED use requirements try nets with a headrope length 12 ft (3.6 m) or less and a footrope length 15 ft (4.6 m) or less, applicable December 19, 1997.

2. Removes the approval of the Morrison, Parrish, Andrews, and Taylor soft TEDs, applicable December 19, 1997.

3. Removes the applicability of the two existing TED testing protocols to soft TED testing, but continues the authority to test and approve new TEDs.

4. Establishes SFSTCAs in the northwestern Gulf of Mexico consisting of the offshore waters out to 10 nm (18.5 km) along the coasts of Louisiana and Texas from the Mississippi River South Pass (west of 89°08.5′ W. long.) to the U.S.-Mexican border, and in the Atlantic consisting of the inshore waters and offshore waters out to 10 nm (18.5 km) along the coasts of Georgia and South Carolina from the Georgia-Florida border to the North Carolina-South Carolina border.

5. Prohibits, within the SFSTCAs, the use of bottom-opening hard TEDs with a webbing flap that extends beyond the posterior edge of the TED or with an angle of the deflector bars greater than 45°, measured along the bottom-most 4 inches (10.2 cm) of each bar or, for TEDs in which the deflector bars are not attached to the bottom frame, along the imaginary lines through the bottom frame and the bottom end of each deflector bar, effective March 1, 1997.

6. Prohibits, within SFSTCAs, the use of soft TEDs, effective March 1, 1997.

7. For vessels fishing within the SFSTCAs, exempts from TED use requirements try nets with a headrope length not greater than 12 ft (3.6 m) and a footrope length not greater than 15 ft (4.6 m), effective March 1, 1997.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, prepared an EA/RIR for this proposed rule and copies are available (see **ADDRESSES**).

When this rule was prepared, 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 as follows:

I certify that the attached proposed rule will not have a significant economic impact on a substantial number of small entities because the provisions of the proposed rule would impose only a minor economic burden on shrimp fishermen. The removal of soft TEDs from the list of approved TEDs is delayed until December 31, 1996. Since soft TEDs have a life-span of only about 1 year, shrimp fishermen using soft TEDs will not bear any additional costs, beyond normal gear replacement costs. The reduction in allowable sized of try nets that are exempt from TED requirements is also delayed until December 31, 1996. Fishermen using larger try nets will have ample time to come into compliance with this change. For many, normal gear replacement cycles will mean that no additional financial burden is assumed.

The cost of purchasing a 12–foot try net is approximately $100, or the cost of purchasing a hard TED is approximately $200. Existing large try nets may also be modified to reduce their size by the fisherman. The implementation of gear requirement changes in the SFSTCAs is proposed to occur on a more rapid schedule than the requirements outside the SFSTCA because of the more critical need to protect sea turtles and manage shrimp trawl-sea turtle interactions in those areas. The impact of this faster schedule on small businesses is expected to be small, though. The proposed SFSTCAs in the Gulf area was either included in the March 14, 1995, Shrimp Fishery Emergency Response Plan's (ERP) interim special management areas in 1995 as potentially subject to gear restrictions or were actually included in gear restrictions implemented during 1995 in response to sea turtle mortality emergencies. Other than inshore waters, the Atlantic area proposed SFSTCA also was subject to gear restrictions in 1995. Shrimp trawlers subject to any gear restrictions in 1995 will already have been required to purchase hard TEDs and reduce

the size of their try nets or install hard TEDs in their try nets. No additional burden will be imposed on those fishermen to acquire new gear. In the Gulf SFSTCA, Zones 13–16 were not subject to gear restrictions, but fishermen in that area were notified of potential additional gear requirements as specified in the ERP. Nearshore fishermen in those zones, however, reportedly were already using primarily hard TEDs, and therefore the prohibition of soft TED use should affect only a small number of fishermen. Bottom-opening hard TEDs can be converted to top-opening in approximately one hour with an estimated cost of approximately $20 of labor per net.

Accordingly, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis was not prepared.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 13, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

2. In § 217.12, the definitions for ''Atlantic Shrimp Fishery-Sea Turtle Conservation Area'' and ''Gulf Shrimp Fishery-Sea Turtle Conservation Area'' are added, in alphabetical order, to read as follows:

§ 217.12 Definitions.

* * * * *

Atlantic Shrimp Fishery-Sea Turtle Conservation Area (Atlantic SFSTCA) means the inshore and offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Georgia and South Carolina from the Georgia-Florida border (defined as the line along 30°42′45.6″ N. lat.) to the North Carolina-South Carolina border (defined as the line extending in a direction of 135°34′55″ from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33° 51′07.9″ N. lat., 078°32′32.6″ W. long.).

* * * * *

Gulf Shrimp Fishery-Sea Turtle Conservation Area (Gulf SFSTCA) means the offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Texas and Louisiana from the South Pass of the Mississippi River (west of 89°32′32.6″08.5′ W. long.) to the U.S.-Mexican border.

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. In § 227.72, paragraphs (e)(2)(ii)(B)(*1*), (e)(4)(i)(C), (e)(4)(iii) introductory text, (e)(4)(iv)(C), and (e)(5)(i) are revised to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) * * *

(*1*) (*i*) For any shrimp trawler fishing in the Gulf SFSTCA or the Atlantic SFSTCA, a single test net (try net) with a headrope length of 12 ft (3.6 m) or less and with a footrope length of 15 ft (4.6 m) or less, if it is either pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net.

(*ii*) Prior to December 19, 1997, in areas other than the Gulf SFSTCA or the Atlantic SFSTCA, a single test net (try net) with a headrope length of 20 ft (6.1 m) or less, if it is either pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net.

(*iii*) Applicable after December 19, 1997, a single test net (try net) with a headrope length of 12 ft (3.6 m) or less and with a footrope length of 15 ft (4.6 m) or less, if it is either pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net.

* * * * *

(4) * * *

(i) * * *

(C) *Angle of deflector bars.* (*1*) Except as provided in paragraph (e)(4)(i)(C)(*2*) of this section, the angle of the deflector bars must be between 30° and 55° from the normal, horizontal flow through the interior of the trawl.

(*2*) For any shrimp trawler fishing in the Gulf SFSTCA or the Atlantic SFSTCA, a hard TED with the position of the escape opening at the bottom of the net when the net is in its deployed position, the angle of the deflector bars from the normal, horizontal flow through the interior of the trawl, at any point, must not exceed 55°, and:

(*i*) If the deflector bars that run from top to bottom are attached to the bottom frame of the TED, the angle of the bottom-most 4 inches (10.2 cm) of each deflector bar, measured along the bars, must not exceed 45° (Figures 14a and 14b);

(*ii*) If the deflector bars that run from top to bottom are not attached to the bottom frame of the TED, the angle of the imaginary lines connecting the bottom frame of the TED to the bottom end of each deflector bar which runs from top to bottom must not exceed 45° (Figure 15).

* * * * *

(iii) *Soft TEDs.* Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. For any shrimp trawler fishing in the Gulf SFSTCA and the Atlantic SFSTCA, soft TEDs are not approved TEDs. Prior to December 19, 1997, in areas other than the Gulf SFSTCA and Atlantic SFSTCA, the following soft TEDs are approved TEDs:

* * * * *

(iv) * * *

(C) *Webbing flap.* A webbing flap may be used to cover the escape opening if: No device holds it closed or otherwise restricts the opening; it is constructed of webbing with a stretched mesh size no larger than 1 5/8 inches (4.1 cm); it lies on the outside of the trawl; it is attached along its entire forward edge forward of the escape opening; it is not attached on the sides beyond the row of meshes that lies 6 inches (15.2 cm) behind the posterior edge of the grid; and it does not extend more than 24 inches (61.0 cm) beyond the posterior edge of the grid, except for trawlers fishing in the Gulf SFSTCA or Atlantic SFSTCA with a hard TED with the position of the escape opening at the bottom of the net when the net is in its deployed position, in which case the webbing flap must not extend beyond the posterior edge of the grid.

* * * * *

(5)(i) *Revision of generic design criteria, and approval of TEDs, of allowable modifications of hard TEDs, and of special hard TEDs.* The Assistant

Administrator may revise the generic design criteria for hard TEDs set forth in paragraph (e)(4)(i) of this section, may approve special hard TEDs in addition to those listed in paragraph (e)(4)(ii) of this section, may approve allowable modifications to hard TEDs in addition to those authorized in paragraph (e)(4)(iv) of this section, or may approve other TEDs, by regulatory amendment, if, according to a NMFS-approved scientific protocol, the TED demonstrates a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Two such protocols have been published by NMFS (52 FR 24262, June 29, 1987; and 55 FR 41092, October 9, 1990) and will be used only for testing relating to hard TED designs. Testing under any protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Science Center, NMFS.

* * * * *

5. Figures 14a, 14b, and 15 to part 227 are added to read as follows:

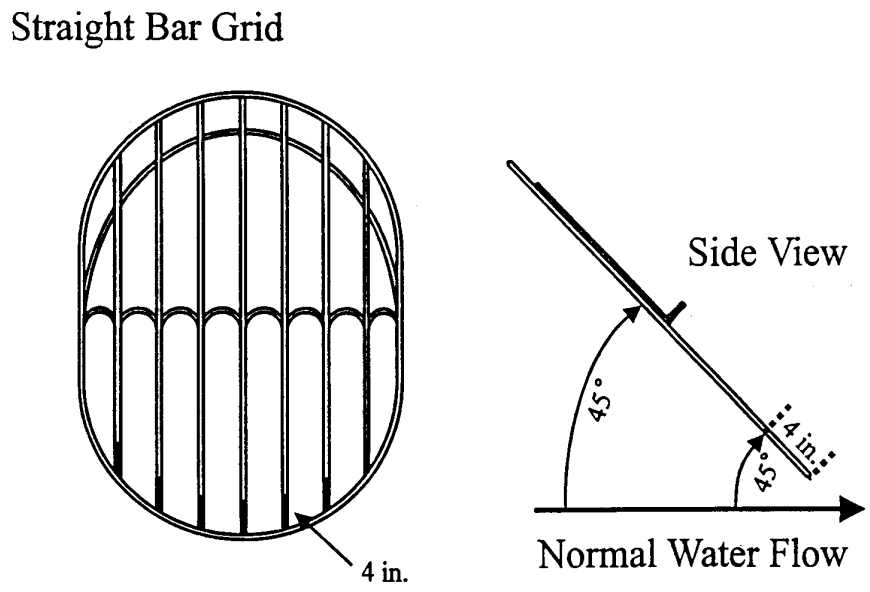

Figure 14a to part 227
Maximum Angle of Deflector Bars with Straight Bars Attached to the Bottom of the Frame

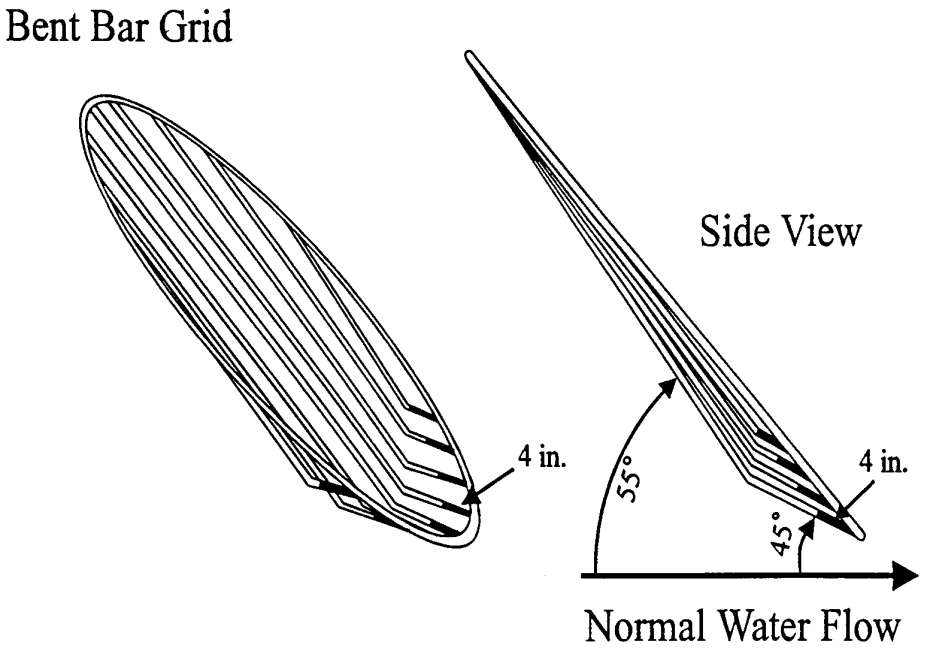

Figure 14b to part 227
Maximum Angle of Deflector Bars with Bent Bars Attached to the Bottom of the Frame

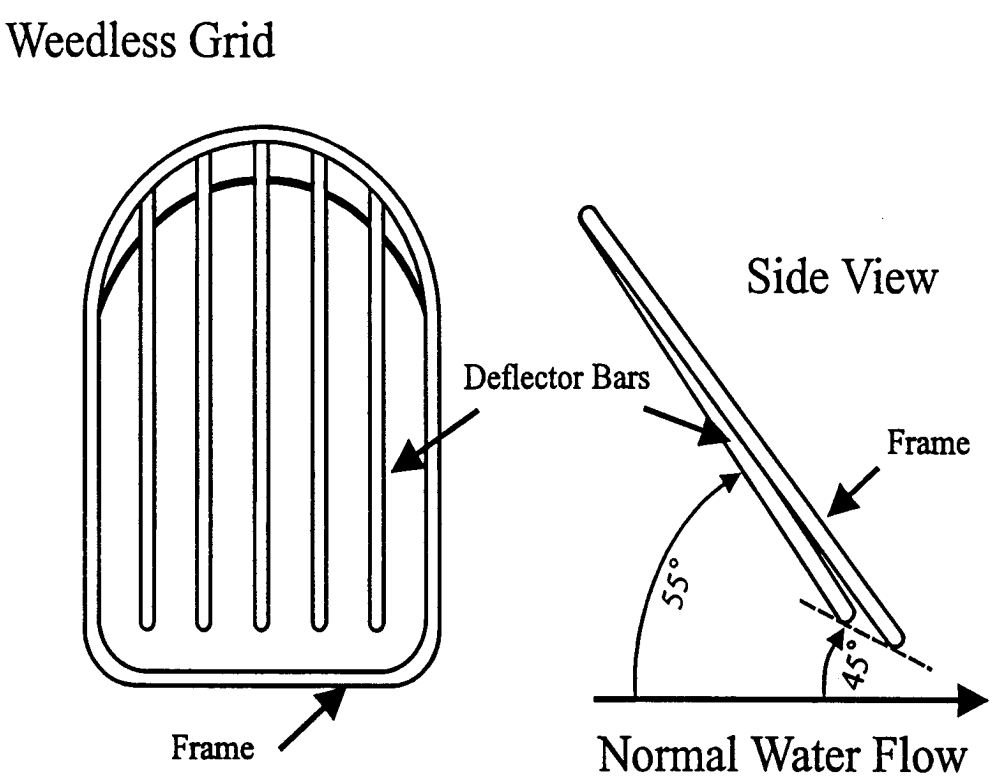

Figure 15 to part 227
Maximum Angle of Deflector Bars with Bars Unattached to the Bottom of the Frame

[FR Doc. 96–32123 Filed 12–13–96; 5:07 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 245
Thursday, December 19, 1996

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

RIN 3206–AH66

Administration and General Provisions—Administration

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations concerning the adjudication of claims arising under the Civil Service Retirement System (CSRS). This amendment would provide that OPM may initially issue decisions that provide the opportunity to appeal directly to the Merit Systems Protection Board (MSPB) without having to request OPM to review its initial decision. The amendment will streamline processing of claims under the CSRS and bring OPM's CSRS regulations into conformity with its Federal Employees Retirement System (FERS) regulations.

DATES: Comments must be received on or before February 18, 1997.

ADDRESSES: Send comments to John E. Landers, Chief, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Brown, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Currently, section 839.109 of Title 5, Code of Federal Regulations establishes a procedure under which individuals whose rights or interests under CSRS are affected by an initial decision of OPM generally must request that OPM reconsider its decision if they think OPM's initial decision is wrong, before they may seek review outside OPM. After receiving a reconsideration request, OPM renders a final decision that contains notice of the right of the individual to file an appeal with MSPB. Only if a decision is rendered at the highest level of review available in OPM may the individual seek MSPB review without first obtaining an OPM reconsideration decision.

The reconsideration process sometimes imposes a needless administrative burden on both the individual and OPM, particularly when the facts of the case are not in dispute. When all relevant evidence and facts have already been considered by OPM in its initial decision, reconsideration is redundant, increases OPM's administrative and processing costs and needlessly delays the claimant's opportunity to appeal OPM's decision to MSPB.

To streamline our processing of disputed cases under CSRS, these proposed regulations would bring CSRS regulations into conformity with FERS regulations at 5 CFR 841.307. Under the FERS process, whenever OPM determines that issuance of both an initial and reconsideration decision would be redundant, OPM issues a final decision without the reconsideration process. The final decision fully sets forth OPM's findings and conclusions and contains notice of the right to file an appeal with MSPB. MSPB regulations require *de novo* review of the OPM decision and provide claimants with a right to a hearing before an administrative judge. Our processing under the proposed regulations may be illustrated with the following example. If official records show that a person claiming an annuity has less than the 5 years of service required by law, and the person does not dispute the accuracy of the records, OPM will disallow the claim without a reconsideration right at OPM, but rather with a notice of MSPB appeal rights. On the other hand, if the person believes that the official record of his or her service is incomplete and wishes to submit secondary evidence to prove that he or she actually performed the necessary 5 years of service, OPM would issue an initial decision with a statement of reconsideration rights at OPM before issuing a final decision.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105–508, 104 Stat. 1388–339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.621 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

Subpart A—Administration and General Provisions

2. In § 831.109, paragraph (c) the last sentence is removed, the text in paragraph (f) after the heading ''*Final decision*.'', is redesignated as paragraph (f)(1) and paragraph (f)(2) is added to read as follows:

§ 831.109 Initial decision and reconsideration.

* * * * *

(f) * * *

(2) OPM may issue a final decision providing the opportunity to appeal

under § 831.110 rather than an opportunity to request reconsideration under paragraph (c) of this section. Such a decision must be in writing and state the right to appeal under § 831.110.

* * * * *

[FR Doc. 96–32135 Filed 12–18–96; 8:45 am]

BILLING CODE 6325–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 145 and 147

Commission Records and Information; Open Commission Meetings

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') seeks comments on its proposal to amend rules relating to Commission records and information last revised October 5, 1989. The proposed modifications update and streamline procedures in light of the Commission's experience in the past several years and amend rules regarding open Commission meetings to conform to these modifications.

DATES: Comments are due no later than February 18, 1997.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; or by electronic mail to secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5120.

SUPPLEMENTARY INFORMATION:

I. Background—Need for Revisions

Based on its experience in the nearly seven years since the rules implementing the Freedom of Information Act (''FOIA'') (5 U.S.C. 552 (1994)) were last revised, the Commission has identified several rules which it believes should be modified. The Commission invites comments regarding the proposed revisions.

A. Disclosure of Nonpublic Records

1. Exemption 7

The Freedom of Information Reform Act of 1986 (§§ 1801–1804 of Public L. 99–570) (''Reform Act'') amended the FOIA by modifying the terms of Exemption 7 (5 U.S.C. 552(b)(7)) relating to requests for records compiled for law enforcement purposes, and by supplying new provisions relating to the charging and waiving of fees. On May 22, 1987, the Commission published a final rule at 52 FR 19306 implementing a Uniform Freedom of Information Act Fee Schedule and Guidelines, published by the Office of Management and Budget, 52 FR 10011 (March 27, 1987) (''OMB Guidelines''). At that time, the Commission did not modify its rule regarding Exemption 7 set forth in 17 CFR 145.5(g). Nevertheless, since early 1988, the Commission has been implementing Exemption 7 by following the guidance set forth in the ''Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act'' (December 1987). The Commission proposes to revise Rule 145.5(g) to conform to its practice and the Reform Act.

Prior to the Reform Act, FOIA permitted the withholding of investigatory records, only to the extent that production ''would'' interfere with enforcement proceedings; ''would'' constitute an unwarranted invasion of personal privacy; ''would'' disclose the identity of a confidential source; or ''would'' endanger the life or safety of law enforcement personnel. 5 U.S.C. 552(b)(7) (A), (C), and (D) (1982). The Commission's current rule reflects this statutory language.

The Reform Act relaxed the test relating to the withholding of investigatory records by substituting ''would'' with the phrase ''could reasonably be expected to'' in 5 U.S.C. 552(b)(7)(A) (interfere with enforcement proceedings), (b)(7)(C) (constitute an unwarranted invasion of personal privacy), and (b)(7)(D) (disclose identity of a confidential source). The Reform Act also modified subsection (b)(7)(F) to provide for the withholding of records to protect the life or physical safety of *any* person, not just law enforcement personnel. The Commission proposes to amend Rule 145.5(g) to conform to its practice and the Reform Act.

Additionally, the Reform Act amended the confidential source provision of FOIA to extend it to include ''a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis.'' The Reform Act also amended FOIA to provide for expanded protection of the information itself when provided by a confidential source in a criminal or national security investigation. Both of these changes are reflected in the proposed revision of Rule 145.5(g).

Originally, FOIA had provided for the withholding of ''investigative techniques and procedures.'' 5 U.S.C. 552(b)(7)(E) (1982). The Reform Act added an exemption for disclosure of ''techniques and procedures for law enforcement investigations or prosecutions, or * * * [disclosure of] guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.'' 5 U.S.C. 552(b)(7)(E), *as amended*. This statutory change is also reflected in the proposed revision of Rule 145.5(g).

Further, the Commission proposes to expand the description of enforcement proceedings. Whereas the current rule describes ''enforcement proceedings'' and ''investigatory records'' primarily as activities of the Commission, the proposed rule expressly includes the law enforcement activities of the Department of Justice, or any United States Attorney, or any Federal, State, local, foreign governmental authority or foreign futures or securities authority, or any futures or securities industry self-regulatory organization. Similarly, the proposed rule also expressly describes ''investigatory record'' to include material involving the possible violation of any statutory or regulatory provision administered by these same authorities.

Finally, the current rule appears to limit the exemption for investigatory sources to persons who communicated with the Commission ''confidentially.'' As currently phrased, this suggests that a person must express a desire for ''confidentiality.'' Because FOIA does not require a request for confidentiality, the Commission proposes to delete this phraseology. Thus, the proposal covers written communications from, or to, any person complaining or otherwise furnishing information respecting possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

2. Other Changes

The introductory paragraph of Rule 145.5(d)(1), which describes certain business information which the Commission would ordinarily treat as exempt from disclosure, has led to some confusion. Some submitters have read the phrase in (d)(1) concerning ''information * * * of a kind not normally disclosed by the person from whom it was obtained'' as meaning that if a submitter would not normally disclose the information to the public, the submitter can choose to have the Commission withhold it. Such an interpretation is not consistent with FOIA. The balance of the language of

the introductory section concerning Commission undertakings to receive certain material ''for its use or the use of specified persons only'' creates additional ambiguity. The Commission believes neither phrase adds to the understanding of the rest of the rule. Accordingly, the Commission proposes to delete the entire introductory paragraph. The Commission also proposes to delete the same language found in Rule 147.3(b)(4)(i).

B. Detailed Written Justification of Request for Confidential Treatment

Under the current scheme, when there is a FOIA request for materials for which confidential treatment has been sought under Rule 145.9 by the submitter of the materials, the Assistant Secretary of the Commission for Freedom of Information, Privacy and Sunshine Acts Compliance (''Assistant Secretary'') seemingly *must* require the submitter to file a detailed written justification of the confidential treatment request within ten days. However, it has been the experience of the Commission that, in some cases, the submitter's initial petition for confidential treatment of the information or its response to a prior FOIA request is so complete that the Assistant Secretary does not need it to be supplemented in order to determine that confidential treatment is justified. Consequently, the Commission is proposing that under Rule 145.9(e)(1) the Assistant Secretary request submission of a detailed justification unless (i) pursuant to an earlier FOIA request, a prior determination to release or withhold the material has been made; (ii) the submitter has already provided sufficient information to grant the request for confidential treatment; or (iii) the material is otherwise in the public domain.

Additionally, the Commission proposes to modify Commission Rules 145.9(d)(7) and 145.9(e)(1). When the Assistant Secretary determines that there has been a request for information for which confidential treatment has been requested and that it is necessary to provide the justification, it is proposed that the Assistant Secretary notify the submitter of the material that the requested information will be released after ten business days unless the submitter objects by providing a detailed written justification. In the proposal, should a submitter fail to file a detailed written justification, the submitter will not be given an opportunity to appeal an adverse determination. It is expected that the volume of correspondence will be reduced by giving the Assistant Secretary this authority. The mandatory language is unchanged regarding what must be supplied once a request for confidential treatment is made.

In some cases, submitters of material have requested confidential treatment of the public portions of financial reports of futures commission merchants and introducing brokers filed on Form 1–FR pursuant to 17 CFR 1.10. In the past seven years, no submitter of material has been able to convince the Commission to make confidential the public portions of these reports. However, submitters continue to file such requests, requiring unnecessary consumption of time and preparation of paperwork by submitters, requesters, and Commission staff. Consequently, the Commission is proposing to modify Commission Rules 145.5 and 145.9(d)(8) by indicating that requests for confidential treatment of the public portions of the financial reports will not be processed.[1] Conforming modifications are proposed for Commission Rule 147.3(b)(4)(i). The Commission is not proposing any change regarding which portions of the Form 1–FR are treated as public and which portions are treated as nonpublic.

Similarly, submitters have requested confidential treatment of materials which have not yet been submitted to the Commission. In practice, it is often difficult to identify what subsequent material is covered, adding greatly to processing time and expense. Accordingly, the Commission proposes to amend Rule 145.9(d)(4) to indicate that requests for confidential treatment of a future submission will not be processed. In some cases, however, submitters submit materials in installments in response to Commission requests for information, *e.g.*, pursuant to investigations or in regard to contract market designations. The proposal sets forth a labelling procedure to address this situation.

Commission Rule 145.9(d)(6) currently states that requests for confidential treatment are considered public documents. However, Commission staff routinely declines to treat requests for confidential treatment as public where disclosure of even the existence of a request would reveal nonpublic information, *e.g.*, in the case of a request for confidential treatment made with respect to a submission in a pending investigation. Accordingly, the Commission proposes to modify Commission Rule 145.9(d)(6) to permit withholding information about a request where disclosure of the request itself would reveal other information exempt from disclosure.

In all other cases, the request for confidential treatment will be public. Nonetheless, some requesters include confidential information in their requests for confidential treatment and seek confidential treatment of the request. Thus, the Commission proposes to amend Commission Rule 145.9(d)(6) to advise submitters of information to place information for which they want confidential treatment in an appendix to the request.

C. Appendix A—Compilation of Commission Records Available to the Public

Appendix A to 17 CFR Part 145 contains a list of publicly available Commission records and the offices which are responsible for them. Requesters are advised to contact those offices directly for access to such records.

The appendix indicates that the Office of the Secretariat maintains a binder of FOIA requests and responses. However, since 1985, on the advice of the United States Department of Justice, it has not been Commission practice to release the addresses or other personal information about requesters. *See* U. S. Department of Justice, Office of Information and Privacy, *Freedom of Information Act Guide & Privacy Act Overview*, September 1995 ed. at 209 (while release of the names of requesters is not an invasion of privacy, personal information about FOIA requesters such as home addresses and telephone numbers should not be disclosed), *citing FOIA Update*, Winter 1985 at 6 (personal information about an individual FOIA requester is protected under Exemption 6 absent a particularly compelling public interest in its disclosure; however, names of Privacy Act requesters should not be disclosed). Rather than redacting all correspondence, the Office of the Secretariat has been redacting personal information from the requests and responses only when an FOIA request is made as to those documents. Consequently, the Commission proposes to amend Appendix A to conform to its current practice by deleting reference to the binder from Appendix A(b)(1) and renumbering the paragraphs accordingly.

Appendix A also indicates that requesters may obtain access to public portions of registration documents at the Commission's regional office in Chicago. Since 1983 the Commission

[1] To the extent that 17 CFR 1.10 and 31.13 require separate binding procedures so that certain portions of financial reports can be accorded nonpublic treatment, the Commission has proposed to eliminate these procedures in a separate release. 61 FR 55235 (Oct. 25, 1996).

has authorized the National Futures Association (''NFA'') to perform various portions of the Commission's registration functions and responsibilities under the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* (1994). By notice published at 49 FR 39518, 39523 (Oct. 9, 1984), the Commission authorized NFA to make available to the public for inspection and copying the publicly available portions of all registration forms compiled or maintained in connection with its performance of registration functions under the Commodity Exchange Act. At that time, the Commission notified the public that any person seeking to inspect or copy the publicly available portions of such registration forms should contact NFA directly and that a formal request pursuant to FOIA is not necessary to obtain such information. The Commission proposes to amend Appendix A accordingly.

D. Appendix B—Schedule of Fees

The Commission last set FOIA fees on May 22, 1987 when it published a final rule at 52 FR 19306 (May 22, 1987). The OMB Guidelines require that each agency's fees for searches involving records stored in computer formats be based upon its direct reasonable operating costs of providing FOIA services. To this end, the Commission has reviewed its fees and proposes a new fee schedule to be set forth in Appendix B. The fees set forth in the proposal reflect the data the Commission currently reports to OMB. Fees are based upon the actual computer time used. The proposed fee for programming and performing searches is $32.00 per hour. This fee represents the average of the pay scale for staff who actually perform the service—GS–13, Step 4. The Commission has calculated its direct costs, defined by OMB for the purpose of FOIA fees, as salary of $27.86 per hour, plus 16 percent. 52 FR 10018 (Mar. 27, 1987). The Commission rounded the $32.32 total to $32.00.

Finally, in Appendix B(a)(3) the phrase ''operation of the central processing unit'' has caused some confusion. Rather than substituting a new phrase, the Commission proposes to explain the new way in which its records are stored in its computer systems and how searches are performed. This should clarify the process.

E. The Commission's Address

The Commission proposes to update the addresses and telephone numbers which appear in Part 145, which have not been updated previously.

II. Related Matter

Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined, pursuant to 5 U.S.C. 605(b) that Part 145 rules relating to Commission records and information do not have a significant economic impact on a substantial number of small entities. Because they do not impose regulatory obligations on commodity professionals and small commodity firms, and because, if instituted, the proposed corrections and amendments will expedite and improve the FOIA process, the Commission does not expect the proposed rule to have a significant economic impact on a substantial number of small business entities.

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Chairperson, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any member of the public who believes that these revisions and corrections would have a significant impact on small businesses.

List of Subjects

17 CFR Part 145

Confidential business information, Freedom of information.

17 CFR Part 147

Sunshine Act.

For the reasons set forth in the preamble, title 17, parts 145 and 147 are proposed to be amended as follows:

PART 145—COMMISSION RECORDS AND INFORMATION

1. The authority for Part 145 is revised to read:

Authority: Pub. L. 99–570, 100 Stat. 3207, Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

2. Section 145.5 is amended as set forth below:

§ 145.5 [Amended]

a. In the introductory paragraph add a sentence to the end as set forth below.

b. Remove the introductory text of paragraph (d)(1).

c. In (d)(1)(i) (B) and (E) remove the following phrase: ''Provided, The procedure set forth in 17 CFR 1.10(g) is followed:''.

d. In (d)(1)(i) (C) and (D) remove the following phrase: '', provided the procedure set forth in § 1.10(g) of this chapter is followed''.

e. In (d)(1)(i) (F) and (G) remove the following phrase: '', if the procedure set forth in § 1.10(g) of this chapter is followed''.

f. In (d)(1)(i)(H) remove the following phrase: '', provided the procedure set forth in § 31.13(m) of this chapter is followed''.

g. Paragraph (g) is revised to read as set forth below.

§ 145.5 Disclosure of nonpublic records.

* * * Requests for confidential treatment of segregable public information will not be processed.

* * * * *

(g)(1) Records or information compiled for law enforcement purposes to the extent that the production of such records or information:

(i) Could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission or any other authority including, but not limited to, the Department of Justice, or any United States Attorney, or any Federal, State, local, foreign governmental authority or foreign futures or securities authority, or any futures or securities industry self-regulatory organization;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques or procedures or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) The term ''investigatory records'' includes, but is not limited to, all documents, records, transcripts, evidentiary materials of any nature,

correspondence, related memoranda, or work product concerning any examination, any investigation (whether formal or informal), or any related litigation, which pertains to, or may disclose, the possible violation by any person of any provision of any statute, rule, or regulation administered by the Commission, by any other Federal, State, local, or foreign governmental authority or foreign futures or securities authority, or by any futures or securities industry self-regulatory organization. The term ''investigatory records'' also includes all written communications from, or to, any person complaining or otherwise furnishing information respecting such possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

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§ 145.6 Commission offices to contact for assistance; registration records available.

3. In § 145.6(a), remove the phrase ''(816) 374–6602'' and add in its place ''(816) 931–7600''; remove the phrase ''10880 Wilshire Blvd., suite 1005 Los Angeles, California 90024, Telephone: (310) 575–6783'' and add in its place ''10900 Wilshire Boulevard, Suite 400, Los Angeles, California 90024, Telephone: (310) 325–6783''.

4. Section 145.9 is amended by revising paragraphs (d) (4), (6), (7), and (8) and the first sentence of (e)(1) to read as follows:

§ 145.9 Petition for confidential treatment of information submitted to the Commission.

* * * * *

(d) * * *

(4) A request for confidential treatment should accompany the material for which confidential treatment is being sought. If a request for confidential treatment is filed after the filing of such material, the submitter shall have the burden of showing that it was not possible to request confidential treatment for that material at the time the material was filed. A request for confidential treatment of a future submission will not be processed. All records which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof should be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page stating ''Confidential Treatment Requested by [name].'' If such marking is impractical under the circumstances, a cover sheet prominently marked ''Confidential Treatment Requested by [name]'' should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this matter should be individually marked with an identifying number and code so that they are separately identifiable. In some circumstances, such as when a person is testifying in the course of a Commission investigation or providing documents requested in the course of a Commission inspection, it may be impractical to submit a written request for confidential treatment at the time the information is first provided to the Commission. In no circumstances can the need to comply with the requirements of this section justify or excuse any delay in submitting information to the Commission. Rather, in such circumstances, the person testifying or otherwise submitting information should inform the Commission employee receiving the information, at the time the information is submitted or as soon thereafter as possible, that the person is requesting confidential treatment for the information. The person shall then submit a written request for confidential treatment within 30 days of the submission of the information. If access is requested under the Freedom of Information Act with respect to material for which no timely request for confidential treatment has been made, it may be presumed that the submitter of the information has waived any interest in asserting that the material is confidential.

* * * * *

(6) A request for confidential treatment (as distinguished from the material that is the subject of the request) shall be considered a public document unless disclosure of the request itself would reveal information exempt from disclosure. In cases in which disclosure of the request itself would reveal information exempt from disclosure, the request will not be disclosed. In all other cases, the request for confidential treatment will be disclosed. When a requester of confidential treatment deems it necessary to include, in its request for confidential treatment, information for which it seeks confidential treatment, the requester shall place that information in an appendix to the request. Information not segregated into such an appendix will be released to the public under the same considerations that the request itself will be released.

(7) On ten business days notice, a submitter shall submit a detailed written justification of a request for confidential treatment, as specified in paragraph (e) of this section. The Assistant Secretary will notify the submitter that failure to provide timely a detailed written justification will be deemed a waiver of the submitter's opportunity to appeal an adverse determination.

(8)(i) Requests for confidential treatment for any reasonably segregable material that is not exempt from public disclosure under the Freedom of Information Act as implemented in § 145.5(d) or for confidential treatment of segregable public information contained in financial reports as specified in § 1.10 shall not be processed. Except for those materials which have been designated as nonpublic in § 145.5(d), a submitter has the burden of clearly and precisely specifying the material that is the subject of his or her confidential treatment request. A submitter may be able to meet this burden in various ways, including:

(A) Segregating material for which confidential treatment is being sought;

(B) Submitting two copies of the submission: a copy from which material for which confidential treatment is being sought has been obliterated, deleted, or clearly marked; and an unmarked copy; and

(C) Clearly describing the material within a submission for which confidential treatment is being sought.

(ii) A submitter shall not employ a method of specifying the material for which confidential treatment is being sought if that method makes it unduly difficult for the Commission to read the full submission, including all portions claimed to be confidential, in its entirety.

* * * * *

(e) * * * (1) If the Assistant Secretary or his or her designee determines that a FOIA request seeks material for which confidential treatment has been requested pursuant to § 145.9, the Assistant Secretary or his or her designee shall require the submitter to file a detailed written justification of the confidential request within ten business days of that determination unless:

(i) Pursuant to an earlier FOIA request, a prior determination to release or withhold the material has been made;

(ii) The submitter has already provided sufficient information to grant the request for confidential treatment; or

(iii) The material is otherwise in the public domain.

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Appendix A to Part 145—Compilation of Commission Records Available to the Public.

6. In Appendix A remove paragraph (b)(1) and redesignate paragraphs (b)(2) through (b)(13) as (b)(1) through (b)(12), respectively; and in paragraph (g) of Appendix A remove the phrase ''from the Division of Trading and Markets, Commodity Futures Trading Commission, 300 South Riverside Plaza, suite 1600 North, Chicago, Illinois 60606 or''.

7. Amend Appendix B to Part 145 by revising paragraph (a)(3) to read as follows:

Appendix B to Part 145—Schedule of Fees.

(a) * * *

(3) The Commission uses a variety of computer systems to support its operations and store records. Older systems of records, particularly systems involving large numbers of records, are maintained on a mainframe computer. More recently, systems have been developed using small, inexpensive, shared computer systems to store records. Systems of use in particular programmatic and administrative operations may also store records on the workstation computers assigned to particular staff members. For searches of records stored on the Commission's mainframe computer, the use of computer processing time will be charged at $456.47 for each hour, $7.61 for each minute, and $0.1268 for each second of computer processing time indicated by the job accounting log printed with each search. When searches require the expertise of a computer specialist, staff time for programming and performing searches will be charged at $32.00 per hour. For searches of records stored on personal computers used as workstations by Commission staff and shared access network servers, the computer processing time is included in the search time for the staff member using that workstation as set forth in the other subsections of Appendix B, section (a).

* * * * *

PART 147—OPEN COMMISSION MEETINGS

8. The authority for part 147 continues to read:

Authority: Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b); sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j)(Supp. V, 1975)), unless otherwise noted.

§ 147.3 [Amended]

9. In § 147.3 make the following changes:

a. Remove the introductory text of paragraph (b)(4)(i).

b. In paragraphs (b)(4)(i)(A) (*2*) and (*5*) remove the following phrase: ''*Provided,* The procedure set forth in 17 CFR 1.10(g) is followed:''.

c. In paragraphs (b)(4)(i)(A) (*3*) and (*4*) remove the following phrase: '', provided, the procedure set forth in § 1.10(g) of this chapter is followed''.

d. In paragraphs (b)(4)(i)(A) (*6*) and (*7*) remove the following phrase: '', if the procedure set forth in § 1.10(g) of this chapter is followed''.

e. In paragraph (b)(4)(i)(A)(*8*) remove the following phrase: ''provided the procedure set forth in § 31.13(m) of this chapter is followed''.

Issued by the Commission.

Dated: December 11, 1996.

Jean A. Webb,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 96–31930 Filed 12–18–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 351

[Docket No. 80N–0280]

RIN 0910–AA01

Vaginal Contraceptive Drug Products for Over-the-Counter Human Use; Reopening of the Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Reopening of the administrative record.

SUMMARY: The Food and Drug Administration (FDA) is announcing the reopening of the administrative record for the proposed rulemaking for over-the-counter (OTC) vaginal contraceptive drug products to allow for comment on matters considered at the November 22, 1996, joint meeting of the Nonprescription Drugs, Reproductive Health Drugs, Anti-Infective Drugs, and Antiviral Drugs Advisory Committees. That meeting is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Submit comments regarding matters discussed at the November 22, 1996, advisory committee by March 3, 1997. The administrative record will remain open until March 3, 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: Gloria Chang, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2245.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 12, 1980 (45 FR 82014), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC vaginal contraceptive drug products, together with the recommendations of the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products (the Panel). The Panel recommended that the spermicidal ingredients nonoxynol 9 and octoxynol 9 be considered generally recognized as safe and effective (45 FR 82014 at 82028 to 82030 and 82047). The Panel also recommended final formulation in vitro testing as an adequate method to determine effectiveness (45 FR 82014 at 82047).

In the Federal Register of February 3, 1995 (60 FR 6892), the agency published a proposed rule for OTC vaginal contraceptive drug products. This proposal would require manufacturers to obtain approved applications for marketing of OTC vaginal contraceptive drug products. The agency stated that although nonoxynol 9 and octoxynol 9 kill sperm in vitro and in vivo, the spermicidal activity and resulting effectiveness of these contraceptive ingredients cannot be considered separately from a product's vehicle. Thus, clinical studies are necessary to establish the effectiveness of the spermicide's final formulation when used in humans. The agency also announced the availability of a guidance document that is intended to help manufacturers of vaginal contraceptive drug products develop data in support of applications (60 FR 6892 at 6893). The administrative record for this proposed rule closed on April 3, 1996.

In response to the proposed rule, 13 professional associations, 1 health professional, 1 trade association, 10 public health groups, 4 manufacturers, 1 consumer, and 1 research laboratory submitted comments. The majority of the comments objected to the agency's proposal to require approved applications for marketing of OTC vaginal contraceptive drug products. Copies of the comments received are on public display in the Dockets Management Branch (address above).

On September 24, 1996, FDA met with the Nonprescription Drug

Manufacturers Association (NDMA) (Ref. 1) to provide industry an opportunity to discuss its position on FDA's proposed rule for OTC vaginal contraceptive drug products. NDMA opposed the requirement of applications for these products and requested that FDA reconsider its position to reject monograph standards for OTC vaginal spermicides.

In the Federal Register of October 30, 1996 (61 FR 55990), FDA announced a joint meeting of the Nonprescription Drugs, Reproductive Health Drugs, Anti-Infective Drugs, and Antiviral Drugs Advisory Committees. The meeting took place on November 20–22, 1996, at the Holiday Inn-Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD. On November 22, 1996, the committees discussed proposals and guidance for clinical efficacy studies on marketed OTC vaginal spermicides. Issues for discussion included the type of data and quality of both in vitro and in vivo data needed to support and ensure spermicidal efficacy in final formulation.

Because the issues have a direct impact on FDA's rulemaking on OTC vaginal contraceptive drug products, the agency is reopening the administrative record to specifically allow for comments on the matters discussed at the November 22, 1996, meeting. Transcripts of the November 22, 1996, meeting may be requested (by mail or fax) from the Freedom of Information Staff (HFI–35), 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, 301–443–6310; or FAX 301–443–1726. Requests should specify date of meeting, name of committee, and a description of document(s) requested. The agency requests data and information regarding clinical efficacy studies, and in vivo and in vitro data needed to support and ensure spermicidal efficacy in final formulation. Any individual or group may, on or before March 3, 1997, submit to the Dockets Management Branch (address above), comments and data specifically limited and relevant to the matters discussed at the November 22, 1996, meeting. Two copies of any comments are to be submitted, except that individuals may submit one copy. All comments are to be identified with the docket number found in brackets in the heading of this document. The administrative record will remain open until March 3, 1997.

Reference

(1) Minutes of meeting between FDA and NDMA, September 24, 1996, coded MM1, Docket No. 80N–0280, Dockets Management Branch.

Dated: December 3, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32273 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 812

[Docket No. 96N–0299]

Investigational Device Exemptions; Treatment Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing procedures to allow for the treatment use of investigational devices. These procedures are intended to facilitate the availability of promising new therapeutic and diagnostic devices to desperately ill patients as early in the device development process as possible, i.e., before general marketing begins, and to obtain additional data on the device's safety and effectiveness. These procedures would apply to patients with serious or immediately life-threatening diseases or conditions for which no comparable or satisfactory alternative device, drug, or other therapy exists.

DATES: Submit written comments by March 19, 1997. Written comments on the information collection requirements should be submitted by January 21, 1997. FDA proposes that any final rule that may issue based on this proposal become effective 30 days after date of publication of the final rule.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Joanne R. Less, Office of Device Evaluation (HFZ–403), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of May 22, 1987 (52 FR 19466), FDA published a final rule that codified procedures authorizing the treatment use of investigational new drugs (IND's) (hereinafter referred to as the treatment IND regulation). In publishing the treatment IND regulation, FDA was responding to an increased demand from patients as well as from health professionals to permit broader availability of investigational drugs to treat serious diseases for which there were no satisfactory alternative treatments. For similar reasons, FDA is now proposing to amend its Investigational Device Exemption (IDE) regulations (part 812 (21 CFR part 812)). With minor exceptions, the proposed rule parallels the regulation for treatment use of investigational new drugs and extends those provisions to cover the treatment use of investigational devices, including diagnostic devices. The proposed rule is intended to facilitate the availability of promising new devices to patients as early in the device development process as possible while safeguarding against commercialization of the devices and ensuring the integrity of controlled clinical trials.

II. Summary of the Proposed Rule

The proposed rule amends part 812 by adding proposed § 812.36, which parallels the IND treatment use provisions contained in 21 CFR 312.34 and 312.35. The proposed rule consists of the following provisions.

A. Purpose

Proposed § 812.36(a) provides for the treatment use of investigational devices in order to facilitate the availability of promising new devices to desperately ill patients as early in the device development process as possible, before general marketing begins, and to obtain additional data on the device's safety and effectiveness.

B. Criteria

Proposed § 812.36(b) specifies that treatment use of an investigational device would only be considered when the following criteria are satisfied: (1) The device is intended to treat or diagnose a serious or immediately life-threatening disease or condition; (2) there is no comparable or satisfactory alternative device or other therapy available to treat or diagnose that stage of the disease or condition in the intended patient population; (3) the device is under investigation in a controlled clinical trial under an approved IDE, or all clinical trials have been completed; and (4) the sponsor of the controlled clinical trial is pursuing marketing approval/clearance of the

investigational device with due diligence.

An example of approved devices which would have met the proposed treatment IDE criteria are nonthoracotomy (transvenous) defibrillation leads. These leads would have met the proposed criteria because: (1) They are intended to treat immediately life-threatening conditions; i.e., sudden cardiac death and ventricular tachyarrhythmia; (2) there were no comparable or satisfactory alternative devices (no other leads could be placed in the patient without opening the chest cavity); (3) the devices were under investigation under controlled clinical trials under approved IDE's; and (4) the sponsors of the controlled clinical trials pursued marketing approval of the leads with due diligence.

1. Definitions

Proposed § 812.36(a) defines an ''immediately life-threatening disease or condition'' as a stage of a disease or condition in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment. Generally, an immediately life-threatening illness or condition is one that poses a significant threat that the patient will die from the illness or condition unless the course of the disease is promptly altered to reduce that possibility.

As in the treatment IND regulation, this definition does not mean that a clinician would have to make a prognosis with exact precision, but is meant only to provide a general yardstick for decisionmaking purposes (for example, a reasonable expectation of death within 6 months). (See 52 FR 19466 at 19467.) FDA recognizes that the medical judgment of the treating physician must carry considerable weight in deciding whether an illness poses a sufficient threat to justify treating patients with a device for which safety or effectiveness has not yet been fully demonstrated. FDA's statutory responsibility with regard to investigational devices, however, necessitates that it retain authority to review the appropriateness of treatment use and to ensure that such use does not constitute commercialization of the investigational device. Therefore, FDA will apply a common sense interpretation of the term ''immediately life-threatening,'' in that the agency would not normally consider death within more than a year to be immediately life-threatening, but would consider death within several days or several weeks to be an overly restrictive interpretation of the term. (*Id*.)

The phrase ''or in which premature death is likely without early treatment'' is intended to describe those fatal illnesses or conditions where death itself may not be imminent but where immediate treatment is necessary to prevent premature death. For example, a ventricular septal defect can lead to overloading of the right ventricle, failure of the left ventricle, and ultimately result in myocardial infarction (heart attack). Use of a septal closure device would help to prevent this progression of events and could quality, therefore, for treatment IDE use.

The stage of a disease or condition is important in determining whether it should be considered immediately life-threatening, serious, or not serious within the context of this treatment IDE regulation. For diseases such as multiple sclerosis, where some stages of the disease would not be considered serious, the regulation would not be applicable to those stages. In approving a treatment IDE, FDA will seek to define the intended patient population and, in medically appropriate cases, will limit treatment use to particular stages of a disease or condition or to patients with a particular set of symptoms.

To illustrate these categories further, the following diseases or conditions or stages of diseases would normally be considered to be immediately life-threatening: (1) Certain cardiac arrhythmias; (2) arteriovenous malformations; and (3) intracranial aneurysms.

In addition, the following would normally be considered serious diseases or conditions or serious stages of diseases: (1) Early stages of breast cancer; (2) proliferative vitreoretinopathy; and (3) advanced Parkinson's disease.

FDA recognizes that these are illustrative and not complete lists. The agency solicits suggestions for additional diseases or conditions that would provide greater breadth to these illustrative lists.

2. No Comparable or Satisfactory Alternative Device or Other Therapy

Similar to the treatment IND regulation, the absence of an alternative therapy is proposed as a prerequisite to granting a treatment IDE because one of the major principles underlying the proposed treatment IDE policy is that these devices would be necessary to fill an existing gap in the medical therapies available. (See 52 FR 19466 at 19468.) FDA recognizes that there should be flexibility in applying this concept so as to best serve desperately ill patients. The fact that the disease in question has existing approved therapies does not mean that the approved treatments are satisfactory for all patients. FDA will not be unduly restrictive in interpreting this criterion. FDA would view the criterion of no comparable or satisfactory alternative therapy as being met when there are patients who are not adequately treated by available therapies, even if the particular disease does respond in some cases to available therapy. This criterion would be met, for example, if the intended population is patients who have failed on an existing therapy (i.e., the existing therapy did not provide its intended therapeutic benefit or did not fully treat the condition); patients who could not tolerate the existing therapy (i.e., it caused unacceptable adverse effects); or patients who had other complicating diseases that made the existing therapy unacceptable (e.g., concomitant disease that makes available therapy contraindicated). The key is that the device proposed for treatment use addresses an unmet medical need in a defined patient population.

3. The Device is Under Investigation in a Controlled Clinical Trial Under an Approved IDE or All Clinical Trials Have Been Completed

To ensure that progress is being made towards a marketing application, FDA will only permit treatment use of an investigational device if the device is being studied or has been studied in a controlled clinical trial for the same use under an approved IDE. As in the treatment IND regulation, FDA expects that clinical studies will be of the kind that can reasonably be expected to provide data acceptable to FDA in determining the safety and effectiveness of the investigational device for its intended use. (See 52 FR 19466 at 19470.) Therefore, the agency would interpret the proposed regulation to mean that the controlled trial that serves as the underpinning for the treatment IDE must be sufficiently well-designed to provide such data. The agency anticipates that the controlled clinical trial would often be a concurrently controlled trial but recognizes other trial designs may be equally appropriate to establish safety and effectiveness. In a recent analysis of IDE approvals, the agency found more than 40 percent of the key clinical trials used historically controlled or self controlled designs. Thus, the term ''controlled clinical trial'' is intended to incorporate a number of different trial designs, rather than to specify any one particular design.

4. The Sponsor of the Controlled Clinical Trial is Pursuing Marketing Approval of the Investigational Device With Due Diligence

The term ''due diligence'' is intended to refer to an applicant's good faith effort to seek timely and expeditious marketing approval through actions intended to advance the progress of the clinical study or the subsequent marketing application. Pursuing marketing approval with due diligence is necessary as a precaution against the artificial prolonging of the investigational status of a device. In deciding whether a sponsor is pursuing marketing approval with due diligence, FDA will take into consideration all relevant factors. For example, full enrollment and monitoring of ongoing clinical trials(s); compliance with all IDE obligations, especially adverse reaction and annual reporting requirements; preparation and filing of a marketing application; and moving into compliance with FDA's Current Good Manufacturing Practices (CGMP's) would be considered as evidence of a sponsor's due diligence to pursue marketing approval.

C. Interpretation of Treatment IDE Criteria

FDA intends to interpret the above proposed criteria for treatment use of investigational devices in the same way FDA's Center for Devices and Radiological Health (CDRH) applies the criteria for expedited review of premarket approval applications, with which CDRH has considerable experience. FDA expects that most requests for treatment use would meet the criteria for expedited review, i.e., the device: (1) Is intended for a life-threatening or irreversibly debilitating condition for which there is no alternative therapy or for which the device provides a significant advance in safety and effectiveness over the existing alternatives; or (2) meets a specific public health need.

In addition, however, regardless of whether the device is intended to treat an immediately life-threatening or serious disease or condition, such devices may be considered for distribution under a treatment IDE only when there is promising evidence of safety and effectiveness, i.e., relatively late in the IDE process. Therefore, information that is relevant to the safety and effectiveness of the device for the intended treatment use that is available to a sponsor at the time a treatment use is requested should be submitted to the agency for review. The evidence should include relevant data gathered under the controlled clinical trial, as well as other supporting information the sponsor may have.

The criteria in this proposed rule are independent of, and should not be confused with or substituted for, the criteria to categorize IDE devices for Medicare coverage purposes. (See 60 FR 48417 at 48425, September 19, 1995.) For Medicare coverage purposes, IDE's are designated as either Category A (Experimental) or Category B (Nonexperimental/Investigational). Accordingly, Category A devices, even if given treatment IDE status, would continue to be categorized as experimental, and Category B devices would be considered to be nonexperimental only when used within the context of an approved clinical trial protocol.

D. Applications for Treatment Use

As in the treatment IND regulation, the proposed requirements for applications for treatment use would be minimal, but must be consistent with patient safety and proper use. (See 48 FR 26720 at 26729.) Each application would include, among other things, an explanation of the rationale for the use of the device; the criteria for patient selection; a description of clinical procedures, laboratory tests, or other measures to be used to monitor the effects of the device and to minimize risk; written procedures for monitoring the treatment use; information that is relevant to the safety and effectiveness of the device for the intended treatment use; and a written protocol describing the treatment use. The protocol should be written by the device firm supplying the device, with input from the clinical community and FDA as necessary to aid patient safety and proper use.

The agency recognizes that most of the information needed for a treatment IDE should already be available in the sponsor's IDE. Therefore, the additional supporting information to be submitted by the sponsor of the treatment IDE should focus on the safety and effectiveness of the device for the proposed treatment use. Applications for treatment use of an investigational device should be clearly identified as a ''Treatment IDE.''

E. FDA Action on Treatment IDE Applications

1. Approval of Treatment IDE's

Similar to the treatment IND regulations, proposed § 812.36(d)(1) provides that treatment use may begin 30 days after FDA receives the treatment IDE submission, unless FDA notifies the sponsor in writing earlier than the 30 days that the treatment use may or may not begin. FDA may approve the treatment use as proposed or approve it with modifications.

2. Disapproval or Withdrawal of Approval of Treatment IDE's

Under proposed § 812.36(d)(2)(i), FDA would have the authority to disapprove a treatment IDE if the threshold criteria proposed in § 812.36(b) are not met or the treatment IDE is incomplete, i.e., does not contain all the information proposed in § 812.36(c). FDA may also disapprove or withdraw approval of a treatment IDE if any of the grounds for disapproval or withdrawal of approval listed in § 812.30(b)(1) through (b)(5) apply.

Two additional proposed reasons for disapproval or withdrawal of approval of a treatment IDE relate to the amount of evidence necessary to support the intended treatment use. Under proposed § 812.36(d)(2)(iii), FDA may disapprove or withdraw approval of a treatment IDE for a serious disease if there is insufficient evidence of safety and effectiveness to support such use. In addition, under proposed § 812.36(d)(2)(iv), FDA may disapprove or withdraw approval of a treatment IDE for an immediately life-threatening illness if the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the device: (1) May be effective for its intended use in its intended patient population; or (2) would not expose the patients to whom the device is to be administered to an unreasonable or significant additional risk of illness or injury.

As in the treatment IND regulation, FDA believes that the severity of the disease or condition needs to weigh heavily in the decision on whether to approve the investigational device for treatment use. This is because of the different risk-benefit considerations involved in treating patients under different disease conditions; the consequences of denying treatment use for a patient in an immediately life-threatening situation are much graver than for a patient with a serious, but not immediately life-threatening condition. The agency believes that this standard needs to be interpreted so that the level of evidence needed to support treatment use in diseases that are immediately life-threatening is significantly less than that needed for device approval and may be less than what would be needed to support treatment use in diseases that are serious, but not immediately life-threatening.

In order to reflect this continuum, the agency is proposing that FDA may deny

a request for treatment use for an immediately life-threatening illness if the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the device: (a) May be effective for its intended use in its intended patient population; or (b) would not expose the patients in whom the device is to be used to an unreasonable or significant additional risk of illness or injury. The agency is proposing that FDA may deny a request for treatment use for serious, but not immediately life-threatening, disease conditions based on a finding of insufficient evidence of safety and effectiveness to support such use. For any of these disease conditions, the proposed rule provides for a standard of medical and scientific rationality—a requirement for sufficient scientific evidence on the basis of which experts reasonably could conclude that the device may be effective for the intended patient population.

The scientific evidence to be submitted in support of a treatment IDE may arise from a variety of sources. FDA expects that at least an early analysis of the data from the controlled clinical trial will ordinarily be available at the time a treatment IDE is submitted. However, FDA is committed to reviewing and considering all available evidence, including results of domestic and foreign clinical trials, animal data, and, where pertinent, in vitro data or bench testing. FDA will also consider clinical experience from outside a controlled trial, where the circumstances surrounding such experience provide sufficient indicia of scientific value.

Under proposed § 812.36(d)(2)(v), FDA may disapprove or propose to withdraw approval of a treatment IDE if there is reasonable evidence that the treatment use is impeding enrollment in, or otherwise interfering with the conduct or completion of, a controlled investigation of the same or another investigational device. As in the treatment IND regulation, FDA is concerned that the treatment IDE process does not become either a substitute for the research necessary to bring a device to market or a substitute for marketing itself. Therefore, the proposed rule incorporates specific approval criteria as well as reasons for disapproval or withdrawal of approval of a treatment IDE that reflect these agency concerns. These provisions are intended to ensure that the premarket availability of devices for treatment use does not impede the controlled clinical trial of the device or delay the timely development and submission of marketing applications for promising therapies.

Under proposed § 812.36(d)(2)(vi), FDA may disapprove or propose to withdraw approval of a treatment IDE if the device has received marketing approval or a comparable device or therapy becomes available to treat or diagnose the same indication in the same patient population for which the investigational device is being used. As previously discussed in this document, FDA believes that the proposed treatment IDE regulation can facilitate the availability of therapeutic or diagnostic tools for patients that have no other alternative available to them. However, if the treatment use device gains marketing approval/clearance, or if an alternative device becomes available for this specific indication, FDA may determine that the treatment IDE is no longer medically necessary, or needs to be restricted to patients for whom the recently approved product is not medically appropriate.

Under proposed § 812.36(d)(2)(vii), FDA may disapprove or propose to withdraw approval of a treatment IDE if the sponsor of the controlled clinical trial is not pursuing marketing approval/clearance with due diligence. As discussed in section II.B.4. of this document, pursuing marketing approval/clearance with due diligence is necessary as a precaution against the artificial prolonging of the investigational status of a device by a sponsor that is unable or unwilling to complete the clinical trial(s) and prepare a marketing application. Thus, if FDA determines that a sponsor is not demonstrating due diligence in pursuing marketing approval/clearance, FDA may disapprove or propose to withdraw approval of the treatment IDE.

Under proposed § 812.36(d)(2)(viii), FDA may disapprove or propose to withdraw approval of a treatment IDE if approval of the IDE for the clinical trial for the device has been withdrawn for reasons related to safety and effectiveness of the device. In such a situation, if FDA has determined that it is contrary to public health to allow the clinical trial of the device to continue due to issues related to safety and/or effectiveness of the device, the agency believes that treatment use of the device should also be curtailed.

Under proposed § 812.36(d)(2)(ix), FDA may disapprove a treatment IDE if the investigator(s) named in the application are not qualified by reason of their scientific training and experience to use the investigational device for the intended treatment use. While it is primarily the sponsor's responsibility to select only those investigators who are qualified to use the device under the treatment IDE, FDA may also review the qualifications of a proposed investigator if the need arises.

As with all IDE's, in addition to FDA's authority to disapprove or withdraw approval of the treatment IDE, FDA reserves the right to impose limits on the number of sites and/or patients who may receive the investigational device under a treatment use protocol. If FDA determines that it is necessary to impose limits on treatment use or to withdraw approval of the treatment IDE, the treatment IDE sponsor is responsible for ensuring that no new patients are enrolled and that the patients that had already been enrolled are followed in accordance with the treatment use protocol.

3. Notice of Disapproval or Withdrawal of Approval of Treatment IDE

Under proposed § 812.36(d)(3), FDA will follow the procedures set forth in § 812.30 if FDA disapproves or proposes to withdraw approval of a treatment IDE. In accordance with § 812.30(c), FDA will notify the sponsor in writing of FDA's decision to disapprove or propose to withdraw approval of a treatment IDE. The notice of disapproval or proposed withdrawal of approval of a treatment IDE will contain a complete statement of the reasons for disapproval or proposed withdrawal and a statement that the sponsor has an opportunity to request a part 16 hearing. FDA will provide the opportunity for a hearing before withdrawal of approval, unless FDA determines and specifies in the notice that continuation of use of the device will result in an unreasonable risk to patients and orders withdrawal of approval before any hearing.

F. Safeguards

FDA's objectives in regulating the clinical testing of new devices is the same as in regulating the clinical testing of new drugs; that is to protect the rights, safety, and welfare of human subjects involved in such testing while, at the same time, to facilitate the development and marketing of beneficial device therapies. (See 52 FR 19466 at 19468.) In order to fulfill these objectives, FDA has included in the proposed rule certain safeguards that were already in place as part of the IDE regulations and other safeguards that have been specifically designed for the proposed treatment use.

Under proposed § 812.36(e), treatment use of an investigational device is conditioned upon the sponsor and investigators complying with the IDE regulations, including distribution of

the device through qualified experts, maintenance of adequate manufacturing facilities, the submission of certain reports, and with the regulations governing informed consent (part 50 (21 CFR part 50)) and institutional review boards (21 CFR part 56).

The most significant of these safeguards are the following:

1. *The IDE regulations*. The obligations and responsibilities of the sponsor of a clinical trial also apply to the sponsor of a treatment IDE. For example, treatment IDE sponsors are responsible for maintaining control of the device by ensuring that only qualified experts receive the device under the treatment IDE protocol. Similarly, the responsibilities of a clinician using an investigational device for treatment use are the same as those imposed on an investigator participating in a clinical trial. In addition, as with investigational devices, the methods, facilities, and controls used for the manufacturing, processing, packaging, storage, and when appropriate, installation of the treatment use device must be adequate. Finally, as with all investigational devices, treatment IDE sponsor(s) or any person(s) acting for or on behalf of the treatment IDE sponsor(s) may not charge the subjects or investigators a higher price than is necessary to recover costs of research, development, manufacturing, and handling. However, because FDA is concerned that the existence of treatment IDE's may increase the risk of commercialization of investigational devices, FDA is soliciting comment on the appropriate approach to take with respect to charging for devices under a treatment IDE. Specifically, do the IDE and proposed treatment IDE regulations provide sufficient protection against commercialization? Is it appropriate for sponsors to recover research and development costs in addition to the cost of manufacturing and handling an investigational device? Should prior FDA approval of charging be required? FDA wants to adopt an approach that facilitates the availability of promising new devices to treat serious diseases early in the device development process, but does not want to undermine the integrity of controlled clinical trials or increase the likelihood that investigational products will be commercialized before safety and efficacy have been established.

2. *Submission of progress reports*. Under proposed § 812.36(f), in lieu of the annual reports required under 812.150(b)(5), the sponsor of a treatment IDE shall submit progress reports on a quarterly basis to all reviewing IRB's and FDA. See section G below for further explanation.

3. *Informed consent*. As in the treatment IND regulation, authorization to use an investigational device for treatment use is conditioned upon the practitioner obtaining the legally effective informed consent of the patient. See 52 FR 19466 at 19469. Clearly, there are risks in using experimental devices. Patients must be informed of the device's potential benefits and risks to help them decide whether the risks are appropriate and acceptable for their particular situation. Thus, the regulations governing informed consent, part 50, apply to the use of devices under a treatment IDE.

4. *IRB review*. Compliance with the IRB regulations will help to ensure that the rights, safety, and welfare of human subjects treated with an investigational device are protected, whether it be during a clinical investigation or under a treatment IDE. Therefore, FDA has determined that an IRB, either local or national, shall review and have authority to approve, require modifications to, or disapprove the treatment use of an investigational device.

G. Reporting Requirements

Under proposed § 812.36(f), in lieu of the annual reports submitted under § 812.150(b)(5), the sponsor of a treatment IDE shall submit progress reports on a quarterly basis to all reviewing IRB's and FDA. Similar to IDE progress reports, treatment use progress reports shall contain a summary of the safety and effectiveness information gathered under the treatment IDE, a summary of anticipated and unanticipated adverse device effects, the number of patients treated with the device under the treatment IDE, the names of the investigators participating in the treatment IDE, and a brief description of the sponsor's efforts to pursue marketing approval/clearance of the device. The sponsor of a treatment IDE is also responsible for submitting all other reports required under § 812.150.

III. 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.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). 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 proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

Treatment use of an investigational device will only be considered when the criteria set out in section II.B. of this document are met. FDA believes that these limitations are necessary to ensure that devices are not commercialized before FDA determines that they are reasonably safe and effective for wider distribution.

Given the limited circumstances in which a treatment use of an investigational device may be considered, FDA estimates that about six investigational devices per year will meet the criteria for treatment use. FDA believes that the requirements for applications for treatment use of an investigational device would be minimal, but must be consistent with patient safety and proper use. Because relevant information already should be available to FDA in the sponsor's IDE, limited additional information relative to the safety and effectiveness of the device for treatment use would be required in the treatment IDE application. In fact, applications for treatment use may be submitted as supplements to the IDE for the controlled clinical trial in order to eliminate the additional burden that could result if sponsors were required to submit new applications. FDA estimates that the annual cost of submitting an application for treatment use and the necessary progress reports would be about $8,000 per application. Treatment use would benefit the public health by permitting wider distribution of life-saving devices while marketing approval is pending.

The proposed rule contains very specific provisions regarding the approval criteria as well as the reasons for disapproval or withdrawal of approval of a treatment IDE. This will assist sponsors in determining whether they have met the criteria for initial and continued approval of a treatment use IDE well in advance of their applications.

For the reasons set forth above, the Commissioner of Food and Drugs certifies that the proposed 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.

V. Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for 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 proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Investigational Device Exemptions; Treatment Use.

Description: The proposed rule is intended to permit broader availability of investigational devices to treat serious diseases for which there are not satisfactory alternative treatments. Under the proposed rule, treatment use of an investigational device would only be considered when the following criteria are satisfied: (1) The device is intended to treat or diagnose a serious or immediately life-threatening disease or condition; (2) there is no comparable or satisfactory alternative device or other therapy available to treat or diagnose that stage of the disease or condition in the intended patient population; (3) the device is under investigation in a controlled clinical trial under an approved IDE, or all clinical trials have been completed; and (4) the sponsor of the controlled clinical trial is pursuing marketing approval/clearance of the investigational device with due diligence.

The proposed requirements for applications for treatment use would be minimal, but must be consistent with patient safety and proper use. Each application would include, among other things, an explanation of the rationale for the use of the device; the criteria for patient selection; a description of clinical procedures, laboratory tests, or other measures to be used to monitor the effects of the device and to minimize risk; written procedures for monitoring the treatment use; information that is relevant to the safety and effectiveness of the device for the intended treatment use; and a written protocol describing the treatment use. Sponsors of an approved treatment IDE would be required to submit quarterly progress reports.

Description of Respondents: Businesses or other for profit organizations.

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
812.36(c)	6	1	6	120	720
812.36(f)	6	4	24	20	480
Total					1,200

There are no operating and maintenance costs or capital costs associated with this information collection.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted the collections of information contained in the proposed rule to OMB for review. Other organizations and individuals should submit comments on the information collection requirements by January 21, 1997, and should direct them to the Office of Information and Regulatory Affairs, OMB (address above).

Lists of Subjects in 21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 812 be amended as follows:

Part 812—Investigational Device Exemptions

1. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 702, 704, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

2. New § 812.36 is added to subpart B to read as follows:

§ 812.36 Treatment use of an investigational device.

(a) *General.* A device that is not approved for marketing may be under clinical investigation for a serious or immediately life-threatening disease or condition in patients for whom no comparable or satisfactory alternative device or other therapy is available. During the clinical trial or prior to final action on the marketing application, it may be appropriate to use the device in the treatment of patients not in the trial under the provisions of a treatment investigational device exemption (IDE). The purpose of this section is to facilitate the availability of promising new devices to desperately ill patients as early in the device development process as possible, before general marketing begins, and to obtain additional data on the device's safety and effectiveness. In the case of a serious disease, a device ordinarily may be made available for treatment use under this section after all clinical trials have been completed. In the case of an immediately life-threatening disease, a device may be made available for treatment use under this section prior to the completion of all clinical trials. For the purpose of this section, an ''immediately life-threatening'' disease means a stage of a disease in which there is a reasonable likelihood that

death will occur within a matter of months or in which premature death is likely without early treatment. For purposes of this section, ''treatment use'' of a device includes the use of a device for diagnostic purposes.

(b) *Criteria*. FDA shall consider the use of an investigational device under a treatment IDE if:

(1) The device is intended to treat or diagnose a serious or immediately life-threatening disease or condition;

(2) There is no comparable or satisfactory alternative device or other therapy available to treat or diagnose that stage of the disease or condition in the intended patient population;

(3) The device is under investigation in a controlled clinical trial under an approved IDE, or such clinical trials have been completed; and

(4) The sponsor of the investigation is actively pursuing marketing approval/clearance of the investigational device with due diligence.

(c) *Applications for treatment use*. (1) A treatment IDE application shall include, in the following order:

(i) The name, address, and telephone number of the sponsor of the treatment IDE;

(ii) The intended use of the device, the criteria for patient selection, and a written protocol describing the treatment use;

(iii) An explanation of the rationale for use of the device, including, as appropriate, either a list of the available regimens that ordinarily should be tried before using the investigational device or an explanation of why the use of the investigational device is preferable to the use of available marketed treatments;

(iv) A description of clinical procedures, laboratory tests, or other measures that will be used to evaluate the effects of the device and to minimize risk;

(v) Written procedures for monitoring the treatment use and the name and address of the monitor;

(vi) Instructions for use of the device and all other labeling as required under § 812.5(a) and (b);

(vii) Information that is relevant to the safety and effectiveness of the device for the intended treatment use. Information from other IDE's may be incorporated by reference to support the treatment use;

(viii) A statement of the sponsor's commitment to meet all applicable responsibilities under this part and part 56 of this chapter and to assure compliance of all participating investigators with the informed consent requirements of part 50 of this chapter; and

(ix) An example of the agreement to be signed by all investigators participating in the treatment IDE and certification that no investigator will be added to the treatment IDE before the agreement is signed.

(2) A licensed practitioner who receives an investigational device for treatment use under a treatment IDE is an ''investigator'' under the IDE and is responsible for meeting all applicable investigator responsibilities under this part and parts 50 and 56 of this chapter.

(d) *FDA action on treatment IDE applications*. (1) Approval of treatment IDE's. Treatment use may begin 30 days after FDA receives the treatment IDE submission at the address specified in § 812.19, unless FDA notifies the sponsor in writing earlier than the 30 days that the treatment use may or may not begin. FDA may approve the treatment use as proposed or approve it with modifications.

(2) Disapproval or withdrawal of approval of treatment IDE's. FDA may disapprove or withdraw approval of a treatment IDE if:

(i) The criteria specified in § 812.36(b) are not met or the treatment IDE does not contain the information required in § 812.36(c);

(ii) FDA determines that any of the grounds for disapproval or withdrawal of approval listed in § 812.30(b)(1) through (b)(5) apply;

(iii) The device is intended for a serious disease or condition and there is insufficient evidence of safety and effectiveness to support such use;

(iv) The device is intended for an immediately life-threatening disease or condition and the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the device:

(A) May be effective for its intended use in its intended population; or

(B) Would not expose the patients to whom the device is to be administered to an unreasonable or significant additional risk of illness or injury;

(v) There is reasonable evidence that the treatment use is impeding enrollment in, or otherwise interfering with the conduct or completion of, a controlled investigation of the same or another investigational device;

(vi) The device has received marketing approval clearance or a comparable device or therapy becomes available to treat or diagnose the same indication in the same patient population for which the investigational device is being used;

(vii) The sponsor of the controlled clinical trial is not pursuing marketing approval/clearance with due diligence;

(viii) Approval of the IDE for the controlled clinical investigation of the device has been withdrawn; or

(ix) The clinical investigator(s) named in the treatment IDE are not qualified by reason of their scientific training and/or experience to use the investigational device for the intended treatment use.

(3) Notice of disapproval or withdrawal. If FDA disapproves or proposes to withdraw approval of a treatment IDE, FDA will follow the procedures set forth in § 812.30(c).

(e) *Safeguards*. Treatment use of an investigational device is conditioned upon the sponsor and investigators complying with the safeguards of the IDE process and the regulations governing informed consent (part 50 of this chapter) and institutional review boards (part 56 of this chapter).

(f) *Reporting Requirements*. In lieu of the annual reports required under § 812.150(b)(5), the sponsor of a treatment IDE shall submit progress reports on a quarterly basis to all reviewing IRB's and FDA. These reports shall be based on the period of time since initial approval of the treatment IDE and shall include a summary of the safety and effectiveness information gathered under the treatment IDE, a summary of anticipated and unanticipated adverse device effects, the number of patients treated with the device under the treatment IDE, the names of the investigators participating in the treatment IDE, and a brief description of the sponsor's efforts to pursue marketing approval/clearance of the device. The sponsor of a treatment IDE is responsible for submitting all other reports required under § 812.150.

§ 812.150 [Amended]

3. Section 812.150 *Reports* is amended by revising paragraph (b)(5) to read as follows:

* * * * *

(b) * * *

(5) *Progress reports*. At regular intervals, and at least yearly, a sponsor shall submit progress reports to all reviewing IRB's. In the case of a significant risk device, a sponsor shall also submit progress reports to FDA. In lieu of the annual reports, a sponsor of a treatment IDE shall submit

progress reports on a quarterly basis to all reviewing IRB's and FDA in accordance with § 812.36(f).

* * * * *

Dated: December 11, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–32186 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2704

Implementation of Equal Access to Justice Act in Commission Proceedings

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Mine Safety and Health Review Commission is proposing to revise its rules providing for the award of attorneys' fees and other expenses under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504, applicable to eligible individuals and entities who are parties to administrative proceedings before the Commission. The proposed revisions to the rules are in response to amendments to the EAJA, enacted pursuant to Public Law 104–121, 110 Stat. 862 (1996), and effective on March 29, 1996. The proposed rules authorize fee awards under a newly-defined standard—when the Secretary of Labor's demand is substantially in excess of the decision of the Commission and is unreasonable when compared to that decision. The proposed rules also expand the definition of a ''party'' eligible for an award under this new standard to include ''a small entity'' as defined by 5 U.S.C. 601. The maximum hourly rate for attorneys' fees in all EAJA cases before the Commission is increased to $125. Finally, the Commission is revising its rules to provide that parties submit EAJA applications to the Chief Administrative Law Judge instead of the Chairman. The Commission invites public comments on these proposed rules.

DATES: Comments should be received by January 21, 1997.

ADDRESSES: Comments should be sent to Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006. For the convenience of persons who will be reviewing the comments, it is requested that commenters provide an original and three copies of their comments.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, Office of the General Counsel, 1730 K Street, NW, 6th Floor, Washington, DC 20006, telephone 202–653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Commission's present rules, the EAJA applies to administrative adjudications, brought pursuant to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.*, in which an eligible party prevails over the Department of Labor's Mine Safety and Health Administration. 29 CFR 2704.100 and 2704.103. Prior to the enactment of Public Law 104–121, prevailing parties could receive awards if they met the EAJA's eligibility standards (which set ceilings on the net worth and number of employees) and if the government's position was not ''substantially justified.''

Public Law 104–121 creates an additional standard under which eligible parties can obtain fees in administrative adjudications. The EAJA amendments authorize an award when a government ''demand'' is both ''substantially in excess of the decision of the adjudicative officer'' and ''unreasonable.'' *Id.* at 231(a). Under this standard, if the demand by the Secretary of Labor is substantially in excess of the judgment finally obtained by the Secretary and is unreasonable when compared with that judgment under the facts and circumstances of the case, the Commission shall award to the opposing party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. *Id.*

Public Law 104–121 also establishes a separate definition of a ''party'' for fee awards under the new standard. Parties that are eligible to apply for awards include ''small entit[ies] as defined in section 601 [of title 5].'' *Id.* at 231(b)(2). Title 5 U.S.C. 601(6) provides that ''small entity'' has ''the same meaning as the term[ ] 'small business'. . . .'' In turn, a ''small business'' is defined at 5 U.S.C. 601(3) as a ''small business concern'' under section 3 of the Small Business Act (15 U.S.C. 632). Section 632(a) authorized the Small Business Administration (SBA) to establish standards to specify when a business concern is ''small.'' The SBA has recently issued updated size standards for various types of economic activity, categorized by the Standard Industrial Classification System (SIC). 13 CFR 121.105. In defining the standards for small businesses engaged in mining, the SBA regulations count either annual receipts or numbers of employees. The number of employees or annual receipts specified is the maximum allowed for a concern and its affiliates to be considered small. 13 CFR 121.201. The standards for the mining industry are as follows:

DIVISION B—MINING:	
MAJOR GROUP 10—METAL MINING.	500 employees.
MAJOR GROUP 12—COAL MINING.	500 employees.
MAJOR GROUP 14—MINING AND QUARRYING OF NON-METALLIC MINERALS, EXCEPT FUELS.	500 employees.
EXCEPT:	
1081 Metal Mining Services.	$5 million.
1241 Coal Mining Services.	$5 million.
1481 Nonmetallic Minerals Services, Except Fuels.	$5 million.

13 CFR 121.201.

Finally, Public Law 104–121 increases the maximum fee award of an attorney or agent from $75.00 to $125.00 per hour. *Id.* at 231(b)(1).

II. Analysis of the Regulations

The present language of § 2704.100 providing for fee awards to prevailing parties when the Secretary's position is not substantially justified is unchanged. The Commission proposes to add new language to the rule to provide that an eligible party may receive an award if the demand of the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with that decision, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. For purposes of this part, a decision of the Commission includes not only a decision by the Commission but also a decision by an administrative law judge that becomes final by operation by law.

The present language of § 2704.102 is revised to specify that recovery under the prevailing party standard is available for any adversary adjudication commenced before the Commission after August 5, 1984. Proposed language provides that, where an applicant seeks an award based on a substantially excessive and unreasonable demand of

the Secretary, the adversary adjudication before the Commission must have commenced on or after March 29, 1996, the effective date of the EAJA amendments.

In § 2704.104(a) the Commission proposes to restate the reference to 5 U.S.C. 551(3), which defines ''party'' in the Administrative Procedure Act. The Commission proposes to add new language referring to the eligibility conditions specified in paragraphs (b) and (c).

Section 2704.104(b) states the eligibility requirements for an applicant seeking an award based on prevailing party status. The requirements in the present paragraph (b) are proposed in renumbered form with one exception; references to charitable or tax exempt organizations and units of local government have been deleted, because it is not apparent that such organizations have ever been involved in a Mine Act proceeding. Paragraph (c) states the standards for an applicant seeking an award based on a substantially excessive and unreasonable demand by the Secretary. Such an applicant must be a small entity as defined in 5 U.S.C. 601. To qualify as a small business under 5 U.S.C. 601(3), the applicant must meet the requirements for a small mining business concern as set forth by the SBA at 13 CFR 121.104, 121.106 and 121.201. Title 13 CFR 121.106 details the SBA's methodology of counting employees, which differs from the Commission's present rule for counting employees for purposes of determining eligibility of a prevailing party.

The Commission proposes that it not reiterate the specific SBA standards for ascertaining whether a mining operation is ''small'' because those standards are subject to revision periodically by the SBA. Instead, the Commission proposes to notify the mining community, by Federal Register publication, of changes in the SBA standards as they occur. The Commission has omitted any reference to other types of small entities contained in 5 U.S.C. 601, including ''small organization,'' which pertains to not-for-profit enterprises, and ''small governmental jurisdiction,'' 5 U.S.C. 601(4) and (5), because it is unlikely that any of these organizations will be involved in proceedings under the Mine Act.

The Commission proposes to redesignate § 2704.104(c) through (g) and amend paragraphs (c) and (f), in conformance with the EAJA amendments relating to eligibility, by adding language to the present rules. Under proposed paragraph (d), the annual receipts, number of employees or net worth of the applicant, as applicable, shall be determined as of the date the underlying proceeding was initiated under the Mine Act. Under proposed paragraph (g), the annual receipts, numbers of employees or net worth, as applicable, of the applicant and its affiliates shall be aggregated to determine eligibility. The Commission proposes to leave unchanged, except for redesignating, current paragraphs (d), (e), and (g).

Section 2704.105(a) sets forth the standards for an applicant seeking an award based on prevailing party status and is unchanged except that it is amended to include the sentence regarding denial or reduction of an award because of unreasonable protraction in the proceedings or special circumstances that is presently in paragraph (b).

The proposed language in § 2704.105(b) tracks the language of Public Law 104–121 at section 231(a) and provides that, if the demand of the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision, under the facts and circumstances of the case, the Commission shall award to an eligible party applicant fees and expenses related to defending against the excessive demand. Nevertheless, an award may not be made if the applicant has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. Whether the applicant has unduly or unreasonably protracted the underlying proceeding may also be considered. The proposed language provides that the burden of proof is on the applicant to show that the demand of the Secretary is substantially excessive and unreasonable. The rule also defines ''demand'' by tracking language in the EAJA amendments, Public Law 104–121 at section 231(b)(5)(F). While the statutory language might suggest that the new standard of awards is limited to penalty cases, that issue is best left to resolution in individual case adjudication.

In conformity with the EAJA amendments, § 2704.106(b) is amended to provide that the maximum award for fees of an attorney or agent is $125.00 per hour.

Section 2704.107(a) is amended to reflect that the highest award for fees of an attorney or agent is $125.00 per hour. The term ''agent'' is added to the present rule to bring the rule into conformity with the statutory language.

The present language of § 2704.108 provides for awards only to prevailing parties in cases where the Secretary's position is not substantially justified. The Commission proposes to amend the rule to add a reference to the new standard for recovery in the EAJA amendments set forth in § 2704.105(b). The rule provides that, if an applicant is entitled to an award under either standard in § 2704.105, the award shall be made by the Commission against the Department of Labor.

Proposed § 2704.201 designates the Chief Administrative Law Judge as the Commission official to whom EAJA applications are submitted, revising the present procedure requiring submission of applications to the Chairman. The Commission further proposes to amend present § 2704.201(a) and (b) by moving their major portions relating to the contents of an application by a prevailing party to § 2704.202. The remaining portions of the proposed rule set forth the information common to applications based on either prevailing party status or a substantially excessive and unreasonable demand by the Secretary and are a redesignation of major portions of present § 2704.201(a) to (f).

In § 2704.202(a) the Commission proposes to amend the present rule by adding the requirements presently in § 2704.201(a) for an EAJA application by a prevailing party. Present § 2704.202(b) is redesignated as § 2704.204.

Proposed § 2704.202(b) is primarily a redesignation of present § 2704.201(b) concerning the applicant's net-worth exhibit. Language from present § 2704.201(b) permitting a tax-exempt organization to omit a net-worth statement has not been retained because of the low likelihood that such an organization would ever be a party to a Commission proceeding.

Present § 2704.203 is redesignated as § 2704.205. Proposed § 2704.203(a) amends the present rule by adding the new standard for recovery. Proposed § 2704.203(b) provides that the application must show that the applicant is a small entity as defined in 5 U.S.C. 601(6). Paragraph (b) also refers to the SBA regulations at 13 CFR Part 121 and provides that the application shall include a statement of the applicant's annual receipts or number of employees, where the applicant seeks eligibility based on being a small business. Paragraph (b) requires a brief description of the type and purpose of the applicant's organization or business. Because the EAJA amendments rely on the SBA's definition of ''small business concern,'' and because the SBA has defined small business concerns engaged in mining in terms of annual receipts or number of employees and has set forth its methodology for

calculating the annual receipts or number of employees (13 CFR 121.104 and 121.106), the Commission intends that parties be guided by those regulations in meeting the SBA's standards of annual receipts or number of employees to qualify as a ''small business.''

Present § 2704.204 is redesignated as § 2704.206. Proposed § 2704.204 is a redesignation of § 2704.202(b). In addition, the Commission proposes to modify the language in present § 2704.202(b) for regulating the public disclosure of financial information in the networth and annual receipts exhibits. Present § 2704.202(b) only relates to the net-worth exhibit.

Proposed § 2704.205 is a redesignation of present § 2704.203.

Proposed § 2704.206 is a redesignation of § 2704.204. Paragraph (a) adds new language that an application may also be filed when a demand by the Secretary is substantially in excess of the decision finally obtained in the case and unreasonable. In addition, language has been added to provide for the filing of EAJA applications with the Commission 30 days after final disposition by a court in the event that an applicant wishes to file in light of the court's disposition. *See Dole* v. *Phoenix Roofing, Inc.*, 922 F.2d 1202 (5th Cir. 1991). Section 2704.206(b) proposes language to include the new standard for recovery. Section 2704.206(c) is changed to delete an inadvertent reference to section 105(a) of the Mine Act, 30 U.S.C. 815(a), in the definition of final Commission dispositions in the present rule; in addition, references to Commission EAJA decisions in § 2704.307 and 2704.308 are deleted.

Proposed § 2704.305 eliminates ''prevailing'' from present § 2704.305 to reflect that an EAJA award is no longer limited to proceedings involving a prevailing party but includes those proceedings in which the Secretary has made a substantially excessive and unreasonable demand.

Because an EAJA award is no longer limited to a prevailing party, language has been added to § 2704.307 to provide for the issuance of written findings and conclusions covering whether the applicant has been subjected to a substantially excessive and unreasonable demand. Commission judges are instructed to make specific findings depending on whether the application was filed pursuant to § 2704.105 (a) or (b).

III. Matters of Regulatory Procedure

The Commission has determined that these rules are not subject to Office of Management and Budget review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–612) that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in CFR Part 2704

Administrative practice and procedure, Equal access to justice.

For the reasons set out in the preamble, it is proposed that 29 CFR part 2704 be amended as follows:

PART 2704—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COMMISSION PROCEEDINGS

1. The authority citation for part 2704 is revised to read as follows:

Authority: Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99–80, 99 Stat. 183; Pub. L. 104–121, 110 Stat. 862.

Subpart A—General Provisions

2. Section 2704.100 is revised to read as follows:

§ 2704.100 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before this Commission. An eligible party may receive an award when it prevails over the Department of Labor, Mine Safety and Health Administration (MSHA), unless the Secretary of Labor's position in the proceeding was substantially justified or special circumstances make an award unjust. In addition to the foregoing ground of recovery, an eligible party may receive an award if the demand of the Secretary is substantially in excess of the decision, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The rules in this part describe the parties eligible for each type of awards. They also explain how to apply for awards, and the procedures and standards that this Commission will use to make the awards.

3. Section 2704.102 is revised to read as follows:

§ 2704.102 Applicability.

Section 2704.105(a) applies to adversary adjudications before the Commission pending or commenced on or after August 5, 1984. Section 2704.105(b) applies to adversary adjudications commenced on or after March 29, 1996.

4. Section 2704.104 is amended by revising paragraphs (b) through (e) and removing paragraphs (f) and (g) to read as follows:

§ 2704.104 Eligibility of applicants.

* * * * *

(b) For purposes of awards under § 2704.150(a) for prevailing parties:

(1) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis;

(2) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the administrative law judge determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the administrative law judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(3) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant prevails are related primarily to personal interests rather than to business.

(4) The types of eligible applicants are as follows—

(i) An individual with a net worth of not more than $2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and employs not more than 500 employees;

(iii) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $7 million and not more than 500 employees;

(c) For the purposes of awards under § 2704.105(b), eligible applicants are small entities as defined in 5 U.S.C. 601, subject to the annual-receipts and number-of-employees standards as set forth by the Small Business Administration at 30 CFR part 121;

(d) For the purpose of eligibility, the net worth, number of employees, or annual receipts of an applicant, as applicable, shall be determined as of the date the underlying proceeding was initiated under the Mine Act.

(e) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

5. Section 2704.105 is revised as follows:

§ 2704.105 Standards for awards.

(a) A prevailing applicant may receive an award of fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Secretary was substantially justified. The position of the Secretary includes, in addition to the position taken by the Secretary in the adversary adjudication, the action or failure to act by the Secretary upon which the adversary adjudication is based. The burden of proof that an award should not be made to a prevailing applicant because the Secretary's position was substantially justified is on the Secretary, who may avoid an award by showing that his position was reasonable in law and fact. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the underlying proceeding or if special circumstances make the award unjust.

(b) If the demand of the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision, under the facts and circumstances of the case, the Commission shall award to an eligible applicant the fees and expenses related to defending against the excessive demand, unless the applicant has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. The burden of proof that the demand of the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision is on the applicant. As used in this section, ''demand'' means the express demand of the Secretary which led to the adversary adjudication, but does not include a recitation by the Secretary of the maximum statutory penalty—

(1) In the administrative complaint, or

(2) Elsewhere when accompanied by an express demand for a lesser amount.

6. Section 2704.106(b) is revised to read as follows:

§ 2704.106 Allowable fees and expenses.

* * * * *

(b) No award for the fee of an attorney or agent under this part may exceed $125.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Secretary of Labor pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item if the attorney, agent or witness ordinarily charges clients separately for such expenses.

* * * * *

7. Section 2704.107(a) is revised to read as follows:

§ 2704.107 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may adopt regulations providing that the fees of an attorney or agent may be awarded at a rate higher than $125.00 per hour in some or all of the types of proceedings covered by this part.

* * * * *

8. Section 2704.108 is revised to read as follows:

§ 2704.108 Awards.

If an applicant is entitled to an award because it has met its burden of proof under § 2704.105 (a) or (b), the award shall be made by the Commission against the Department of Labor.

9. Subpart B is revised to read as follows:

Subpart B—Information Required From Applicants

Sec.

Subpart B—Information Required From Applicants

§ 2704.201 Contents of application—in general.

(a) An application for an award of fees and expenses under the Act shall be made to the Chief Administrative Law Judge of the Commission at 1730 K Street NW, 6th Floor, Washington, DC 20006. The application shall identify the applicant and the underlying proceeding for which an award is sought.

(b) The application shall state the amount of fees and expenses for which an award is sought.

(c) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(d) The application should be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(e) Upon receipt of an application, the Chief Administrative Law Judge shall immediately assign it for disposition to the administrative law judge who presided over the underlying Mine Act proceeding.

§ 2704.202 Contents of application—where the applicant has prevailed.

(a) An application for an award under § 2704.105(a) shall show that the applicant has prevailed in a significant and discrete substantive portion of the underlying proceeding and identify the position of the Department of Labor in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application also shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants including their affiliates, as described in § 2704.104(b)(2) of this part).

(c) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as described in § 2704.104(b)(2) of this part) when the underlying proceeding was initiated. The exhibit may be in any form convienient to the applicant that

provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge may require an applicant to file additional information to determine its eligibility for an award.

§ 2704.203 Contents of application—where the Secretary's demand is substantially in excess of the judgment finally obtained and unreasonable.

(a) An application for an award under § 2704.105(b) shall show that the Secretary's demand is both substantially in excess of the decision of the Commission and is unreasonable when compared with such decision.

(b) The application shall show that the applicant is a small entity as defined in 5 U.S.C. 601(6) and must conform with the standards of the Small Business Administration at 13 CFR 121.201 for mining entities. The application shall include a statement of the applicant's annual receipts or number of employees, as applicable, in conformance with the requirements of 13 CFR 121.104 and 121.106. The application shall describe briefly the type and purpose of its organization or business.

§ 2704.204 Confidential financial information.

Ordinarily, the net-worth and annual receipts exhibits will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of such exhibits and believes there are legal grounds for withholding the information from disclosure may submit that portion of the exhibit directly to the administrative law judge in a sealed envelope labeled ''Confidential Financial Information,'' accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the Secretary of Labor against whom the applicant seeks an award, but need not be served on any other party to the proceeding. If the administrative law judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the established procedures under the Freedom of Information Act (29 CFR part 2702).

§ 2704.205 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the underlying proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 2704.206 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the underlying proceeding or in a significant and discrete substantive portion of that proceeding. An application may also be filed when a demand by the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision. In no case may an application be filed later than 30 days after the Commission's final disposition of the underlying proceeding, or 30 days after issuance of a court judgment this is final and nonappealable in any Commission adjudication that has been appealed pursuant to section 106 of the Mine Act, 30 U.S.C. 816.

(b) If review or reconsideration is sought or taken of a decision on the merits as to which an applicant has prevailed or has been subjected to a demand from the Secretary substantially in excess of the decision of the Commission and unreasonable when compared to that decision, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this part, final disposition before the Commission means the date on which a decision in the underlying proceeding on the merits becomes final under sections 105(d) and 113(d) of the Mine Act (30 U.S.C. 815(d), 823(d)).

Subpart C—Procedures for Considering Applications

10. Section 2704.305 is revised to read as follows:

§ 2704.305 Settlement.

If an applicant and counsel for the Secretary agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

11. Section 2704.307 is revised to read as follows:

§ 2704.307 Decision of administrative law judge.

The administrative law judge shall issue an initial decision on the application within 75 days after completion of proceedings on the application. In all decisions on applications, the administrative law judge shall include written findings and conclusions on the applicant's eligibility, an explanation of the reasons for any difference between the amount requested and the amount awarded. As to applications filed pursuant to § 2704.105(a), the administrative law judge shall also include findings on the applicant's status as a prevailing party and whether the position of the Secretary was substantially justified; if at issue, the judge shall also make findings whether the applicant unduly protracted or delayed the underlying proceeding or whether special circumstances make the award unjust. As to applications filed pursuant to § 2704.105(b), the administrative law judge shall include findings that the Secretary made a demand that is substantially in excess of the decision of the Commission and unreasonable when compared with that decision; if a issue, the judge shall also make findings whether the applicant has committed a willful violation of the law or otherwise acted in bad faith or whether special circumstances make the award unjust. The initial decision by the administrative law judge shall become final 40 days after its issuance unless review by the Commission is ordered under § 2704.308 of this part.

Issued this 6th day of December, 1996 at Washington, D.C.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 96-31631 Filed 12–18–96; 8:45am]

BILLING CODE 6735–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC11

Outer Continental Shelf Civil Penalties

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPR) would revise MMS regulations governing the Outer Continental Shelf (OCS) Civil Penalty Program. MMS is amending these regulations to clarify and simplify assessing and collecting OCS civil penalties. In addition, MMS is adjusting the maximum civil penalty per day per violation from $20,000 to $25,000 due to inflation.

DATES: MMS will consider all comments received by March 19, 1997. Any comments received after March 19, 1997 may not be fully considered.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Greg Gould, Program Coordinator, telephone (703) 787–1591 or fax (703) 787–1575.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA 90), (Pub.L. 101–380) expanded and strengthened MMS's authority to impose penalties for violating its regulations.

Section 8201 of OPA 90 authorizes the Secretary of the Interior (Secretary) to assess a civil penalty without providing notice and time for corrective action where a failure to comply with applicable regulations results in a threat of serious, irreparable, or immediate harm or damage to human life or the environment.

The goal of the MMS OCS Civil Penalty Program is to ensure safe and clean operations on the OCS. By pursuing, assessing, and collecting civil penalties, the program is designed to encourage compliance with OCS statutes and regulations.

Not all regulatory violations warrant a review to initiate civil penalty proceedings. However, violations that cause injury, death, or environmental damage, or pose a threat to human life or the environment, will trigger such review. Examples of such violations include:

- Unsafe and unworkmanlike operations involving injury to humans or pollution.
- Safety devices; e.g., surface and subsurface safety valves, emergency shut-down systems, etc. that are:

(a) Bypassed or removed without (1) a valid reason, (2) prior approval, or (3) lockout-tagout, flagging or monitoring, or

(b) Inoperable (i.e., failures) but are left in service without repair.

The provisions of OPA 90, amending the regulations at 30 CFR part 250, Subpart N, were published as a notice of final rulemaking the Federal Register on May 13, 1991. As of February 1996, MMS had

- Initiated 87 compliance reviews that resulted in 78 civil penalty cases,
- Assessed 41 civil penalties, and
- Collected over $346,292 in fines.

Fourteen cases were dismissed, and 23 are still in review.

Over the past several years, MMS has had internal reviews of the OCS Civil Penalty Program. These reviews resulted in a rewrite of the regulations at 30 CFR part 250, Subpart N to simplify the language into ''plain English.'' The new question-and-answer format should provide a better understanding of the OCS civil penalty process.

Besides simplifying the regulations, MMS is proposing to increase the maximum civil penalty to $25,000 per day per violation. The provisions of OPA 90 require the Secretary to adjust at least every 3 years the maximum civil penalty to reflect any increases in the Consumer Price Index for all-urban consumers (CPI–U) as prepared by the Department of Labor.

In accord with Public Law 101–410, MMS divided the August 1995 CPI–U by the August 1990 CPI–U. The resulting value was multiplied by the current maximum civil penalty, rounding the new value to the nearest $5,000 (152.5/131.6=1.159; 1.159x20,000=23,180) we rounded $23,180 to $25,000.

Author: Greg Gould, Inspection and Enforcement Branch, MMS, prepared this document.

Executive Order (E.O.) 12866

This rule is significant under E.O. 12866 and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Department of the Interior (DOI) determined that this NPR will not have a significant effect on a substantial number of small entities. In general, the entities that engage in offshore activities are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities. The DOI also determined that the indirect effects of this NPR on small entities that provide support for offshore activities are small.

Paperwork Reduction Act

The NPR does not contain collections of information that require approval by OMB under 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment

The DOI determined that this NPR does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, DOI does not need to prepare a Takings Implication Assessment pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Unfunded Mandate Reform Act of 1995

This NPR does not contain any unfunded mandates to State, local, or tribal governments or the private sector.

E.O. 12988

The DOI has certified to OMB that the rule meets the applicable reform standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

National Environmental Policy Act

The DOI determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: October 2, 1996.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons in the preamble, Minerals Management Service (MMS) proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. Authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. Subpart N is revised to read as follows:

Subpart N—Outer Continental Shelf (OCS) Civil Penalties

Subpart N—Outer Continental Shelf (OCS) Civil Penalties

§ 250.200 Initiation of civil penalty process.

Whenever MMS determines, on the basis of available evidence, that a violation may have occurred, it will prepare a case file. MMS will appoint a Reviewing Officer.

§ 250.201 Index table.

The following table is an index of the sections in this subpart:

TABLE § 250.201

	Section
Definitions	250.202
What is the maximum civil penalty?	250.203
Which violations will MMS review for potential civil penalties?	250.204
When is a case file developed?	250.205
When will MMS notify me and provide penalty information?	250.206
May I request a meeting with the MMS Reviewing Officer?	250.207
When will I be notified of the Reviewing Officer's decision?	250.208
What are my appeal rights?	250.209

§ 250.202 Definitions.

Terms used in this subpart have the following meaning:

Case file means an MMS document file containing information and the record of evidence related to the alleged violation.

Civil penalty is a fine. It is an MMS regulatory enforcement tool used in addition to Notices of Incidents of Noncompliance and directed suspensions of production or other operations.

I, me in a question or *you* in a response means the person, or agent of a person engaged in oil, gas, sulphur, or other minerals operations in the Outer Continental Shelf (OCS).

Person means, in addition to a natural person, an association (including partnerships and joint ventures), a State, a political subdivision of a State, or a private, public, or municipal corporation.

Reviewing Officer means an MMS employee assigned to review case files and assess civil penalties.

Violation means failure to comply with the Outer Continental Shelf Lands Act (OCSLA) or any other applicable laws, with any regulations issued under the OCSLA, or with the terms or provisions of leases, licenses, permits, rights-of-way, or other approvals issued under the OCSLA.

Violator is a person who fails to comply with the OCSLA or any other applicable laws, with any regulations, or the terms or provisions of leases or rights-of-way, licenses, permits, or other approvals issued under the OCSLA.

§ 250.203 What is the maximum civil penalty?

The maximum civil penalty is $25,000 per day per violation.

§ 250.204 Which violations will MMS review for potential civil penalties?

MMS will review each of the following violations for potential civil penalties:

(a) Violations that you don't correct within the period MMS grants;

(b) Violations that MMS determines may constitute a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment; or

(c) Violations that cause serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

§ 250.205 When is a case file developed?

MMS will develop a case file during its investigation of the violation, and forward it to an MMS Reviewing Officer if any of the conditions in § 250.204 exist. The Reviewing Officer will review the case file and determine if a civil penalty is appropriate. The Reviewing Officer may administer oaths and issue subpoenas requiring witnesses to attend meetings, submit depositions, or produce evidence.

§ 250.206 When will MMS notify me and provide penalty information?

If the MMS Reviewing Officer determines that a civil penalty should be assessed, the Reviewing Officer will send the violator a letter of notification. The letter of notification will include:

(a) The amount of the proposed civil penalty;

(b) Information on the alleged violation(s); and

(c) Instructions on how to obtain a copy of the case file.

§ 250.207 How do I respond to the letter of notification?

(a) You have 30 calendar days after you receive the Reviewing Officer's letter to either:

(1) Request, in writing, a meeting the MMS Reviewing Officer;

(2) Submit additional information; or

(3) Pay the proposed civil penalty.

(b) The Reviewing Officer's letter will include instructions for scheduling a meeting, submitting information, or paying the penalty.

§ 250.208 When will I be notified of the Reviewing Officer's decision?

At the end of the 30-day response period, the MMS Reviewing Officer will review the case file, including all information you submitted, and send you a decision. The decision will include the amount of any final civil penalty and the basis for the civil penalty. Instructions for paying the civil penalty will be included in the decision.

§ 250.209 What are my appeal rights?

When you receive the Reviewing Officer's decision, you must either pay the penalty or file an appeal with MMS under part 290 of this chapter. If you do not either pay the penalty or file a timely appeal, MMS will take one or more the following actions:

(a) MMS will collect the amount you were assessed, plus interest, late payment charges, and other fees as provided by law, from the date of assessment until the date MMS receives payment.

(b) MMS may initiate additional enforcement proceedings including, if appropriate, cancellation of the lease, right-of-way, license, permit, or approval, or the forfeiture of a bond under this part.

(c) MMS may bar you from doing further business with the Federal Government.

[FR Doc. 96–31797 Filed 12–18–96; 8:45 am]
BILLING CODE 4310–MR–M

Bureau of Land Management

43 CFR Parts 6300 and 8560

[WO–420–1060–00–24 1A]

RIN 1004–AB69

Wilderness Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to revise and update the regulations for management of designated wilderness areas. Since the original issuance of the regulations, BLM has developed new policies, Congress has required new procedures, and technologies have changed. The proposed revision would add new requirements based on changes in legislation or agency objectives and clarify use of wilderness areas, prohibited acts, special uses and access to non-Federal lands located within BLM wilderness areas.

DATES: You must submit comments by February 18, 1997. Comments received or postmarked after this date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: You must submit comments or suggestions to: Bureau of Land Management, Administrative Record, 401 LS, 1849 C Street, NW, Washington, DC 20240. You may also comment via the internet to WOComment@WO.blm.gov. Please include ''attn: AB69'' and your name and address in your internet message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly at (202) 452–5030. You may review comments, including names and street addresses of respondents, at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address, except for the city or town, from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. However, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Rob Hellie, Cultural Heritage, Wilderness, Special Areas & Paleontology Group, (202) 452-7703, Regulatory Management Team (202) 452-7785.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Rule

The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) and the Wilderness Act (16 U.S.C. 1131 et seq.) direct BLM to manage wilderness areas for the use and enjoyment of the American people in a manner that will leave them unimpaired for future use and enjoyment, provide for the protection of these areas, the preservation of their wilderness character, and the gathering and disseminating of information about their use and enjoyment as wilderness. In short, unless specified otherwise by Congress, BLM must ensure the preservation of wilderness character for all activities conducted within wilderness areas.

These proposed regulations govern the management of BLM wilderness areas outside Alaska. They tell you what wilderness areas are, how BLM is to manage them, and how you can use them. These regulations also tell you what activities BLM does not allow in wilderness areas, the penalties for doing prohibited acts, and the special provisions for some uses and access. When BLM has management responsibility for wilderness areas in Alaska, regulations for their management will be developed under the Wilderness Act (16 U.S.C. 1131 *et seq.*), and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101).

Since BLM issued the current wilderness management regulations in 1985, several legislative, policy, and technological changes have occurred that require their revision. Examples of legislative changes include the Americans with Disabilities Act (42 U.S.C. 12207) and the American Indian Religious Freedom Act (42 U.S.C. 1996). For ease of discussion in the preamble, we grouped the revisions into the following five categories: (1) Definitions, (2) use of wilderness areas, (3) prohibited acts, (4) special use provisions, and (5) access.

As discussed in an Advance Notice of Proposed Rulemaking published June 5, 1996 (61 FR 28546), some of BLM's regulations, particularly in the areas of recreation and resource preservation and conservation, are being reorganized. As part of that reorganization, the regulations on wilderness management would be renumbered in this rule as part 6300 instead of part 8560. Also, we have attempted to write these regulations in plainer English.

(1) Definitions

The proposed rule in section 6301.50 amends several definitions included in the existing regulations. BLM also changed the definition of ''mechanical transport'' and ''motorized equipment.'' The proposed rule would make it clear that sailboats, sailboards, parachutes, game carriers, carts, wagons, and similar devices are mechanical transports under Section 4(c) of the Wilderness Act. Similarly, the definition of motorized equipment now includes a list of items such as chain saws, power drills, and motor vehicles. BLM includes some new definitions in section 6301.50. Among these is a definition of ''wheelchair.'' The proposed rule adopts the definition from the Americans with Disabilities Act of 1990. Definitions were also added for the terms ''inholding'' and ''valid occupancy'' to clarify the discussion of access to non-federal lands.

(2) Use of Wilderness Areas

The proposed rule in subpart 6302 amends the existing regulations concerning the use of wilderness areas.

The proposed rule references an existing provision of 43 CFR 8372 that BLM may require a permit and charge a fee for use of wilderness areas. This provision has applied in BLM wilderness areas for many years. It is not new policy.

Section 6302.40 of the proposed rule changes the requirements for the collection, disturbance, or removal of animals, plants, rocks, or other natural resources from BLM wilderness areas. The existing regulations in 43 CFR part 8560 prohibit only the cutting of trees and the removal of common variety mineral materials from BLM wilderness areas. The proposed rule in § 6302.40 provides that BLM may, by authorization, allow persons to gather information in wilderness areas about natural resources, including collecting physical specimens or samples, provided they do it in a manner compatible with the preservation, protection, and maintenance of the wilderness environment. While a single activity or a small number of such activities might not result in degradation of the wilderness area, it is possible that many or cumulative occurrences could result in damage to wilderness resources. Accordingly, BLM proposes to prohibit certain activities in BLM wilderness areas unless the user obtains an authorization from BLM. The rule would not impose similar restrictions on public lands other than

wilderness areas. Public lands would continue to be open to those activities allowed by statute, regulation, permit, or other forms of authorization.

(a) Use of Wheelchairs

The proposed rule in section 6302.50 is consistent with the Americans with Disabilities Act of 1990 (ADA) (104 Stat. 327, 42 U.S.C. 12207), which provides for the use of wheelchairs in wilderness areas by an individual whose disability requires use of a wheelchair. The ADA does not require BLM to provide any special treatment or accommodation, or to construct any facilities, or modify any conditions of lands within a wilderness area in order to facilitate such use by wheelchairs. Such special accommodation would be inconsistent with the purposes of the Wilderness Act.

(b) Traditional Religious Purposes

The proposed rule at section 6302.60 contains special provisions allowing BLM to grant Native American people access to BLM wilderness areas for traditional religious purposes.

These provisions specify that the BLM may temporarily close portions of wilderness areas to public use to protect the privacy of people engaged in religious uses.

(3) Prohibited Acts and Penalties

The proposed rule at section 6302.70 includes a list of prohibited actions and activities.

(a) Competitive Events

BLM retains in the proposed rule at section 6302.70 a prohibition against holding or conducting competitive events in wilderness areas. Such events typically involve animal, foot, or water craft races and other similar activities. These events are not compatible with the stated purposes of wilderness areas, which are to be places of solitude. Such events intrude upon the solitude of wilderness visitors. Also, these events are often, although not always, commercial enterprises, prohibited by Section 4(c) of the Wilderness Act. Other commercial activities in wilderness areas, where specifically authorized by statute or regulations, such as outfitting for hunting, recreation, river running, and similar uses, are not affected by this policy provision. The proposed rule at section 6302.70 combines existing provisions of the regulations that prohibit landing aircraft and dropping materials, supplies, or skydivers from them. The new provision specifies that ''aircraft'' also includes helicopter, hang-glider, hot air balloon, parasail, and parachute.

(b) Rock Climbing

The proposed rule at section 6302.70 prohibits, unless it is provided for in the management plan, the use of any type of permanent fixed anchor, including expansion bolts, construction or placement of permanent artificial hand and footholds, and the use of glues, epoxies, or other fixatives on a natural surface to facilitate mountain climbing, rock climbing, or cave exploration. This provision of the proposed rule is similar to the approach used by the National Park Service and provides BLM with the ability to manage such use through the land use planning process. Individual rock climbing and bolting activities may not adversely affect the wilderness environment, but taken collectively a number of such activities could have a detrimental affect in an individual BLM wilderness area. BLM is not proposing restrictions on or prohibitions of rock climbing activities in areas of the public lands other than BLM wilderness areas. Rock climbing is a legitimate recreational use of the public lands and should be allowed as one of the many forms of recreation activities permissible on BLM lands.

(c) Penalties

Penalty provisions would be revised in section 6302.80 to accommodate amendments of the Sentencing Reform Act of 1984 (18 U.S.C. 3571 et seq.), and to avoid the misleading impression that criminal penalties are limited to the minimum amounts provided for in FLPMA. The Criminal Fine Improvements Act of 1987 substantially increased the maximum fine that may be levied on violators of Federal law and regulations.

(4) Special Provisions

The Wilderness Act makes special provision for some uses. The proposed rule in subpart 6303 discusses how these special provisions may affect you if you engage in one of these uses.

(a) Use of Aircraft

Unless Congress specifies otherwise in the statute designating a particular wilderness area, the designation of BLM areas as components of the National Wilderness Preservation System would not by itself preclude low-level overflight by military aircraft, designation of new units of special use airspace, or establishment of military flight training routes over BLM wilderness areas.

(b) Mining, Mineral Leasing and Material Sales

The proposed rule in part 6303 would not change BLM policies regarding mineral development, mineral leases or permits in wilderness areas. The changes included in the proposed rule are essentially remedial changes to eliminate errors and clarify valid existing rights for mineral and geothermal leases, licenses, and permits.

(c) Livestock Grazing

Under the Wilderness Act and the proposed rule, grazing activities including the associated use and maintenance of livestock management facilities may continue at the levels existing at the time of wilderness designation. Construction, replacement, or reconstruction of deteriorated grazing support facilities is permissible if in conformance with the management plan. Any operation or maintenance of facilities must ensure protection of wilderness resource values. Under the proposed rule, grazing of livestock in wilderness areas will be governed by the guidelines found in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101–405).

(5) Access

The proposed rule at subpart 6304 would clarify the procedure used to provide access to non-Federal land affected by wilderness designation.

In conformance with the Wilderness Act, section 6304.20 of the proposed rule assures that owners of non-Federal lands completely surrounded by wilderness areas will be given rights necessary to assure adequate access. The proposed regulations at section 6304.20 also cover access to valid mining claims or other valid occupancies within wilderness areas.

II. Procedural Matters

National Environmental Policy Act

BLM has prepared a draft environmental assessment (EA) and made a tentative finding that the proposed rule would not constitute a major federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). BLM anticipates making a Finding of No Significant Impact for the final rule in accordance with BLM's procedures under NEPA. The draft EA is on file in the BLM Administrative Record at the address specified previously (see **ADDRESSES**). BLM will complete an EA on the final rule and make a finding on the significance of any resulting impacts prior to promulgation of the final rule.

Paperwork Reduction Act

The provisions for collection of information contained at 43 CFR part 8500 have previously been approved by the Office of Management and Budget and assigned clearance numbers 1004-0119 and 1004-0133. This rule does not contain additional information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities. Changes from the existing regulations are few: The rule would provide for access to inholdings, allow temporary closure of areas to accommodate Native American religious activities, expand slightly the requirement for authorization before engaging in research in wilderness, prohibit or limit certain recreational activities, and clarify the rules on access by wheelchair. None of these changes are expected to have more than marginal economic impacts on anyone, and should not unnecessarily or disproportionately affect small entities.

Unfunded Mandates Reform Act

BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995 because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

Executive Order 12612

The proposed rule would not have sufficient federalism implications to warrant BLM preparation of a Federalism Assessment.

Executive Order 12630

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Executive Order 12988

The Department conducted an Executive Order 12988 review of the proposed rule and determined that it meets the applicable standards of section 3 (a) and (b) of the Executive Order.

Executive Order 12866

BLM has determined that the proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. The cost of complying with the requirements of the proposed rule is indistinguishable from the cost of complying with the requirements imposed by the existing Wilderness Management regulations. The changes in the proposed rule are primarily not economic: They would provide a way of obtaining access to inholdings; they would impose certain limited restrictions on some recreational uses; they would broaden slightly the requirement for obtaining authorization before information gathering and research in wilderness; they would provide privacy for Native Americans engaging in religious activities in wilderness; and they would clarify to what extent wheelchairs are allowed in wilderness.

Authors: The principal authors of this proposed rule are Rob Hellie, Jeff Jarvis, Keith Corrigall (retired), Bob Barbour, and Ted Hudson of the BLM, assisted by Wendy Dorman of the Office of Solicitor.

List of Subjects in 43 CFR Parts 6300 and 8560

Penalties, Public lands, Reporting and recordkeeping requirements, Wilderness areas.

For the reasons explained in the preamble and under the authority of 43 U.S.C. 1740, chapter II, subtitle B of title 43 of the Code of Federal Regulations is proposed to be amended as follows:

1. Group 8500, consisting of part 8560 (§§ 8560.0–1 through 8560.5) is removed.

2. The heading for subchapter F is revised to read as follows:

SUBCHAPTER F—PRESERVATION AND CONSERVATION (6000)

3. A new part 6300 is added to read as follows:

Part 6300—Management of Designated Wilderness Areas

Subpart 6301—Introduction

Sec.

Subpart 6302—Use of Wilderness Areas, Prohibited Acts, and Penalties

Subpart 6303—Special Provisions

Subpart 6304—Access to State and Private Lands Within Wilderness Areas

Authority: 16 U.S.C. 1133; 43 U.S.C. 1733, 1740, 1782.

Subpart 6301—Introduction

§ 6301.10 What is the purpose of this part?

This part governs the management of BLM wilderness areas outside of Alaska. They tell you what wilderness areas are, how BLM is to manage them, and how you can use them. These regulations also tell you what activities BLM does not allow in wilderness areas, the penalties for performing prohibited acts, and the special provisions for some uses and access.

§ 6301.30 What is a BLM wilderness area?

A BLM wilderness area is an area of public lands designated by Congress for BLM to manage as a component of the National Wilderness Preservation System. The Wilderness Act provides an extensive definition of wilderness and wilderness area. See 16 U.S.C. 1131.

§ 6301.50 What are the definitions of terms used in this part?

Terms used in this part have the following meanings:

Access means the ability of property owners to have ingress and egress to and from State or private inholdings, valid mining claims, or other valid occupancies. It does not include rights-of-way or permits under section 501 of FLPMA (43 U.S.C. 1761).

Inholding means State-owned or privately-owned land or an interest in land that is completely surrounded by congressionally designated wilderness areas.

Mechanical transport means any contrivance for moving people or material in or over land, water, snow, or air that has moving parts and is powered by a living or nonliving power source. This includes, but is not limited to, sailboats, sailboards, hang gliders, parachutes, bicycles, game carriers, carts, and wagons. The term does not include wheelchairs when used as necessary medical appliances, nor does it include skis, snowshoes, non-motorized river craft including, but not limited to, driftboats, rafts, and canoes, or sleds, travois, or similar primitive devices without moving parts.

Mining operations means all functions, work, and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses of the land reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this part, regardless of whether the operations take place on or off mining claims.

Motor vehicle means any vehicle that is self-propelled or any vehicle that is propelled by electric power obtained from batteries.

Motorized equipment means any machine that uses or is activated by a motor, engine, or other power source. This includes, but is not limited to, chain saws, power drills, aircraft, generators, motor boats, motor vehicles, snowmobiles, tracked snow vehicles, snow blowers or other snow removal equipment, and all other snow machines. The term does not include shavers, wrist watches, clocks, flashlights, cameras, camping stoves, cellular telephones, radio transceivers, radio transponders, radio signal transmitters, ground position satellite receivers, or other similar small handheld or portable equipment.

Primitive and unconfined recreation means nonmotorized types of outdoor recreation activities that do not require developed facilities.

Public lands means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through BLM without regard to how the United States acquired ownership.

Valid occupancy means a current permit, lease, or other written authorization from BLM to occupy public lands.

Wheelchair means a device designed solely for use by a mobility-impaired person for locomotion and suitable for use in an indoor pedestrian area.

Subpart 6302—Use of Wilderness Areas, Prohibited Acts, and Penalties

§ 6302.10 May I use wilderness areas?

Unless otherwise designated by BLM, all wilderness areas will be open to uses consistent with the preservation of their wilderness character and their future use and enjoyment by the American people as wilderness, including, but not limited to, primitive recreation, rock climbing, orienteering, cave exploration, and scientific study. In subpart 6303 you will find an explanation of special provisions that apply to specific uses of wilderness areas. In § 6302.70 you will find a list of acts that are explicitly prohibited within wilderness areas.

§ 6302.20 Do I need and where do I obtain an authorization to use a wilderness area?

(a) In general, use of wilderness areas does not require an authorization. BLM may require an authorization and charge fees for some uses of wilderness areas. You must obtain authorization from BLM to use a wilderness area when required by:

(1) The regulations in this part (see §§ 6302.40, 6302.41, and 6304.20);

(2) A BLM order issued under § 6302.30; or

(3) The management plan for the wilderness area involved.

(b) To determine whether an authorization is needed, you should refer to the applicable BLM regulations for that activity.

(c) You may request an authorization to use a wilderness area from the BLM field office with jurisdiction over the wilderness area you want to use.

§ 6302.30 When and how does BLM close or restrict use of wilderness areas?

When necessary to carry out the provisions of the Wilderness Act, BLM may issue an order to close or restrict the use of lands or waters within the boundaries of any component of the National Wilderness Preservation System. See § 8364.1, Closure and Restriction Orders.

§ 6302.40 May I gather information, do research, or collect things such as rocks, animals, plants, or other types of natural or cultural resources in wilderness areas?

(a) You may conduct research, gather information, and collect natural or cultural resources in wilderness areas provided—

(1) You do it in a manner compatible with the preservation of the wilderness environment;

(2) Your proposed activity is in conformance with the applicable management plan; and

(3) You have an authorization from BLM.

(b) If your proposed activity meets the requirements of paragraph (a) of this section, you may collect, disturb, destroy to the extent necessary to accomplish the proposed activity, or remove:

(1) Animals or animal parts, including but not limited to insects, reptiles, birds, or fish, that are not regulated by applicable State or Federal law;

(2) Plants or plant parts, including but not limited to flowers, berries, nuts, seeds, cones, leaves, lichens, algae, and fungi, that are not regulated by applicable State or Federal law;

(3) Soil, rocks, stones;

(4) Mineral specimens, gemstones;

(5) Fossils, petrified wood;

(6) Cave and cave resources;

(7) Archaeologic, historic, and other cultural resources; and

(8) Forest and vegetative products and resources.

(c) Where campfires are allowed, you may gather a reasonable amount of forest and vegetative products for use in campfires.

§ 6302.41 Will BLM authorize me to use a motor vehicle, motorized equipment, or mechanized transport to conduct research or gather resource information?

If you wish to use motor vehicles, motorized equipment, mechanized transport, or land aircraft for mineral prospecting, gathering information about mineral or other resources, or for resource management purposes, you must receive written approval from BLM. If BLM issues you an authorization, the authorization will provide for the protection of public land resources, including wilderness characteristics. BLM may require you to reclaim disturbed areas and post a performance bond.

§ 6302.50 May wheelchairs be used in a wilderness area?

An individual whose disability requires the use of a wheelchair may use a wheelchair in a wilderness area. Consistent with the Wilderness Act and the Americans with Disabilities Act of 1990 (42 U.S.C. 12207), no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area, in order to facilitate such use.

§ 6302.60 May wilderness areas be used for traditional religious purposes?

In accordance with the American Indian Religious Freedom Act (42 U.S.C. 1996), American Indians, Eskimos, Aleuts, and Native Hawaiians may use wilderness areas for traditional religious purposes where these uses of an area preceded wilderness designation. BLM may temporarily close to general public use specific portions of the wilderness area that are not subject to valid existing rights in order to protect the privacy of native people engaged in religious activities in such areas. Any such closure will be made so as to affect the smallest practicable area for the minimum period necessary.

§ 6302.70 What activities does BLM prohibit in wilderness areas?

BLM may prohibit any use, activities, or actions that harm wilderness values. Except as specifically provided in the Wilderness Act, the following things are prohibited in wilderness areas managed by BLM:

(a) Operating a commercial enterprise;

(b) Constructing temporary or permanent roads;

(c) Constructing aircraft landing strips, heliports, or helispots;

(d) Use of motorized equipment; or motor vehicles, motorboats, or other forms of mechanical transport. For an exception see §§ 6302.41 and 6303.20;

(e) Landing of aircraft, or dropping or picking up of any material, supplies, or person by means of aircraft, including a helicopter, hang-glider, hot air balloon, parasail, or parachute. For an exception see § 6303.20;

(f) Structures or installations, including motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures;

(g) Cutting of trees;

(h) Entry into or use of wilderness areas without a permit, where permits are required by the BLM;

(i) Competitive use as defined in section 8372.0–5(c) of this chapter, including those activities involving physical endurance of a person or animal, foot races, water craft races, survival exercises, war games, or other similar exercises;

(j) Unless allowed in the applicable BLM management plan, or pursuant to a BLM authorization, physical alteration or defacement of a natural rock surface for any purpose, including the use of any type of drill, permanent fixed anchor or expansion bolt; construction of permanent artificial hand and footholds; use of glues, epoxies, or other fixatives to facilitate mountain climbing, rock climbing, or cave exploration; and

(k) Violating any regulation, authorization or order established by the BLM.

§ 6302.80 What penalties am I subject to if I commit one or more of the prohibited acts?

(a) If you knowingly and willfully commit a prohibited act listed in § 6302.70, you are subject to criminal prosecution on each offense. If convicted, you are subject to a fine of not more than $100,000 or the alternate fine provisions of 18 U.S.C. 3571, or imprisonment for not more than 12 months, or both.

(b) At the request of the Secretary of the Interior, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent you from using public lands in violation of the regulations of this part.

Subpart 6303—Special Provisions

§ 6303.10 Are there special provisions for some uses of wilderness areas?

Some uses are specifically addressed in the Wilderness Act. Below is a discussion of these uses and how Wilderness Act provisions may affect you if you engage in any of these activities.

§ 6303.20 Are there special provisions for aircraft and motorboat use within wilderness areas?

(a) BLM may authorize you to land aircraft and use motorboats at places within any wilderness area if these uses were established before the date the area was designated by Congress as a unit of the National Wilderness Preservation System, and where such uses have continued, subject to such restrictions as necessary to protect wilderness values. BLM may also authorize you to maintain aircraft landing strips, heliports or helispots that existed when the area was designated a unit of the National Wilderness Preservation System.

(b) The designation of wilderness areas as components of the National Wilderness Preservation System will not by itself preclude low-level overflights by military aircraft, designation of new units of special use airspace, or use or establishment of military flight training routes over such areas.

§ 6303.30 What special provisions apply to operations under the mining laws?

The general mining laws will apply to each BLM wilderness area for the period specified in the legislation designating the area as wilderness. The mining laws will apply to valid existing rights only to the extent provided in the legislation designating the area as wilderness.

(a) You cannot establish any right to or interest in any mineral deposits discovered after the date on which the general mining laws cease to apply to the specific wilderness area.

(b) You must conduct your mining operations in BLM wilderness areas in conformance with the applicable standards provided in the legislation designating the wilderness and your approved plan of operations as required by subpart 3809 of this chapter.

(c) If you hold a valid mining claim, mill site, or tunnel site located on any BLM wilderness area before the general mining laws ceased to apply to that area, you may maintain your mining claim or site in accordance with the general mining laws and the legislation designating the wilderness.

(d) If you are a mining claimant, you must comply with all reasonable requirements established by BLM regarding your mining activities to protect wilderness values consistent with the use of your valid claim or site for mineral activities.

(e) You must remove all structures, equipment, and other facilities as soon as feasible after mining operations cease, but not more than 1 year thereafter. You must begin reclamation no more than 6 months after mining operations cease. You must complete reclamation, including appropriate revegetation, within a reasonable time as determined by BLM. Whenever possible and feasible, your reclamation activities must restore the surface to a contour which appears to be natural. Where such measures are impractical or impossible, as determined by BLM, reclamation must result in the maximum achievable slope stability.

(f) BLM will require you to post a financial guarantee as provided in subpart 3809 of this chapter in order to assure completion of reclamation.

(g) In conducting mineral activities on your mining claims and sites, you must prevent, to the extent practicable as determined by BLM and consistent with the use of your valid claim or site for mineral activities, erosion, deterioration

of the lands, impairment of wilderness characteristics, and the obstruction, pollution, or siltation of streams, lakes, and springs.

(h) BLM will allow the gathering of mineral information in wilderness areas after the date on which the general mining laws cease to apply in designated wilderness only to the extent such activities are conducted in a manner compatible with the preservation of the wilderness environment.

§ 6303.31 How will BLM determine the validity of unpatented mining claims or sites?

(a) BLM will conduct a mineral examination to determine if your claim or site was valid prior to the date that lands within the wilderness area were withdrawn from appropriation under the mining laws and whether your claim or site remains valid. BLM must complete this validity determination before approving your plan of operations or allowing you to continue previously approved operations on unpatented mining claims or sites.

(b) If BLM concludes that your mining claim lacks a discovery of a valuable mineral deposit or your claim or site is invalid for any other reason, BLM will either deny the plan of operation or, in the case of an existing approved operation, issue a notice ordering cessation of operations and begin contest proceedings to determine the status of your mining claim as provided in subpart 3870 of this chapter.

(c) If a final administrative decision is rendered declaring your claim or site null and void, you must complete all reclamation required under subpart 3800 of this chapter.

§ 6303.40 What special provisions apply to mineral leasing and material sales?

(a) BLM will not issue any mineral or geothermal leases, licenses, or permits under the mineral leasing, geothermal leasing, and material sales laws in any wilderness area on public lands.

(b) If you hold a valid mineral or geothermal lease, license, or permit for land in any BLM wilderness area issued before the date the area was included in the National Wilderness Preservation System, you may continue the activities for which the lease, license, or permit was issued in accordance with the terms and conditions of the specific lease, license, or permit.

(c) Subject to valid existing rights, you may not establish any right to or interest in any mineral or geothermal resources that may be discovered in a wilderness area after the date on which the laws pertaining to mineral leasing, geothermal leasing, or material sales cease to apply to the specific wilderness area.

§ 6303.50 What special provisions apply to water and power resources?

If you are specifically authorized by the President, pursuant to Section 4(d)(4)(1) of the Wilderness Act, you may be permitted to prospect for water resources and establish new reservoirs, water-conservation works, power projects, transmission lines and other facilities needed in the public interest, and to maintain such facilities.

§ 6303.60 What special provisions apply to livestock grazing?

If you hold a BLM grazing permit or grazing lease for land within a wilderness area, you may continue to graze your livestock provided that such use was initiated before the wilderness area was established. Your grazing activities within wilderness areas, including the construction, use, and maintenance of livestock management improvements must comply with the livestock grazing regulations in part 4100 of this chapter. You may maintain or reconstruct grazing support facilities that existed prior to designation of the wilderness area if allowed by the management plan for the area. You may not construct new support facilities for the purpose of increasing your number of livestock. The construction of new livestock management facilities must be for the purposes of protection and improved management of resources. You may increase livestock numbers only when you can demonstrate that the additional use will not have adverse impact on wilderness values.

§ 6303.70 What special provisions apply to other commercial use?

You may only conduct commercial uses specifically permitted in wilderness areas by the Wilderness Act and subsequent laws in a manner that will preserve the wilderness character of the land, unless otherwise provided in the Wilderness Act and other applicable laws. BLM may permit temporary structures and commercial services such as those provided by packers, outfitters, and guides within wilderness areas to the extent necessary to realize the recreational or other wilderness purposes of the area.

§ 6303.80 What special provisions apply to administrative and emergency functions?

To the extent authorized by law, BLM may:

(a) Use, construct or install motorized equipment, mechanical transport, aircraft, aircraft landing strips, heliports, helispots, installations or structures in designated wilderness areas, and prescribe conditions under which such items may be used, transported or installed by other Federal, State or county agencies or their agents to meet the minimum requirements for protection and administration of the wilderness area, its resources and users;

(b) Authorize occupancy and use of wilderness areas by officers, employees, agencies or agents of the Federal, State and local governments to carry out the purposes of the Wilderness Act or other statutes;

(c) Prescribe measures to be taken, as necessary, to control fire, noxious weeds, insects, and diseases where these threaten human life, property or wilderness resources within the wilderness area or on adjacent non-wilderness lands; or

(d) Prescribe measures that may be used in emergencies involving the health and safety of persons or damage to property, including, but not limited to, the conditions for use of motorized equipment, mechanical transport, aircraft, installations, structures, rock drills, and fixed anchors. BLM will require restoration activities necessitated by such emergency measures to be undertaken concurrently with or as soon as practicable upon completion of the measures, events, or activities.

Subpart 6304—Access to State and Private Lands Within Wilderness Areas

§ 6304.20 How will BLM allow access to State and private land within wilderness areas when the access is affected by wilderness designation?

(a) If you own land completely surrounded by a wilderness area, BLM will give you such rights as may be necessary to ensure adequate access to your lands, or you may enter into an exchange with BLM under part 2200 of this chapter. If you have existing access or a right of access to your property over non-public lands or over public roads that is adequate or that can be made adequate, the Secretary is not required to provide access through wilderness areas. If your access is not adequate, BLM will issue an authorization under part 2920 of this chapter to give you access. Each authorization you receive will specify the applicable terms and conditions. Adequate access is that combination of routes and modes of travel to non-Federal inholdings that BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and, at the same time, cause impacts of least duration and degree on wilderness character. Section 501(a) of FLPMA (43

U.S.C. 1761 *et seq.*) prohibits BLM from issuing rights-of-way under Section 501 on lands designated as wilderness. BLM will consider voluntary acquisition of land or interests in land by exchange, purchase, or donation to reduce or eliminate the need to use wilderness areas for access purposes.

(b) If you hold a valid mining claim or other valid occupancy wholly within a wilderness area, you will be permitted access by means that are consistent with the preservation of wilderness and that have been or are being customarily used with respect to other similar occupancies surrounded by wilderness. Plans approved by BLM under subpart 3809 of this chapter will prescribe the routes of travel that you may use for access to occupancies surrounded by wilderness. These plans will also identify the mode of travel, and other conditions reasonably necessary to preserve the wilderness area.

(c) Before issuing any access authorization, BLM will make certain that:

(1) You have demonstrated a lack of any existing access rights or alternate routes of access available by deed or under State or common law and that access across non-federally owned routes is not reasonably obtainable;

(2) You are allowed to use the combination of routes and modes of travel, including non-motorized modes, that will cause the least impact on the wilderness but, at the same time, will permit the reasonable use of the non-Federal land;

(3) The route that BLM approves is located and constructed to minimize adverse impacts on natural resource values of the wilderness area; and

(4) The location and method of access BLM approves are as consistent as possible with the management of the wilderness area and the management plan for the area.

Dated: December 11, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 96–31957 Filed 12–18–96; 8:45 am]

BILLING CODE 4310-84-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7195]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Walton County (Unincorporated Areas).	Gulf of Mexico	Approximately 1.6 miles southwest of the intersection of U.S. Route 98 and County Route 30A in the vicinity of Morris Lake.	*5	*10
			Approximately 2,000 feet south of the intersection of U.S. Route 98 and County Route 30A in the vicinity of Inlet Beach.	*8	*12
Maps available for inspection at the Walton County Emergency Operation Center, 75 South Davis Lane, DeFuniak Springs, Florida. Send comments to Mr. Ronnie Bell, Walton County Administrator, P.O. Drawer 689, DeFuniak Springs, Florida 32433.					
Illinois	Long Grove (Village) Lake County.	Diamond Lake	Downstream side of State Route 83	None	*717
		Drain	Approximately 550 feet downstream of State Route 83.	None	*712
		Tributary A to Buffalo Creek.	Approximately 1,600 feet upstream of the confluence with Buffalo Creek.	None	*699
			At the county boundary	None	*704
		Buffalo Creek	Approximately 0.6 mile upstream of Checker Drive.	*711	*710
			Approximately 0.8 mile upstream of Long Grove Road (State Route 53).	*729	*728
Maps available for inspection at the Village of Long Grove Municipal Building, 3110 Old McHenry Road, Long Grove, Illinois 60047. Send comments to Ms. Lenore Simmons, Long Grove Village President, 3110 RFD, Long Grove, Illinois 60047.					
Minnesota	Lakeville (City) Dakota County.	North Creek	At downstream corporate limits	*916	*914
			At confluence of Unnamed Tributary No. 2 to North Creek.	*942	*939
			Approximately 810 feet upstream of Icon Trail.	None	*1,059
		South Creek	At downstream corporate limits	*931	*930
			Approximately 0.9 mile upstream of State Route 50.	*988	*989
		West Branch South Creek	At confluence with South Creek	*942	*944
			Approximately 1,100 feet upstream of Kenrick Avenue.	None	*1,082
		East Branch South Creek	At downstream corporate limits	None	*935
			At upstream side of Hamburg Avenue	None	*1,032
		Marion Branch South Creek.	Approximately 75 feet downstream of CP rail system.	None	*968
			At upstream side of Icalee Path	None	*985
Maps available for inspection at the Lakeville City Engineer's Office, Lakeville City Hall, 20195 Holyoke Avenue, Lakeville, Minnesota. Send comments to The Honorable Duane Zaun, Mayor of the City of Lakeville, Lakeville City Hall, 20195 Holyoke Avenue, Lakeville, Minnesota 55044.					
New Hampshire	Tilton (Town) Belknap County.	Gulf Brook	Just upstream of U.S. Route 3/State Route 11.	*473	*474
			Approximately 0.52 mile upstream of U.S. Route 3/State Route 11.	None	*485
Maps available for inspection at the Tilton Town Hall, Land Use Office, 257 Main Street, Tilton, New Hampshire. Send comments to Mr. Heber Feener, Chairman of the Town of Tilton Board of Selectmen, 257 Main Street, Tilton, New Hampshire 03276.					
New York	Brutus (Town) Cayuga County.	Skaneateles Creek	Approximately 560 feet downstream of Farm Bridge.	*382	*383
			Approximately 1,370 feet upstream of Farm Bridge.	*384	*387
		Cold Spring Brook	Approximately 50 feet upstream of River Forest Drive.	*383	*384
			At the confluence with Old Erie Canal	*397	*396
		North Brook	At the Old Erie Canal	*397	*396
			Approximately 20 feet upstream of the Old Erie Canal.	*397	*396
Maps available for inspection at the Brutus Town Clerk's Office, 9021 North Seneca Street, Weedsport, New York. Send comments to Ms. Ann Petrus, Brutus Town Supervisor, 9021 North Seneca Street, Weedsport, New York 13166.					
New York	Gardiner (Town) Ulster County	Mara Kill	At County Road No. 7	None	*239
			Approximately 1,140 feet upstream of Sparkling Ridge Road.	None	*539

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Gardiner Town Hall, Route 44/55, Gardiner, New York. Send comments to Mr. LeRoy Carlson, Gardiner Town Supervisor, P.O. Box 1, Route 44/55, Gardiner, New York 12525.					
Ohio	Canal Winchester (Village).	Tussing-Bachman-Bush Ditch.	Just downstream of County Route 7 (Groveport Road).	*743	*741
	Franklin County		At upstream county boundary	None	*769
Maps available for inspection at the Canal Winchester Village Hall, 10 North High Street, Canal Winchester, Ohio. Send comments to The Honorable Marsha Hall, Mayor of the Village of Canal Winchester, P.O. Box 226, 10 North High Street, Canal Winchester, Ohio 43110.					
Ohio	Franklin County (Unincorporated Areas).	Georges Creek	At confluence with Georges Creek	None	*747
		Overland Flow	Approximately 2,080 feet upstream of confluence with Georges Creek.	None	*751
Maps available for inspection at the Franklin County Zoning Department, 373 South High Street, 15th Floor, Columbus, Ohio. Send comments to Mr. Philip Laurien, Franklin County Development Director, 373 South High Street, 15th Floor, Columbus, Ohio 43215.					
Pennsylvania	Alsace (Township) Berks County.	Bernhart Creek	Approximately 1,650 feet downstream of Pricetown Road.	None	*472
			Approximately 1,200 feet downstream of Pricetown Road.	None	*482
Maps available for inspection at the Alsace Township Office, 65 Woodside Avenue, Temple, Pennsylvania. Send comments to Mr. Joseph E. Williams, Chairman of the Alsace Township Board of Supervisors, 65 Woodside Avenue, Temple, Pennsylvania 19560.					
Pennsylvania	Benton (Borough) Columbia County.	Fishing Creek	Approximately 50 feet downstream of dam, which is located approximately 450 feet upstream of State Route 487.	*765	*766
			At upstream corporate limits	*775	*777
Maps available for inspection at the Benton Borough Hall, 3rd and Center Streets, Benton, Pennsylvania. Send comments to The Honorable Larry Houseweart, Mayor of the Borough of Benton, P.O. Box T, Benton, Pennsylvania 17814.					
Pennsylvania	Exeter (Township) Berks County.	Tributary B to Antietam Creek.	Approximately 250 feet upstream of confluence with Antietam Creek.	None	*390
			Approximately 810 feet upstream of confluence with Antietam Creek.	None	*395
Maps available for inspection at the Exeter Township Engineering Office, 4975 DeMass Road, Reading, Pennsylvania. Send comments to Ms. Linda Buler, Chairperson of the Township of Exeter Board of Supervisors, P.O. Box 4068, Reading, Pennsylvania 19606.					
Pennsylvania	Heidelberg (Township) Berks County.	Tulpehocken Creek	Approximately 270 feet downstream of U.S. 422.	None	*359
			Downstream side of U.S. 422	None	*359
		Furnace Creek No. 2	At downstream corporate limits	None	*508
			Approximately 50 feet upstream of the downstream corporate limits.	None	*508
Maps available for inspection at the Heidelberg Township Building, 373 Charming Forge Road, Robesonia, Pennsylvania. Send comments to Mr. Robert Manbeck, Heidelberg Township Administrator, P.O. Box 241, Robesonia, Pennsylvania 19551.					
Pennsylvania	Lock Haven (City) Clinton County.	Sugar Run	At its confluence with West Branch Susquehanna River.	*569	*572
			Approximately 320 feet upstream of State Route 120.	*569	*572
Maps available for inspection at the Lock Haven City Engineer's Office, Lock Haven City Hall, 20 East Church Street, Lock Haven, Pennsylvania. Send comments to The Honorable Harold C. Yost, Jr., Mayor of the City of Lock Haven, 20 East Church Street, Lock Haven, Pennsylvania 17745.					
Pennsylvania	Marion (Township) Berks County.	Tulpehocken Creek	Approximately 270 feet downstream of U.S. 422.	None	*359
			Approximately 1,200 feet upstream of U.S. 422.	None	*361
Maps available for inspection at the Marion Township Municipal Building, 20 South Water Street, Womelsdorf, Pennsylvania. Send comments to Mr. Kenneth L. Keppley, Chairman of the Township of Marion Board of Supervisors, 20 South Water Street, Womelsdorf, Pennsylvania 19567.					
Pennsylvania	Muhlenberg (Township) Berks County.	Bernhart Creek	Approximately 450 feet downstream of Kutztown Road.	*284	*283
			Approximately 1,050 feet upstream of Crystal Rock Road.	*483	*480

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Muhlenberg Township Engineering Department, Muhlenberg Township Building, First Floor, 555 Raymond Street, Reading, Pennsylvania.					
Send comments to Mr. Stephen J. Geras, President of Muhlenberg Township, 555 Raymond Street, Reading, Pennsylvania 19605.					
Pennsylvania	Reading (City) Berks County.	Bernhart Creek	Approximately 80 feet upstream of Richmond Street.	None	*283
			Approximately 200 feet upstream of Richmond Street.	None	*285
Maps available for inspection at the Reading City Hall, 815 Washington Street, Reading, Pennsylvania.					
Send comments to The Honorable Paul J. Angstadt, Mayor of the City of Reading, Reading City Hall, 815 Washington Street, Reading, Pennsylvania 19601–3690.					
Pennsylvania	Richmond (Township) Berks County.	Willow Creek	Approximately 1,450 feet upstream of Poplar Street.	None	*474
			Approximately 0.44 mile downstream of State Route 1010.	None	*404
		Maiden Creek	At State Route 143	None	*327
		Unnamed Tributary to Willow Creek.	Approximately 1,500 feet upstream of North Richmond Road.	None	*376
			Downstream face of Vine Street bridge	None	*394
Maps available for inspection at the Richmond Township Building, Off Route 222 at Route 662, Moselem Springs, Pennsylvania.					
Send comments to Mr. Gary Angstadt, Chairman of the Township of Richmond Board of Supervisors, P.O. Box 474, Fleetwood, Pennsylvania 19522.					
Pennsylvania	Womelsdorf (Borough) Berks County.	Tulpehocken Creek	Approximately 150 feet downstream of U.S. 422 bridge.	None	*359
			Approximately 1,250 feet upstream of U.S. 422 bridge.	None	*361
Maps available for inspection at the Womelsdorf Borough Hall, 101 West High Street, Womelsdorf, Pennsylvania.					
Send comments to Mr. Vincent Balistrieri, President of the Womelsdorf Borough Council, 101 West High Street, Womelsdorf, Pennsylvania 19567.					
Pennsylvania	Woodward (Township) Clinton County	West Branch Susquehanna River.	Approximately 1 mile downstream of Woodward Avenue.	*563	*564
			Approximately 800 feet upstream of CONRAIL.	*578	*579
		Reeds Run	At confluence with West Branch Susquehanna River.	*564	*566
			Approximately 950 feet upstream of Church Street.	*565	*566
		Queens Run	At confluence with West Branch Susquehanna River.	*575	*576
			Approximately 500 feet upstream of Farransville Road.	*575	*576
Maps available for inspection at the Woodward Township Building, 101 Riverside Terrace, Lock Haven, Pennsylvania.					
Send comments to Mr. Charles C. Rine, Jr., Chairman of the Woodward Township Board of Supervisors, 101 Riverside Terrace, Lock Haven, Pennsylvania 17745–9608.					
Wisconsin	West Bend (City) Washington County.	Silver Creek	Approximately 52 feet downstream of City Park Drive.	*900	*899
			Downstream side of West Washington Street culvert.	*933	*932
		Silverbrook Creek	Upstream side of Silverbrook Drive	*927	*928
			Approximately 900 feet upstream of U.S. Highway 45.	None	*955
		Washington Creek	Approximately 200 feet downstream of Valley Avenue.	*980	*981
			Approximately 450 feet upstream of Shepherds Drive.	None	*1,002
Maps available for inspection at the West Bend City Hall, 1115 South Main Street, West Bend, Wisconsin.					
Send comments to The Honorable Michael Miller, Mayor of the City of West Bend, 1115 South Main Street, West Bend, Wisconsin 53095–4658.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 10, 1996.

Craig S. Wingo,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 96–32265 Filed 12–18–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 91–221 and 87–8; FCC 96–438]

Local Television Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *Second Further NPRM,* the Commission makes several tentative conclusions and proposals concerning the modification of the local television ownership rule and the radio-television cross-ownership rule. Specifically, we invite comment on our tentative conclusion to modify the local television ownership rule to a generally less restrictive Designated Market Area (''DMA'') and Grade A signal contour standard and on a number of specific waiver standards for the local television ownership rule. We also seek comment as we reexamine the radio-television cross-ownership rule in light of changes to the radio-television cross-ownership waiver policy and local radio ownership rules contemplated by the Telecommunications Act of 1996 (''1996 Act''). In addition, the Commission tentatively concludes that it will establish the adoption date of this *Second Further NPRM (i.e.,* November 5, 1996) as the grandfathering date for television local marketing agreements (''LMAs'') in the event television LMAs are considered attributable under our ownership rules. The purpose of this *Second Further Notice of Proposed Rulemaking* is to invite additional comments on our local television ownership rule, radio-television cross-ownership rule, and the treatment of existing television LMAs in light of the enactment of the 1996 Act.

DATES: Comments are due by February 7, 1997, and reply comments are due by March 7, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Alan Baughcum (202) 418–2170 or Kim Matthews (202) 418–2130 of the Policy and Rules Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rule Making in MM Docket Nos. 91–222 and 87–8, adopted November 5, 1996, and released November 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W. Washington, D.C. 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Second Further Notice of Proposed Rulemaking

I. Background

1. Last year, the Commission adopted a broad-ranging *Further Notice of Proposed Rule Making* in this docket (hereinafter *TV Ownership Further NPRM).* In that item, the Commission proposed changes or revisions to the national television ownership rule, the local television ownership rule, and the radio-television cross-ownership rule. In addition, the Commission requested comment as to whether certain broadcast television local marketing agreements (''LMAs'') should be considered to be an attributable interest in a manner similar to radio LMAs.

2. On February 8, 1996, the Telecommunications Act of 1996 (the ''1996 Act'') was signed into law. Section 202 of the 1996 Act directs the Commission to undertake significant and far-reaching revisions to its broadcast media ownership rules, some of which—like the relaxation of the national television ownership limit—were proposed in the *TV Ownership Further NPRM.* Section 202 also requires us to review other aspects of our local ownership rules which were also the subject of the *TV Ownership Further NPRM.* In particular, Section 202 requires the Commission to do the following: (1) to conduct a rulemaking proceeding concerning the retention, modification or elimination of the television duopoly rule; and (2) to extend the Top 25 market/30 independent voices one-to-a-market waiver policy to the Top 50 markets, ''consistent with the public interest, convenience, and necessity.'' Additionally, both the Act and its legislative history contain statements regarding the appropriate treatment of existing television local marketing agreements (''LMAs'') under our ownership rules. Because our previous request for comments occurred before the enactment of the 1996 Act, we believe inviting additional comments pertaining to the duopoly rule, the radio-television cross-ownership rule, and the treatment of existing television LMAs is appropriate.

3. We confine this *Second Further NPRM* to issues related to our local television ownership rule (the duopoly rule), the one-to-a-market rule, and LMA grandfathering issues. Issues relating to the national television ownership limit, which was specifically modified by the 1996 Act, were addressed in a previously released Order implementing these modifications (*See Order,* FCC 96–991, 61 FR 10691 (March 15, 1996) and are also discussed in a separate *NPRM* adopted contemporaneously with this *Second Further NPRM.* In addition, issues related to the broadcast attribution rules are the subject of a *Further NPRM* in our attribution proceeding that is also being adopted today.

4. In the sections that follow, we invite comment on several discrete issues prompted by the 1996 Act. We also take this opportunity to solicit further comment in light of our review of comments filed in this proceeding to date. Specifically, we invite comment on our tentative conclusion to modify the local television ownership rule to a generally less restrictive Designated Market Area (''DMA'') and Grade A signal contour standard and on a number of specific waiver standards for the local television ownership rule. We also seek comment as we reexamine the radio-television cross-ownership rule in light of the 1996 Act. Finally, we seek comment on how, if we decide to make television local marketing agreements (''LMAs'') attributable for ownership purposes, existing LMAs should be treated under the Act and the new rules.

II. The Local Television Ownership Rule

A. Background

5. Our local television ownership rule presently prohibits common ownership of two television stations whose Grade B signal contours overlap. The *TV Ownership Further NPRM* set out a comprehensive analytical framework for reviewing this rule in light of three principal goals. First, we seek through our local television ownership rule to promote diversity, particularly program and viewpoint diversity. Second, we intend to foster the competitive operation of broadcast television stations' program distribution and advertising markets. Finally, we seek to promote greater certainty by adopting

generally applicable rules. We also recognize that the 1996 Act and additional Commission proceedings may have a cumulative effect on the ability of small stations or stations owned by minorities and women to compete effectively in this new environment. We seek comment on what aggregate effect these proposed rules may have on small stations, or stations owned by minorities and women.

B. Geographic Scope of the Rule

6.The *TV Ownership Further NPRM* proposed to narrow the geographic scope of the duopoly rule by prohibiting station overlaps on the basis of Grade A contours (with a radius of approximately 30-45 miles) rather than Grade B contours (with a radius of approximately 50-70 miles). We also sought comment on whether Nielsen's DMA was a better measure of a local television market than Grade B signal contours. While some commenters opposed any change of the local ownership rule at all, most advocated a relaxation of the rule, with many supporting some form of the proposed Grade A test.

7. We continue to question whether the Grade B contour best reflects the market in which a television station operates for purposes of our local ownership rule. The *TV Ownership Further NPRM* indicated that the area within the Grade B contour does not necessarily reflect the station's ''core market,'' (*i.e.*, the viewers the station is trying to reach). It further pointed to a number of benefits, including economies of scale, that could be gained by relaxing the rule. Various parties have commented that the Grade B contour test should be relaxed because stations with overlapping Grade B contours are generally unlikely to have enough viewers in common to raise competition or diversity concerns if the stations were jointly owned. Commenters also pointed to the greater number of alternatives now afforded many viewers with cable and other multichannel video program services.

8. While we believe the Grade B test may be overly restrictive, we are concerned that the Grade A contour alone may not be the appropriate measure to adopt in its place. We recognize that in the *TV Ownership Further NPRM,* we indicated that the record at the time supported moving to a Grade A approach. Upon further consideration of these issues and of the comments submitted in response to the *TV Ownership Further NPRM,* however, we believe a combination of the DMA and Grade A signal contours may be a more appropriate measure of the geographic scope of the local television ownership rule.

9. Our tentative conclusion is that the local television ownership rule should permit common ownership of television stations in different DMAs so long as their Grade A signal contours do not overlap. In this section, we set forth the reasons as to why this approach may more accurately reflect a television station's geographic market and may further our diversity and competition goals. We invite parties to comment on this tentative conclusion and how it might be superior or inferior to a standard that is based solely on signal contours or one that is based solely on DMAs.

10. *The Relevance of DMAs.* The record indicates that the DMA provides, as a general matter, a reasonable proxy of a television station's geographic market. The Commission has previously noted that the benefit of the DMA definition is that it attempts to capture the actual television viewership patterns and each county is assigned to a unique television market, unlike the Grade A and B contour standards which ignore the carriage of broadcast signals over cable systems. Thus, DMAs are designed to reflect actual household viewing patterns and advertising markets—critical ingredients for determining a station's geographic market, both for competition and diversity purposes. In addition, the Commission traditionally has employed a similar geographic measure to the DMA in other rules. That geographic measure is the Area of Dominant Influence (''ADI''), used by the Arbitron Company to define a television station's geographic market according to audience viewing patterns.

11. We thus invite parties to comment further upon whether the DMA provides a reasonable, general approximation of a television station's geographic market, and whether the DMA is an appropriate basis for application of our local ownership rules. Furthermore, we seek comment on the consistency of DMA classifications from year to year. We recognize that some degree of change in these classifications is inevitable as viewing patterns shift, but ask parties to address whether these changes are so frequent or of such significance that they would undermine our goal of crafting an ownership rule that provides certainty and consistency in its application. We also seek comment on the basis upon which changes in DMA boundaries are made, and on whether boundaries are changed at the request of local broadcast television stations.

12. *Supplementing the DMA Test with a Grade A Contour Standard.* While it is our present view that DMAs may be better than either Grade B or Grade A signal contours as measures of the market, we also tentatively conclude that we should supplement our proposed DMA-based rule with a Grade A contour criterion. There are at least two reasons why we would include both the DMA and Grade A signal contours in the local television ownership rule. First, because the DMA is based on the preponderance, not necessarily the majority, of audience viewing, broadcast television stations in neighboring DMAs may in fact be such significant competitors that joint ownership should not be allowed. Broadcast television stations with overlapping Grade A signal contours, whether in the same DMA or not, may compete for viewers and advertising dollars. Second, the common ownership of two broadcast stations in different DMAs with overlapping Grade A signal contours may reduce voice and program diversity available to the viewers in the overlap area. Thus, we believe that a supplemental Grade A overlap criterion will serve to forestall potentially anti-competitive and diversity-reducing mergers in the broadcast television industry.

13. Total viewing for a particular broadcast television station may include viewing in counties both within and outside the station's DMA. Nielsen in fact examines all such viewing attributed to stations in counties in and outside the station's DMA and reports this viewing data under the heading ''Station Totals.'' The fact that there is viewing outside the DMA suggests that, at least in some instances, stations in neighboring DMAs may compete for some of the same audience. This may especially be the case in the eastern U.S. where counties and DMAs tend to be smaller than west of the Mississippi River. In these areas it may be that significant portions of an individual station's audience reside in adjacent DMAs, particularly for stations located near DMA boundaries. We seek comment on whether our composite DMA/Grade A rule will adequately address these concerns.

14. The Commission recognizes that actual viewing patterns may not be limited to instances where stations in different DMAs find their Grade A signal contours overlapping. We believe, however, that the areas in which such Grade A signal contours overlap are likely to be among those where the competitive and diversity concerns raised by common ownership of the two stations would be greatest. This is because the Grade A contour represents

the core over-the-air market. We seek comment on this belief.

15. A further reason we tentatively conclude that a composite DMA/Grade A rule is advisable is because the DMA designation relies on ratings in both cable and non-cable households in describing the geographic reach and extent of television markets. We note, however, that slightly more than one-third of television viewers do not subscribe to cable. Thus, reliance on a DMA market definition may conceal the extent to which viewers that rely on free-over-the-air television might be harmed from a diversity perspective if the duopoly rule takes no independent account of the extent to which two stations serve the same viewers solely on an ''over-the-air'' basis.

16. We ask for comment on whether there are any other such issues raised by reliance on DMA market designations which the Commission should consider. To the extent that such problems exist and are significant, will adding a Grade A component to the rule remedy them and thereby ease our competition and diversity concerns?

17. *Large DMAs and Counties.* We believe that a DMA/Grade A approach will generally be less restrictive than the current Grade B signal contour test. There may be some situations, however, where this is not the case, particularly in some geographically large DMAs west of the Mississippi River. In these situations, the DMA may be large enough so that two stations could be situated in the DMA yet not have overlapping Grade B contours; common ownership of the two stations would be permitted under the existing rule but not under the DMA/Grade A approach. We note, however, that a preliminary review of station locations and Nielsen DMAs suggests that there are currently few stations within the same DMA that could be commonly owned under the existing Grade B signal contour standard that are not already jointly owned. We invite comment on whether parties agree with this assessment, and whether, as a practical matter, the issue is essentially mooted by our proposal to grandfather these existing arrangements. In the event this is not the case, we invite comment as to how we should address this issue in defining the local geographic market and implementing the television duopoly rule. One alternative would be to adopt a two-tiered rule under which we would permit common ownership both in cases where there is no DMA/Grade A overlap and in situations where there is no Grade B overlap. Such a rule would be no more restrictive than our current regulation and would not disrupt current ownership patterns. We seek comment on this approach.

18. A related issue concerns the possibility that certain western counties are sufficiently large, measured by area, that populations in cities or towns at opposite ends of the same county watch stations in different DMAs. Nielsen's methodology for assigning counties would nonetheless award the county based on the preponderance of overall viewing in the county. This could, potentially, lead to a situation in which Nielsen assigns a significant portion of the viewing population of that county, say residents of town A, to a DMA with stations that are not viewed by those television households. Such assignment might occur because Nielsen relies on the preponderance of cable and non-cable viewers in both town A and the larger town B at the opposite end of the county. As a result, under a DMA-based duopoly rule, stations licensed to towns A and B could not be commonly owned even if their Grade B contours do not overlap and they actually serve entirely different markets. Our preliminary analysis, however, indicates that the number of instances in which this might occur may be small. Indeed, we note that Nielsen has, in certain instances, split counties among different DMAs based on the disparate viewing habits of residents in various locations in the county. We seek comment on whether this assessment is accurate. What would be the appropriate response in the event the record shows that this issue in fact presents a significant problem?

19. *Grandfathering.* As noted, recognizing that our proposal could disrupt existing ownership arrangements involving stations in the same DMA with no Grade B overlaps, we seek comment on whether we should, if we adopt a DMA/Grade A rule, grandfather existing joint ownership combinations that conform to our current Grade B test. We also seek comment on whether the grandfathered status we propose for existing joint ownership combinations in the same DMA should cease at the time an applicant seeks to assign or transfer a grandfathered station, or whether we should allow the grandfathered status to be transferred to a new owner. In the event we were to grandfather these combinations, the apparently more restrictive aspects of a DMA/Grade A duopoly approach would appear to have little effect on existing broadcasters, while the relaxation of the duopoly standard inherent in the change from a Grade B to a DMA/Grade A criterion would afford broadcasters significant opportunities to obtain the efficiencies which common ownership may offer. We tentatively conclude that, overall, our DMA/Grade A rule will make the local television rule less restrictive without harming our competition and diversity goals.

C. Exceptions and Waivers to the DMA/Grade A Approach

20. The *TV Ownership Further NPRM* invited comment on whether, in at least some situations, we should allow a company to acquire stations within the same geographic market. We asked parties to address a number of possible exceptions to a ''one station'' local ownership rule, such as (1) permitting combinations of two UHF stations located in the same market or permitting combinations of one UHF station and one VHF station located in the same market, and (2) permitting such combinations only if a certain number of independently-owned broadcast television stations remain after the transaction. We also sought comment on the criteria to be used in a case-by-case waiver approach. In response, a number of parties opposed any relaxation of our current rules, while other commenters urged us to modify our rules to permit same-market combinations in certain circumstances.

21. We invite parties to update the record on the general issue of whether we should permit television duopolies in certain circumstances by rule or waiver. We also seek additional comment on a specific exception and on specific waiver criteria for the local station ownership rule.

22. In addition, we seek further evidence regarding the relationship between ownership and diversity. Greater ownership concentration traditionally has been thought to reduce diversity. We seek comment, analysis and evidence on whether it reduces viewpoint and program diversity. For example, would a single owner of two stations be less likely to present diverse opinions, and less likely to serve diverse audiences, than would two unaffiliated owners? Conversely, would an owner of two stations in a market be more likely to counterprogram and thereby serve the interests and views of more viewers? With respect to these questions, what can we learn from the waivers of local television ownership rules that we have already granted? Have they led to a decrease or an increase in programming or viewpoint diversity? Similarly, taking account of the important differences between television and radio, what can we learn from ''radio duopolies,'' which have been permissible since 1992?

1. Exceptions

a. Distinguishing Between UHF and VHF Stations

23. In response to the *TV Ownership Further NPRM,* several parties raised a threshold issue in arguing that local television station combinations involving UHF stations should receive more favorable treatment than those involving VHF stations. We invite parties to comment on the extent to which we should explicitly distinguish between UHF and VHF stations in determining whether to allow common ownership of stations in the same market. In particular, should we treat the common ownership of UHF stations in the same DMA or even in the same city more favorably than that of non-UHF stations? As several parties noted, some UHF stations are major network affiliates with large market shares, but many are not. These parties therefore raise a question as to the continuing validity of the need for differential treatment of UHFs.

b. Satellite Stations

24. Television satellite stations are authorized under Part 73 of the Commission's Rules to retransmit all or part of the programming of a parent station. The two stations are ordinarily commonly owned. Satellite stations are generally exempt from our broadcast ownership restrictions. An application for television satellite status will be presumed to be in the public interest if the applicant meets three criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.

25. We presently see no reason to alter our current policy exempting satellite stations from our local ownership rules. Our satellite station policy, resting in significant part on the satellite station's questionable financial viability as a stand-alone operation, has furthered our ownership policies by adding additional voices to local television markets where otherwise no additional voices might have emerged. The criteria we utilize to evaluate requests for satellite status—including service to underserved areas and a demonstrated unwillingness by potential buyers to operate the station on a stand-alone basis—ensure that satellite operations are consistent with our underlying goals of promoting diversity and competition. Under these circumstances, we believe that continued exception of satellite stations from the local ownership rules is appropriate. We invite comment on this conclusion.

2. Waivers

The Commission seeks comment on a number of specific waiver criteria for allowing common ownership of stations within the same local market.

a. UHF/VHF

27. We have discussed, as a possible exception to the local television ownership rule, exempting certain UHF combinations from the application of the local television ownership rule. Another approach toward the same end would be to create waiver criteria by which the Commission might waive the application of the rule for certain UHF combinations. Many of the comments from parties on possible criteria to be used in permitting common ownership of stations within the same local market focussed on permitting combinations involving UHF stations.

28. Given these comments, we request additional comment on whether we should treat UHF station combinations differently from VHF combinations with respect to local ownership and, if so, how. Commenters citing disadvantages that they believe UHF stations continue to suffer should also list very specific criteria for waiving the duopoly rule that would correspond to those disadvantages, e.g., small audience share or limited area of signal coverage. We ask parties to comment on the use of such criteria in granting waivers in light of our competition and diversity goals. In addition, while the 1996 Act itself is silent on the question, the *Conference Report* to the Act states that ''[i]t is the intention of the conferees that, if the Commission revises the multiple ownership rules, it shall permit VHF-VHF combinations only in compelling circumstances.'' Thus, we seek comment on whether there are particular locations (such as Alaska or Hawaii) where there are such compelling circumstances that the Commission might allow some VHF/VHF combinations for reasons analogous to those cited in support of UHF combinations. Commenters supporting this view should describe the nature of the showing that should be required and the effect of any such waivers on diversity and competition in these markets.

b. Failed Station

29. We invite comment on whether, if an applicant can show that it is the only viable suitor for a failed station, the Commission should grant the application regardless of contour overlap or DMA designations. A ''failed'' broadcast station for purposes of our one-to-a-market rule waiver standard is a station that has not been operated for a substantial period of time, *e.g.,* four months, or that is involved in bankruptcy proceedings. We ask whether this failed station standard would be appropriate in evaluating a potential duopoly application. We invite comment on whether it is preferable to have two operating stations with a single owner than to have one operating and one dark station. The Commission also invites comment on whether any such standard should be relatively strict or generous. For example, should only failed stations qualify, or should we consider failing stations as well? If so, what is the appropriate definition of a failing station? Should applicants be required to demonstrate that they are the only qualified and viable purchaser for the failed stations? We seek comment on whether this standard is appropriate, on how a demonstration that a station has ''failed'' or is failing might be accomplished.

c. Vacant and New Channel Allotments

30. In our recent *Sixth Further Notice of Proposed Rule Making* (''*Sixth FNPRM*''), 61 FR 43209 (August 21, 1996) in the DTV proceeding, we proposed to delete all vacant TV allotments in order to provide existing television stations with DTV allotments with comparable coverage. In the Sixth FNPRM, however, we indicated that ''in some communities—mainly rural areas—unused channels may remain even after all existing broadcasters receive allotments.''

31. We invite comment on whether we should entertain a waiver request to the local television ownership rule to enable a local broadcast television licensee to apply for a channel allotment that has long remained vacant or unused, *e.g.,* five years. We believe that it may not be in the public interest to have allotted broadcast channels lie fallow—particularly in markets where it might be possible to allow additional NTSC stations to come on the air without adversely impacting the proposed DTV allotment table and the transition to digital television. Evidence that an allotment has remained vacant for five years, or evidence of a pattern of failure in applications for that allotment, may suggest that the operation of another television station on a stand-alone basis in the community in question is not economically viable. In those circumstances, the public interest in diversity may be advanced by permitting an existing station in the market to acquire the station, rather

than allowing the channel to remain unused. Similarly, if it is possible to create new channel allotments in a market without interfering with nearby channels and without adversely impacting the proposed new DTV allotment table, we seek comment on whether the Commission should entertain applications by an incumbent television licensee to establish a new channel in a market. We note that there currently is a freeze placed on new applications as the result of our DTV proceeding. We anticipate that, in the event we adopt a vacant channel waiver criterion, it would not apply until a DTV table of allotments is finalized in that proceeding. *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service, Sixth FNPRM*, 61 FR 43209 (August 21, 1996). We seek comment on this issue, including whether there may be circumstances where it would be appropriate to consider such waiver requests before DTV allotments are finalized.

32. A vacant channel waiver criterion is analogous to waivers for failed stations. We believe that granting waivers for failed stations and vacant allotments would be consistent with our objective to advance diversity and competition. We therefore seek comment on whether these failed and vacant channel waiver proposals increase the amount and diversity of programming and viewpoints available in the market. Similarly, we seek comment on a possible competitive or economic efficiency rationale for prohibiting existing broadcasters from expanding their capacity into unused broadcast spectrum that no other person wants to use. Specifically, we ask commenters to discuss the rationale that unassigned channels might need to be preserved for new broadcasters to accommodate future growth in demand for local television broadcasting. We solicit comment on these observations and especially upon the feasibility of this proposal given the proposed new DTV allotment table.

d. Small Market Share/Minimum Number of Voices

33. In addition, the Commission seeks comment on whether it should entertain waivers to allow joint ownership of stations that (1) have very small audience or advertising market shares and (2) are located in a very large market where (3) a specified minimum number of independently owned voices remain post-merger. The purpose of such a waiver standard would be to enhance competition in the local market by allowing small stations to share costs and thereby compete more effectively. It could also increase the availability of programming and, perhaps, program diversity were such stations to use their economic savings to produce new and better-quality programming or related enhancements. Such advantages may be particularly helpful to small and independent UHF stations.

34. *Market Share.* We seek comment as to the size of market shares that would be sufficiently low to meet this standard. We also seek comment on whether a small market share waiver standard would tend to limit the application of this waiver standard, either absolutely or generally, to UHF stations and to independent stations not affiliated with any major network. In addition, if after a duopoly waiver is granted, such joint ownership results in the previously struggling stations developing large shares of the viewing audience, should the Commission terminate the waiver for joint ownership in the event the owner seeks to assign or transfer the stations' licenses?

35. *Minimum Number of Voices.* The *TV Ownership Further NPRM* discussed whether waivers would be appropriate where a sufficient number of independently owned broadcast television voices remained in the market post-merger. Several parties argued for variations on similar waiver standards.

36. We have previously sought comment on whether a minimum of six independently owned broadcast television stations in an ADI is an appropriate standard in light of our competition and diversity goals. The Commission's 1995 *TV Ownership Further NPRM* raised numerous questions about the extent to which other video and non-video products and services were competitive or diversity substitutes for broadcast television. We noted the lack of unanimity among the parties as to which products and services are substitutes and which are not. Given the many changes that are taking place in the television industry and the lack of consensus in the record, we ask here for comment on whether we should, until we observe further marketplace developments, focus only on broadcast television outlets in counting voices for this proposed waiver. Or, for example, should we give consideration to cable television systems when cable has a very high penetration level in the market? If so, how should a cable system be counted for these purposes? In view of recent developments regarding DBS, Open Video Systems (OVS), and on-line services, we also seek comment on whether and how these services should be counted as voices. For a given minimum number of independently owned broadcast television voices, an approach that counted only broadcast television voices would establish a more difficult standard for station owners in most markets to meet as compared to an approach that included a broader array of media as independent voices. Indeed, such an approach might limit waivers under this criteria to only the very largest markets. However, based on experience gained from granting waivers in these circumstances, we could then consider relaxing the rule further as part of a future biennial review of our ownership rules.

37. *Market Size.* We also invite comment on whether, if we adopt a small market share and minimum number of voices waiver policy, we should add a market size test. In other words, we might limit waivers based on a minimum number of television voices in the very largest markets. We invite comment on whether the largest markets already have sufficiently numerous competing broadcast television outlets to safeguard our competition and diversity concerns. Or, are there so few such large markets that development of a waiver criterion is not an efficient means to promote diversity? Parties are also asked to comment on the appropriate minimum number of voices under such an approach. For example, should this standard require a minimum number of independently-owned broadcast television stations (including both commercial and non-commercial stations) licensed to communities in the DMA after the proposed transaction? The Commission seeks comment on alternative standards, and whether waivers based on these criteria should be limited, at least for the time being, to only the largest markets.

e. Public Interest and Unmet Needs

38. Finally, we seek comment on the circumstances in which the Commission should grant a waiver if the applicant demonstrates that the public interest benefits that will flow from a waiver would include public interest programming that would not be provided were the stations owned separately. The Commission has on numerous occasions taken into account an applicant's programming enhancements in granting permanent and temporary waivers of the television duopoly rule although these waivers typically involved only limited amounts of contour overlap between the stations. We also seek comment on how, if this waiver criterion were adopted, programming benefits would fit into our analysis of the public interest. Should we rely only on types of programming

that the Commission has traditionally considered ''public interest'' programming, such as children's educational programming, news, public affairs and access of political candidates to the airwaves? Should we permit broadcasters to identify additional types of programming that would support a waiver, such as programming that serves the needs of an underserved segment of the local market or underprovided public interest programming? Should we follow up on the representations made by licensees in their waiver requests? Finally, we seek comment on whether it would be preferable to consider this waiver criterion, if at all, only in conjunction with one or more of the other criteria discussed above.

3. Waivers Pending the Outcome of This Proceeding

39. There has been an increase in broadcast transactions since the passage of the 1996 Act, with a number of these involving requests for waiver of our ownership rules. Our current television duopoly rule will, of course, remain in place pending the outcome of this proceeding, but we take this opportunity to provide parties guidance regarding our policy in waiving the rule during this interim period. We hope that doing so will facilitate planning for these transactions as well as staff processing of license transfer and assignment applications.

40. During this interim period, we will generally grant waivers of the television duopoly rule, conditioned on coming into compliance with the requirements ultimately adopted in this proceeding within six months of its conclusion, where the television stations seeking common ownership are in different DMAs with no overlapping Grade A signal contours. Commission staff will have delegated authority to act on applications seeking such waivers as long as the applications do not raise new or novel issues. We have tentatively concluded that the record in this proceeding supports relaxation of the geographic scope of the duopoly rule from its current Grade B overlap standard to a standard based on DMAs supplemented with a Grade A overlap criterion. While we are providing an opportunity for comment on this tentative conclusion, we do not believe granting waivers satisfying the proposed standard, and conditioning them on the outcome of this proceeding, will adversely affect our competition and diversity goals in the interim. It will also have the benefit of providing parties some flexibility in moving forward on merger transactions that do not comply with the current duopoly rule.

41. We will be disinclined to grant waiver requests not falling in this category (*i.e.*, those involving stations in the same DMA or with overlapping Grade A signal contours), absent extraordinary circumstances. These types of waiver requests will be acted upon by the full Commission.

III. Radio-Television Cross-Ownership Rule

42. The radio-television cross-ownership rule, or the one-to-a-market rule, generally forbids joint ownership of a radio and a television station in the same local market. The rule seeks to promote competition as well as viewpoint and programming diversity in broadcasting. In 1989, we amended the rule to permit, on a waiver basis, radio-television mergers in the Top 25 television markets if, post-merger, at least 30 independently owned broadcast voices remained, or if the merger involved a failed station or if the merger satisfied a group of five other criteria. Waivers premised on the first two criteria—large market size or financial failure—were presumed to be in the public interest, while waivers based on the ''five factors'' were evaluated based on the strength of the applicant's individual showings.

43. In the *TV Ownership Further NPRM*, we proposed to eliminate the cross-ownership restriction in its entirety or replace it with an approach under which cross-ownership would be permitted where a minimum number of post-acquisition, independently owned broadcast voices remained in the relevant market. We tentatively concluded that there were two alternative approaches towards modifying the one-to-a-market rule. If radio stations and television stations do not compete in the same local advertising, program delivery or diversity markets, we proposed to eliminate this rule entirely and rely on our local ownership rules to ensure competition and diversity at the local level. Under the local radio ownership rules in effect at that time, this would have permitted entities to own one AM, one FM, and one television station in small markets. In large markets, one entity would have been able to own up to 2 AMs, 2 FMs, and 1 television station. If, on the other hand, radio and television did compete in some or all of the same local markets, then we proposed to modify the one-to-a-market rule to allow radio-television combinations (AM-TV, FM-TV, or AM-FM-TV) in those markets that have a sufficient number of remaining alternative suppliers/outlets as to ensure sufficient diversity and competition.

44. Commenting parties responded with a variety of positions ranging from recommending repeal of the rule, to relaxation of the rule, to retention of the rule. Since those comments were received, Congress passed the 1996 Act. The 1996 Act affects our radio-television cross-ownership rule in at least two ways. First, Section 202(d) of that Act directs the Commission to extend our radio-television cross-ownership waiver policy to the Top 50 rather than the top 25 television markets ''* * * consistent with the public interest, convenience and necessity.'' Second, the 1996 Act significantly liberalized the local radio ownership rules. Prior to the 1996 Act, the largest number of radio stations one firm could own in any market was four—two AM and two FM stations. As modified by the 1996 Act, however, our rules now allow one party to own up to 8 commercial radio stations in radio markets with 45 or more commercial radio stations. One party can own up to 7 commercial radio stations in radio markets with 30–44 commercial radio stations and as many as 6 commercial radio stations in radio markets with 15–29 commercial radio stations. For radio markets with 14 or fewer commercial radio stations, one party can own up to 5 commercial radio stations (provided that no party may own, operate or control more than 50% of the stations in the market).

45. We consider the recent statutory changes to the local radio ownership rules to be significant enough to warrant further comment on our radio-television cross-ownership rule proposals outlined in the *TV Ownership Further NPRM*. First, can the rule be eliminated based on a finding that radio and television stations are not substitutes? Second, even if we eventually consider television and radio stations substitutes, can the rule be eliminated because the respective radio and television ownership rules alone can be relied upon to ensure sufficient diversity and competition in the local market?

46. We also seek to update the record on options for modifying, but not eliminating, the radio-television cross ownership rule. Accordingly, we invite comment on whether any easing of the cross-ownership rule should take the form of modifying the rule itself or modifying our presumptive waiver policy.

47. Consistent with Section 202(d) of the 1996 Act, we propose, at a minimum, to extend the Top 25 market/30 voice waiver policy to the Top 50 markets. The 30 independently owned

voices test has proven effective in safeguarding our diversity and competition objectives in the Top 25 markets. Our experience in processing waiver requests beyond these markets further indicates that application of the 30 independently owned voices test to the Top 50 markets should also be sufficient to safeguard diversity and competition in markets 26–50. We consequently tentatively conclude that extending this test to the Top 50 markets would be consistent with the public interest, convenience and necessity. Thus, an applicant would be presumptively entitled to a waiver to obtain one AM, one FM, and one television station in a Top 50 market as long as 30 independently owned voices remained after the merger. The *TV Ownership Further NPRM* made a similar proposal and most parties were in apparent agreement with at least taking this step. We regard this as a minor change in our rules because the independently owned 30 voice requirement would remain the primary restraint on radio-television mergers.

48. We also invite comment, however, on the following four options—most of which were discussed in the previous *NPRM*—to change the rule beyond that contemplated by the 1996 Act. First, should we extend the presumptive waiver policy to any television market that satisfies the minimum independent voice test? Second, should we extend the presumptive waiver policy to entities that seek to own more than one FM and/or AM radio station? Third, should we reduce the number of required independently owned voices that must remain after a transaction? And fourth, should our ''five factors'' test be changed or refined to be more effective in protecting competition and diversity? To assist our consideration of these alternatives, we seek comment on the effects of waivers we have granted in the past on competition in local markets and on viewpoint and program diversity. We request that commenters provide as specific data as possible in describing their conclusions.

49. To the extent the Commission finds that it is necessary to consider market share information in reviewing matters of common ownership, we also ask for comment on how to establish the appropriate definition of the relevant advertising market for our consideration. For example, we seek comment on whether we should view the relevant market as focusing on advertising in radio and television. Alternatively, is the relevant market in this context more appropriately defined as local advertising media for radio, television, newspaper, cable, and others, or should certain media segments be excluded? In this regard, we also seek comment on the level of data on market shares that firms should be required to provide in order to demonstrate that common ownership would meet market share criteria. In particular, should they provide market share of radio and television local revenue independently, as well as the combined share of all advertising?

50. We seek comment on the above options as well as other possible means of revising the radio-television cross ownership rule, particularly in light of the changes resulting from the 1996 Act. We seek to safeguard our competition and diversity goals while at the same time allowing parties to take advantage of the efficiencies that may result from permitting cross ownership of radio and television stations in the same market. As to the latter, we urge parties to provide more detailed evidence of these efficiencies. Can the same level of efficiencies be achieved in the cross-ownership situation as when the common ownership involves stations within the same service? Do these efficiencies diminish as the number of commonly owned stations increases?

51. We note that our current radio-television cross-ownership rule will remain in place pending the resolution of this proceeding. Waiver requests submitted in the interim will be processed pursuant to our current criteria for evaluating such requests. The Chief of the Mass Media Bureau will continue to have delegated authority to rule on uncontested one-to-a-market waiver requests that involve stations in the Top 100 television markets that are clearly consistent with prior Commission precedent, *i.e.*, which present no new or novel issues. One-to-a-market waiver requests not falling in this category will be referred to the Commission. We expect that waivers falling in this latter category that are granted by the Commission will be conditioned on the outcome of this proceeding.

IV. Television Local Marketing Agreements

52. A television local marketing agreement (''LMA'') is a type of contract in which the licensee leases blocks of its broadcast time to a broker who then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. Currently, the Commission does not attribute television LMAs for local and national ownership purposes and so these relationships are not subject to our ownership rules. However, in the radio context, radio station ownership is attributed to any radio licensee who enters into an LMA with another radio station in the same market if the agreement involves the brokering of more than 15% of the station's weekly broadcast hours.

53. In the previous *NPRM*, the Commission suggested that guidelines similar to those governing radio LMAs may be necessary with regard to television LMAs. We also determined that such agreements, subject to some general Commission guidelines, can provide competitive and diversity benefits to both the brokering parties and to the public. We tentatively proposed to treat LMAs involving television stations in the same basic manner as we did for radio stations. That is, time brokerage of another television station in the same market for more than 15% of the brokered station's weekly broadcast hours would result in counting the brokered station toward the brokering licensee's national and local ownership limits. Further, television LMAs would be required to be filed with the Commission in addition to the existing requirement that they be kept at the stations involved in an LMA. Finally, we indicated that our television LMA guidelines would allow for ''grandfathering'' television LMAs entered into before the adoption date of the *TV Ownership Further NPRM*, subject to renewability and transferability guidelines similar to those governing radio LMAs as described more fully below in paragraphs 90 and 91.

54. These proposed guidelines primarily concern the circumstances under which a television LMA should be attributed to the brokering entity for purposes of the broadcast ownership rules. We will consequently incorporate the issue of whether to adopt these guidelines, or some variation of them, into our companion proceeding regarding our broadcast attribution rules. In our companion *Attribution Further NPRM*, we tentatively conclude that we should treat time brokerage of another television station in the same market for more than 15 percent of the brokered station's weekly broadcast hours as being attributable, and therefore as counting toward the brokered licensee's multiple ownership limits.

55. We will, however, decide in this proceeding how to treat *existing* television LMAs under any guidelines that are adopted that would attribute television LMAs to the brokering station. These television LMA grandfathering and transition issues will be especially significant issues if we do

not modify our television duopoly rule, because such an attribution provision would preclude television LMAs in any market where the time broker owns or has an attributable interest in another television station.

56. In this regard, Section 202(g) of the 1996 Act states that ''[n]othing in this section shall be construed to prohibit the origination, continuation, or renewal of any television local marketing agreement that is in compliance with the regulations of the Commission.'' We interpret this provision as clearly stating no more than that Section 202 of the 1996 Act shall not be construed to prohibit any television LMA that is in compliance with the Commission's rules. We do not regard Section 202(g) as limiting our ability to promulgate attribution rules under Title I and Title III affecting the status of television LMAs. As a result, we do not see Section 202(g) of the 1996 Act as posing a legal restraint on our questions in the *TV Ownership Further NPRM* as to (1) whether television LMAs in which a broker obtains the ability to program 15% or more of a broadcast television station's weekly broadcast output should be deemed an attributable interest (which will be decided in the attribution proceeding); and (2) whether grandfathering existing television LMAs from any applicable ownership rules that would follow from that attribution decision is appropriate.

57. We recognize, however, that the language in the *Conference Report* to the 1996 Act appears to interpret Section 202(g) of the 1996 Act in a different manner with regard to television LMAs that predate February 8, 1996, the date of enactment of this legislation. The *Conference Report* states—''[Section 202(g)] grandfathers LMAs currently in existence upon enactment of this legislation and allows LMAs in the future, consistent with the Commission's rules. The conferees note the positive contributions of television LMAs and this subsection assures that this legislation does not deprive the public of the benefits of existing LMAs that were otherwise in compliance with Commission regulations on the date of enactment.'' The *Conference Report* suggests that the conferees intended to ''grandfather'' existing television LMAs. Although we do not interpret the statute as requiring that outcome, we believe that existing television LMAs entered into on reliance of the Commission's current policy should not be disrupted during the remainder of the current contract term. Indeed, we had a similar concern at the time of the *TV Ownership Further NPRM* and so asked a series of questions as to whether television LMAs entered into before the adoption date of the *TV Ownership Further NPRM* should be grandfathered with respect to ownership regulations.

58. We wish to provide an additional opportunity for comment on these grandfathering and transition issues. In particular, in order to devise a fair and efficient method to bring licensees into compliance with our ownership rules, in the event television LMAs are attributable, we request specific comments concerning the number of television LMAs that are in effect on the date of the adoption of this *NPRM*, the market that each LMA covers, the length of the contractual relationship, and any other data concerning television LMA relationships that would have a bearing on bringing parties to an LMA into compliance with our ownership rules. This data will allow us to assess the need for grandfathering existing LMAs in the event they are deemed attributable, and the form this grandfathering should take. We wish to minimize undue and inequitable disruption to existing contractual relationships, and consequently seek comment on allowing television stations to come into compliance with our ownership rules within a reasonable period of time.

59. We note that such a transition would not involve grandfathering permanent ownership arrangements that would violate our rules given that LMAs typically involve, by their nature, more temporary relationships that have set contractual terms. We thus are inclined to institute a grandfathering policy to provide that in the event television LMAs become attributable pursuant to the broadcast attribution proceeding, television LMAs entered into prior to a specific date, and that are otherwise in compliance with applicable rules and policies, would be permitted to continue in force without disruption until the original term in the LMA expires. However, if a grandfathered television LMA results in violation of any Commission ownership rule, a party would be required to seek a waiver from the Commission prior to transferring the station or renewing the grandfathered television LMA. By specifying this date at this time, we provide notice that television LMAs entered into after the grandfathering date will not be grandfathered if television LMAs are ultimately found to be attributable. Additionally, we hope to provide certainty to television licensees who wish to make business decisions concerning television LMAs until the attribution issue is resolved. We consequently believe this grandfathering approach would be appropriate. We reserve the right, however, to invalidate an otherwise grandfathered LMA in circumstances that raise particular competition and diversity concerns, such as those that might be presented in very small markets.

60. With respect to specifying a particular grandfathering date in the event we determine television LMAs should be attributable under our local ownership rules, we are inclined to grandfather all television LMAs entered into *before* the adoption date of this *NPRM* for purposes of compliance with our ownership rules. Thus, such television LMAs will not be disturbed during the pendency of the original term of the LMA in the event the cognizability of the LMA would result in violation of an ownership rule. However, television LMAs entered into *on or after* the adoption date of this *NPRM* would be entered into at the risk of the contracting parties. Consequently, if these latter television LMAs result in violation of any Commission ownership rule, they would not be grandfathered and would be accorded only a brief period in which to terminate.

61. We generally propose to limit the transferability and renewability of grandfathered television LMAs as we did with respect to radio LMAs. In transfer situations wherein the television LMA was entered into *before* the grandfather date, we generally propose to permit the new station owner to retain the LMA for the duration of the initial term of the television LMA even if it would otherwise violate our local ownership rules, under our new attribution criteria for television LMAs. We invite comment, however, as to whether there should be some absolute limit, such as three years, on such grandfathering. In transfer situations wherein the television LMA was entered into *on or after* the grandfather date, we propose to allow the new station owner a minimum amount of time to terminate the contractual relationship. In the television LMA renewal context, we propose to permit renewal or extension of television LMAs only if the extension or renewal took place *before* the relevant grandfathering date. We seek comments on these proposals.

V. Administrative Matters

62. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before February 7, 1997 and reply comments on or before March 7, 1997. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and

supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. If you want to file identical documents in more than one docketed rulemaking proceeding, you must file two additional copies of any such document for each additional docket. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

63. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally* 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

64. Additional Information: For additional information on this proceeding, please contact Alan Baughcum (202) 418-2170 or Kim Matthews (202) 418-2130 of the Policy and Rules Division, Mass Media Bureau.

VI. Initial Paperwork Reduction Act of 1995 Analysis

65. The rules proposed in this *Second Further Notice of Proposed Rulemaking* have been analyzed with respect to the Paperwork Reduction Act of 1995 and contain no changes from our earlier proposals in this rule-making proceeding related to new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements. These proposed rules would not increase or decrease burden hours imposed on the public.

VII. Initial Regulatory Flexibility Analysis

66. With respect to this *Second Further NPRM,* an Initial Regulatory Flexibility Analysis (IRFA) is contained below. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio and television broadcasting industries. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *Second Further NPRM,* but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Second Further NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

Initial Regulatory Flexibility Analysis Regulatory Flexibility Act As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and proposals in this *Second Further NPRM.* Written public comments concerning the effect of the proposals in the *Second Further NPRM,* including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further NPRM* provided in Paragraph 94. The Secretary shall send a copy of this *Second Further NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Reason and Objectives for *Second Further NPRM:* After the issuance of the *Television Ownership Further NPRM* in this docket, the Telecommunications Act of 1996 (''1996 Act'') was signed into law. *The Second Further NPRM* seeks to update the record in this proceeding on the effect of the 1996 Act and to review other aspects of our local ownership rules which were also the subject of the *Television Ownership Further NPRM.*

First, this *Second Further NPRM* proposes to modify the geographic scope of the duopoly rule to eliminate the Grade B contour overlap standard and replace it with a DMA/Grade A contour standard. Second, this *NPRM* proposes to modify the radio-television cross ownership rule to conform to Section 202 of the 1996 Act. Accordingly, we propose to extend our 30 voices waiver policy to the Top 50 markets. We also seek comment on a number of other options for revising the radio-television cross-ownership rule and the waiver policy for this rule. Finally, this *NPRM* proposes to institute a grandfathering policy in the event television LMAs become attributable pursuant to the accompanying broadcast attribution proceeding.

Legal Basis: Authority for the actions proposed in this *Second Further NPRM* may be found in Sections 4(i), 303(r), and 307(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303(r), and 307(a) and Sections 202(c)(2), 202(d), 202(g), and 257 of the Telecommunications Act of 1996.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply: The proposed rules and policies will concern full power television broadcasting licensees, radio broadcasting licensees and potential licensees of either service. The Small Business Administration (SBA) defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified in Services, Industry 7812. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation at the end of August 1996. For 1992 the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.

Additionally, the SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified in Services, Industry 7922. The 1992 Census indicates that 96% (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. For 1996, official Commission records indicate that 12,088 radio stations were operating. Thus, the proposed rules will affect approximately 1,550 television

stations, approximately 1,194 of those stations are considered small businesses. Additionally, the proposed rules will affect 12,088 radio stations, approximately 11,605 are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. We recognize that the proposed rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations and 293 (2.9%) of the commercial radio stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations and 394 (3.8%) of 10,244 commercial and non-commercial radio stations in the United States. We recognize that the numbers of minority and women broadcast owners may have changed due to an increase in license transfers and assignments since the passage of the 1996 Act. We seek comment on the current numbers of minority and women owned broadcast properties and the numbers of these that qualify as small entities. To assist us with our responsibilities under the amended Regulatory Flexibility Act, we specifically request comments concerning our assessment of the number of small businesses that will be impacted by this rulemaking proceeding, the type or form of impact, and the advantages and disadvantages of the impact. In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown. We invite comment as to such number.

Description of Projected Recording, Recordkeeping, and Other Compliance Requirements: No new recording, recordkeeping or other compliance requirements are noted in this *Second Further Notice of Proposed Rulemaking.*

Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules: The Commission's broadcast-newspaper, television broadcast-cable, local radio ownership, and national television ownership rules also promote the same goals as the rules discussed in this item, however, they do not overlap, duplicate or conflict with the proposed rules.

Significant Alternatives to the Proposed Rule Which Minimizes the Significant Economic Impact on Small Entities and Accomplish the Stated Objectives: The Commission seeks to minimize the impact of any changes in the television local ownership rules upon small entities while preserving competition and diversity in our local markets. Any significant alternatives consistent with the stated objectives presented in the comments will be considered. We urge parties to support their proposals with specific evidence and analysis.

Local Ownership Rule: In this *NPRM* we tentatively conclude that a combination of the DMA and Grade A signal contours may be a better measure of the geographic scope of the duopoly rule. We also seek comment on whether to grandfather existing common ownership combinations that conform to our current Grade B test and whether we should permit television duopolies in certain circumstances by rule or wavier.

Radio-Television Cross-Ownership Rule: In the *Television Ownership Further Notice of Proposed Rulemaking,* we received a large array of comments recommending a variety of positions ranging from repeal, to relaxation, to retention of the rule. We request comment and specific data to support the commenters positions concerning: (1) extending the presumptive waiver policy to any television market that satisfies the minimum independent voice test; (2) extending the presumptive waiver policy to entities that seek to own more than one FM and/or AM radio station; (3) reducing the number of required independently owned voices that must remain after a transaction; and (4) whether the ''five factor'' waiver policy should be changed or refined to be more effective in protecting competition and diversity.

Television Local Marketing Agreements: To minimize undue and inequitable disruption to existing contractual relationships, we propose a grandfathering policy which allows television stations to come into compliance with our ownership rules within a reasonable period of time.

We seek comment concerning the significant economic impact of each of the above mentioned proposals on a substantial number of small stations.

Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis: There were no comments submitted specifically in response to the IRFA that was included in the *Television Ownership Further Notice of Proposed Rulemaking.* We have, however, taken into account all issues raised by the public in response to the proposals raised in this proceeding. We received conflicting comments concerning the impact of joint ownership on broadcast stations. Several commenters advocated the modification or elimination of the local ownership rules in order to permit station owners to take advantage of the economies of scale that will result from joint ownership. On the other side, several commenters argued that the ability of station owners to take advantage of the economies of scale resulting from joint ownership will drive up the price of stations which will make it more difficult for new entrants, including minorities and women, to finance the purchase of stations.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–32140 Filed 12–18–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket Nos. 96–222, 91–221, and 87–8; FCC 96–437]

Broadcast Television National Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making makes several proposals regarding how to calculate a group television station owner's aggregate national audience reach to determine compliance with the Commission's 35% national audience cap. This action is needed to best implement the national ownership provisions of the Telecommunications Act of 1996.

DATES: Comments are due by February 7, 1997, and reply comments are due by March 7, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in MM Docket Nos. 96–222, 91–221, and 87–7, adopted November 5, 1996, and released November 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW.,

Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

1. In 1995, the Commission released a *Further Notice of Proposed Rulemaking* in MM Docket Nos. 87–8 and 91–221 (*TV Ownership Further NPRM*) seeking comment on a variety of issues relating to the national broadcast television multiple ownership rules.[1] After comments were submitted, Congress enacted the Telecommunications Act of 1996 (the ''1996 Act''). The 1996 Act set specific national ownership audience reach limitations and eliminated our prior national numerical cap on station ownership. However, it did not address the issue of the measurement of audience reach for the purposes of the new limits. Therefore, we seek to update the record on measuring national television audience reach for purposes of the new national ownership limit in three areas, described in detail below: (1) whether to continue to disregard satellite station ownership in measuring national ownership (the ''satellite exemption''); (2) whether and how to incorporate local marketing agreements (''LMAs'') into the calculation of national audience reach; and (3) whether to replace our use of Arbitron's Areas of Dominant Influence (''ADIs'') to define geographic television markets with the use of Nielsen's Designated Market Areas (''DMAs''). We defer until 1998 consideration of another issue: whether to continue to attribute UHF facilities with only one half the audience reach of VHF stations in the same market (the ''UHF discount'').

Background

2. Before passage of the 1996 Act, Sections 73.3555(e)(1)(ii) and (iii) generally prohibited entities from having an attributable ownership or other cognizable interest in more than 12 such stations. Sections 73.3555(e)(2)(i) and (ii) generally prohibited from an entity from having an attributable ownership or other cognizable interest in a station if it would result in that entity's having such an interest in television stations with an aggregate national audience reach exceeding 25%. The rule defined a station's audience reach as consisting of the total number of television households within the television market for that station, rather than its actual viewing audience. The television market, in turn, was defined as the Area of Dominant Influence (ADI) that Arbitron, a commercial audience-rating service, used in analyzing broadcast television station competition. For purposes of calculating this aggregate audience reach under the rules, UHF stations were attributed with only 50% of the audience within their ADI (the UHF discount), and satellite stations generally were not counted at all (the satellite exemption).

3. Section 202(c)(1) of the 1996 Act directed the Commission to ''modify its rules for multiple ownership set forth in Section 73.3555 of its regulations. . . .—

(A) by eliminating the restrictions on the number of television stations that a person or entity may directly or indirectly own, operate, or control, or have a cognizable interest in, nationwide; and

(B) by increasing the national audience reach limitation for television stations to 35%.''

Accordingly, the Commission released an *Order* revising Section 73.3555(e) of the Rules to reflect these two changes.[2]

4. The 1996 Act is silent with respect to the UHF discount and the satellite station exemption, both of which remain part of the definitions set forth in Section 73.3555(e)(2) for calculating national audience reach. We stated in *the 1996 National TV Ownership Order* that issues related to these rule provisions would be addressed separately, and that the existing UHF discount and the satellite exemption would remain in effect until such time as we could review and resolve these matters. We added that any entity subsequently acquiring stations before these issues were resolved and which complied with the 35% audience reach limitation only by virtue of either or both of these two provisions would be subject to the outcome of the pending national television ownership proceeding, the relevant issues of which have been incorporated into this proceeding.

5. We consequently seek to update the record with regard to the satellite exemption, and we also seek comment on two other issues not addressed in the 1996 Act but which bear on our implementation and enforcement of the new 35% reach limit: the treatment of LMAs and the use of geographic market definitions for purposes of calculating national audience reach.

The Rules

The UHF Discount

6. When the Commission adopted the UHF discount in 1985, it stated that the inherent physical nature of the UHF signal created competitive disadvantages at that time sufficient to warrant accommodation in the national multiple ownership rules. However, as explained below, we are postponing any decision as to whether to modify or eliminate the UHF discount until the next biennial review of the broadcast ownership rules.

7. We have observed in other contexts that the UHF disparity has been ameliorated over the years. This is due in part to improved television receiver designs, as well as the fact that many households received broadcast channels via cable rather than by over-the-air transmission. In the *TV Ownership Further NPRM*, we suggested that extensive cable carriage of UHF stations, might have reduced the UHF disparity.

8. Nearly all of the commenters addressing the issue oppose eliminating the UHF discount. As they correctly point out, approximately 4% of potential viewers are not passed by cable and approximately 34.8% of television households do not subscribe to cable. Such viewers continue to rely on over-the-air reception of both VHF and UHF signals and, accordingly, continue to be subject to the UHF signal disadvantage. Moreover, the Supreme Court is considering the constitutionality of the must-carry rules. If the rules are determined to be unconstitutional, and if many UHF stations are as a result dropped by cable systems, then the increased pass rate and penetration rate of cable television could become much less relevant to the magnitude of the UHF disparity.

9. Given these circumstances, and based on the current record, we have decided to defer any further review of this policy to the biennial review of our broadcast ownership rules that we will conduct in 1998 pursuant to the 1996 Act. We should be in a better position in 1998 to assess the continuing growth over the next several years in the availability and penetration of cable and other multichannel video programming

[1] *Further NPRM* in MM Docket Nos. 87–8 and 91–221, 60 FR 6490, February 2, 1995 *(TV Ownership Further NPRM).* Those aspects of the *TV Ownership* proceeding that address national ownership issues are now incorporated into this new docket. The *TV Ownership Further NPRM* also addressed issues relating to the Commission's local television ownership rules, which are the subject of a companion proceeding. *Second Further Notice of Proposed Rulemaking* in MM Docket Nos. 91–221 and 87–7, also being published today (*Local TV Second Further NPRM*).

[2] *Order,* FCC 96–91 (released March 8, 1996), 61 FR 10691, March 15, 1996 (*1996 National TV Ownership Order*).

suppliers and how this affects the continuing need for the UHF discount. In addition, by 1998 the Commission will have adopted a digital television (DTV) Table of Allotments, and the implementation of this new technology will have proceeded further. Our review of the UHF discount as part of the biennial ownership review would take into account these developments, as both digital technology and the allotment of DTV channels may eventually diminish to a great extent the physical distinction between the UHF and VHF signals.We also invite comment on whether we should impose in the interim any supplementary limitation on national audience reach.

The Satellite Exemption

10. A television satellite is a full-power terrestrial broadcast station that retransmits all or part of the programming of a parent station that is often commonly owned. The Commission currently exempts TV satellites from the national multiple ownership rules. In 1991, in a proceeding addressing the Commission's overall regulation of satellite stations, we abolished both the 5% limit on the amount of local programming that a satellite can originate and the use of that 5% benchmark for determining whether a station is still a satellite.[3] Accordingly, because satellites were no longer limited as to the amount of local programming they could originate, we also sought comment on whether to continue to exempt satellites from the national ownership rule.[4]

11. A satellite may operate in the same market as its parent station intramarket, or the two stations may operate in different markets. We tentatively conclude that, with respect to the intramarket situation, the public interest would be served by retaining the satellite exemption. However, we believe that satellite stations should be counted for purposes of the national ownership limits where they are in a separate market from the parent station.

12. In intramarket situations, we see no reason to count that market twice for the purposes of determining national audience reach.[5] The national multiple ownership rule, as amended by the 1996 Act, is concerned with potential audience rather than actual viewership. Nor are we concerned with the particular number of television stations owned. Indeed, the 1996 Act eliminated the numerical station limitations formerly in the rule and now focuses solely on national audience reach. In this regard, if a licensee acquires a satellite television station in a market within which it already operates a station, it has not extended its audience reach in that television market for purposes of the national audience reach limit; the television households in that market are already counted, given the existence of the licensee's non-satellite station. This is true whether or not the satellite station is originating local programming. We seek comment on our proposal not to ''double count'' a satellite and its parent station in these circumstances.

13. Notably, the above analysis would apply regardless of whether one of the commonly owned stations is a satellite station, as it is based solely on the fact that both stations operate in the same television market. Thus, we extend our proposal to incorporate all commonly owned television stations within a market. Specifically, when two commonly owned stations are in the same market by virtue of a waiver of the local television duopoly rule, we propose not to ''double count'' the television households within that market for national ownership purposes. Similarly, should we ultimately authorize common ownership of more than one television station in a market in the pending local ownership proceeding, we intend not to double count the television households within that market for the purposes of calculating a licensee's national audience reach. We seek comment on this proposal. We also seek comment on how this proposal would affect programming diversity and opportunities for small stations, or stations owned by women and minorities.

14. Turning to parent-satellite combinations in separate markets, we note that this type of satellite provides programming to a population that otherwise would receive no programming at all over the air from either the parent or the satellite station, and the licensee of the parent station controls the programming of both the parent and the satellite station. Consequently, the actual over-the-air audience reach of the parent station's licensee is in fact expanded into another market by the audience reach of the satellite station. While the exemption may have encouraged the operation of satellite stations in the past, any such incentive has been minimized by the elimination of the 12-station limit. Previously, without the exemption, a satellite in an isolated area would have been regarded as being no different from a full-service station in a heavily populated area for the purpose of counting the number of stations toward the 12-station limit. However, as noted above, satellite stations typically operate in areas that are likely to provide television broadcasters relatively little opportunity for growth and profit when compared with larger markets. Under these circumstances, if there had been no satellite exemption, a licensee would have had a disincentive to operate a satellite station, and many rural areas would likely not be receiving service from satellite stations that are operating today. Thus, the exemption allowed group owners to acquire and operate satellite stations without concern for the national numerical station limits.

15. Under the new national ownership rule, however, the equal treatment of satellite stations for the purposes of national ownership would no longer provide a disincentive to satellite operation. Because a satellite generally serves a sparsely populated area that is underserved, the population of the entire market in which the satellite is located should add relatively little to a group owner's total national audience reach. Thus, we tentatively conclude that the satellite exemption in cases where the parent and satellite station serve separate markets is no longer necessary to encourage the operation of satellite stations. We seek comment on our tentative conclusion to eliminate the satellite exemption for parent/satellite combinations in different markets.

Local Marketing Agreements

16. The question of double-counting is also raised when a licensee programs another television station in the same market through an LMA. An LMA is a type of joint venture that generally involves the sale by a licensee of discrete blocks of time to a broker who then supplies the programming to fill that time and sells the commercial spot announcements to support it. Such agreements enable separately owned stations to function cooperatively via joint advertising, shared technical facilities (including shared production facilities), and joint programming arrangements.

17. We request comment specifically addressing how best to treat LMAs when calculating an entity's national audience reach. We stress that in this *NPRM* we are not addressing the permissibility and attribution of LMAs under our local ownership rules, as

[3] *Report and Order* in MM Docket No. 87–8, 56 FR 31876, July 11, 1991 (*TV Satellite R&O*) (*recon. pending*).

[4] *Second Further Notice of Proposed Rulemaking* in MM Docket 87–8, 56 FR 42306, August 27, 1991.

[5] As noted above, any satellite issues that might arise in the context of the local duopoly rule will be addressed in the local ownership proceeding.

these issues are currently being analyzed in our companion local ownership and attribution rule makings.

18. The double-counting issue arises when one licensee operates as a broker to another in the same television market pursuant to an LMA; in this situation it reaches the same audience twice, through two different television stations. We have incorporated the general issue of whether television LMAs should be attributed in the *Attribution Further NPRM* and tentatively conclude in that proceeding that an LMA of another television station in the same market for more than 15% of the brokered station's weekly broadcast hours should generally be attributed for purposes of our ownership rules. However, as discussed above in the context of satellite stations, the national television ownership rule now focuses solely on national audience reach and we see no reason to double-count a market for purposes of calculating this reach. We seek comment on this tentative conclusion. We seek comment in particular on the effect of double counting for small stations, or for stations owned by women or minorities.

Market Definition

19. The 1996 Act left unchanged a provision in our television ownership rule that defines national audience reach as the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI.

20. As we stated in the *1995 Television Ownership Further NPRM,* Arbitron no longer updates its county-by-county determinations of each broadcast station's ADI. Accordingly, we proposed to use Designated Market Areas (DMAs) as compiled by A.C. Nielsen—another commercial ratings service—where we previously relied on ADIs, noting that they are analytically similar. Moreover, in our companion *Local TV Second Further NPRM,* we state that the DMA provides, as a general matter, a reasonable proxy of a television station's geographic market. Consequently, we tentatively conclude in that proceeding that local television markets should be on the basis of DMAs, although for purposes of the local ownership rules, we further propose that we should supplement the DMA test with a Grade A signal contour criterion.

21. While the general issue of how to delineate the geographic scope of local markets was addressed by several commenters in response to the *1995 Television Ownership Further NPRM,* we observe that it was not in the context of calculating a broadcaster's national audience reach. In the absence of any comment, we tentatively conclude that we should adopt the proposal to use DMAs for calculating national audience reach.

22. In some instances the use of DMAs instead of ADIs may lead to small variations in the audience reach calculation of some stations. This is due to the fact that in some instances Arbitron and Nielsen define markets somewhat differently. For example, Hagerstown, Maryland, constitutes its own Arbitron ADI, while it is part of the Washington, DC DMA established by Nielsen. While we recognize that these variations occur, we believe they will have a minor effect on the calculation of an entity's national ownership reach. We invite parties to comment on this assessment.

Implementation and Transition Issues

23. In this *NPRM,* we propose to modify the satellite exemption, but we defer consideration of the UHF discount until our biennial review in 1998. We seek comment regarding the implementation of any changes we may make to the satellite exemption. We also seek to determine whether a group station owner complying with the 35% limit only by virtue of the UHF discount could nevertheless have so high a national audience reach that it would not be in the public interest and, if so, how this matter is best addressed. We note that part of the *1996 National TV Ownership Order* concerned subsequent station acquisitions (*i.e.*, UHF or satellite station acquisitions made after March 15, 1996, the effective date of that *Order*) that comply with the 35% audience reach limitation only by virtue of either or both of the UHF discount or the satellite exemption. We advised broadcasters that such transactions would be subject to the ultimate resolution of this rulemaking. We now ask commenters to address how best to effectuate that approach.

Conclusion

24. The Telecommunications Act of 1996 established new, relaxed limitations on national multiple ownership. We have issued this *NPRM* to update the record on subsidiary matters not addressed in the Act which determine how to calculate the new 35% national audience reach cap—whether to continue the satellite exemption, as well as issues related to LMAs and market definition. In seeking comment on these issues, we wish to ensure that the new national audience reach cap is effectively implemented so as to promote our competition and diversity goals. We also seek comment on the transaction issues raised by any rule changes we may adopt in this proceeding.

Administrative Matters

25. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before February 7, 1997, and reply comments on or before March 7, 1997. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

26. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally* 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

Initial Paperwork Reduction Act of 1995 Analysis

The rules proposed herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements. These proposed rules would not increase or decrease burden hours imposed on the public.

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and proposals in this *Notice of Proposed Rulemaking* (*NPRM*).[6] Written public comments concerning the effect of the

[6] An IRFA pursuant to Public Law Notice 96–354, § 603, 94 Stat. 1165 (1980) was incorporated into both the *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking* in MM Docket Nos. 91–221 and 87–8, the national ownership aspects of which have been incorporated into this proceeding.

proposals in the *NPRM*, including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Secretary shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.[7]

Reason for NPRM

After the issuance of the *TV Ownership Further NPRM* in 1995, the Telecommunications Act of 1996[8] was signed into law. Accordingly, this *NPRM* seeks comment on how the Telecommunications Act of 1996 should affect our ongoing analysis of the national broadcast television ownership rules.

Objectives

This *NPRM* seeks comment on modifying the national broadcast television ownership rules to achieve our competition and diversity goals in light of the passage of the Telecommunications Act. Pursuant to the Act, a licensee may not own a station if it would result in that broadcaster's owning television stations with an aggregate national audience reach exceeding 35%. A station's audience reach has traditionally been defined for national ownership purposes as the total number of television households within the station's Area of Dominant Influence (ADI), an area used by Arbitron to analyze broadcast television station competition. While the Telecommunications Act set the 35% national audience reach limit, it did not address how to actually measure audience reach. This *NPRM* seeks comment on issues relating to such measurement.

First, we propose to eliminate the satellite exemption to the national ownership rule, by which a television satellite station is not considered when calculating a broadcaster's national audience reach, in cases where the satellite operates in a different market from its parent. The exemption was intended to encourage the operation of satellite stations. Without the exemption, a satellite would have brought a group station owner closer to the 12-station cap (which was eliminated by the Telecommunications Act) just like the acquisition of any other station, thereby creating a disincentive for satellite operation. However, because the 12-station cap has been eliminated and because incorporation of a satellite's local market should add relatively little to a group owner's total national audience reach, the disincentive to satellite operation has likely been removed. When the satellite and the parent are in the same market, however, we propose to retain the exemption, because multiple counting of the same audience would appear unrelated to Congress's concern with national audience reach.

Second, the *NPRM* turns to LMAs, noting that the issue is relevant only if the LMA is deemed attributable, a question being resolved in the pending attribution proceeding. This *NPRM* proposes that local marketing agreements (LMAs) not be counted for the purposes of calculating an entity's national audience reach. When one licensee operates as a broker to another in the same television market pursuant to an LMA, it reaches the same audience twice, through two different television stations, and it does not allow the brokering station's licensee to reach any audience that it is not already reaching. Thus, it appears that Congress's concern with national audience reach, as opposed to numerical station limits, is not implicated.

Finally, the *NPRM* proposes to utilize Designated Market Areas (DMAs), the areas used by Nielsen to analyze broadcast television station competition, instead of ADIs when calculating the number of TV households in a station's market. Arbitron no longer updates its county-by-county determinations of each broadcast station's ADI. However, DMAs are generally similar to ADIs and are still updated regularly. Any effects caused by this modification of the rule are expected to be *de minimis.*

Legal Basis

Authority for the actions proposed in this *NPRM* may be found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r).

Recording, Recordkeeping, and Other Compliance Requirements

No new recording, recordkeeping or other compliance requirements are proposed.

Federal Rules That Overlap, Duplicate, or Conflict with the Proposed Rules

The Commission's broadcast-newspaper, television broadcast-cable, local radio ownership, and local television ownership rules also promote the same goals as the rules discussed in this item. However, they do not overlap, duplicate or conflict with the proposed rules.

Description and Estimate of the Number of Small Entities To Which the Rules Would Apply

The Small Business Administration (SBA) defines a television broadcasting station that is independently owned and operated, is not dominant in its field of operation, and has no more than $10.5 million in annual receipts as a small business.[9] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[10] Included in this industry are commercial, religious, educational, and other television stations.[11] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[12] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[13] There were 1,509 television stations operating in the nation in 1992.[14] That number has remained fairly constant, as indicated by the approximately 1,550 operating television stations in August, 1996.[15] In 1992,[16] there were 1,155 television station establishments that

[7] Public Law Notice 96–354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981), as amended.

[8] Public Law Notice 104–104, § 101, 110 Stat. 56 (1996) (Telecommunications Act).

[9] 13 CFR § 121.201, Standard Industrial Code (SIC) 4833 (1996). For purposes of this *Notice of Proposed Rulemaking,* we are utilizing the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations and to consider further the issue of the number of small entities that are television broadcasters in the future. *See Report and Order* in MM Docket No. 93–48 (*Children's Educational and Informational Programming*), 61 FR 43981 (August 27, 1996), citing 5 U.S.C. § 601(3).

[10] Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE, Series UC92–S–1, Appendix A–9 (1995).

[11] Id.

[12] Id.

[13] Id.

[14] FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, supra note 71, Appendix A–9.

[15] Federal Communications Commission News Release 64958, September 6, 1996.

[16] Census for communications establishments are performed every five years, during years that end with a ''2'' or ''7''. *See* Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9, III (1995).

produced less than $10.0 million in revenue.[17]

We recognize that the proposed rules may also affect minority and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations.[18] According to the U.S. Bureau of the Census, 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and noncommercial television stations in the United States.[19] We recognize that the numbers of minority and women broadcast owners may have changed due to an increase in license transfers and assignments since the passage of the Telecommunications Act of 1996. We seek comment on the current numbers of minority and women owned broadcast properties and the numbers of these that qualify as small entities. To assist us with our responsibilities under the Regulatory Flexibility Act, we specifically request comments concerning our assessment of the number of small businesses that will be impacted by this rule making proceeding, the type or form of impact, and the advantages and disadvantages of the impact.

[17] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[18] *Minority Commercial Broadcast Ownership in the United States,* U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (MTDP) (April 1996). MTDP considers minority ownership as ownership of more than 50% of the broadcast corporation's stock, have voting control in a broadcast partnership, or own a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[19] *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, *Women-Owned Business,* WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of mass Media Facilities, Notice of Proposed Rulemaking,* 10 FCC Rcd 2788 (1995), 60 FR 6068, (February 1, 1995).

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

The proposed rules and policies would apply to full power broadcast television licensees, permittees, and potential licensees. We have proposed to not double count commonly owned stations in the same market and LMAs for the purpose of calculating a licensee's national audience reach. We also propose to eliminate the satellite exemption of licensees that operate a satellite station in a separate market from the parent station. We do not have sufficient information, at this time, to reach a tentative conclusion about the effect of these proposed rules, and seek comment on the potential significant economic impact of these proposals on a substantial number of small stations. We urge parties to support their comments with specific evidence and analysis.

We tentatively conclude that there is not a significant economic impact regarding our proposal to use Designated Market Areas (DMAs) compiled by A.C. Nielsen instead of Arbitron to calculate national audience reach. A.C. Nielsen, like Arbitron, is another commercial ratings service, and they are analytically similar.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–32139 Filed 12–18–96; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket 96–22; Notice 1]

Federal Motor Vehicle Safety Standards; Head Restraints

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comment; technical report.

SUMMARY: This document requests comments about a NHTSA Technical Report titled, ''Head Restraints—Identification of Issues Relevant to Regulation, Design, and Effectiveness.'' The report discusses Federal Motor Vehicle Safety Standard No. 202, *Head Restraints,* and its history, previous evaluations of Standard No. 202 and head restraint effectiveness, biomechanics of neck injury and related research, current whiplash rates, occupant/head restraint positioning, insurance industry evaluation, European standards, and future designs. The report also identifies questions which, if answered may lead to improvement in head restraint effectiveness through modifying Standard No. 202. These questions are repeated in this document. The agency invites the public to comment on the report; answer the questions listed in this notice; and make any other comments relevant to the regulation, design and effectiveness of head restraints.

DATES: Comments must be received no later than March 19, 1997.

ADDRESSES: All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington DC 20590. [Docket hours, 9:30 a.m.–4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Louis Molino, Office of Crashworthiness Standards, Light Duty Vehicle Division, NPS–11, NHTSA, 400 Seventh Street, SW, Washington, DC 20590 (Phone: 202–366–2264; Fax: 202–366–4329; E-mail: lmolino@nhtsa.dot.gov).

SUPPLEMENTARY INFORMATION:

Background

Since January 1, 1969 passenger cars have been required by Federal Motor Vehicle Safety Standard No. 202 to have head restraints in the front outboard seating positions. Head restraints must either (a) be at least 27.5 inches above the seating reference point in their highest position and not deflect more than 4 inches under a 120 pound load, or (b) limit the relative angle of the head and torso of a 95th percentile dummy to not exceed 45 degrees when exposed to an 8 g acceleration. Standard No. 202 was extended to light trucks and vans under 10,000 pounds on September 1, 1991.

In 1982, the National Highway Traffic Safety Administration (NHTSA) reported the effectiveness of integral and adjustable restraints at reducing neck injuries in rear impacts was 17 and 10 percent, respectively. The difference was due to integral restraints being higher with respect to the occupant's head than adjustable restraints, which are normally left down. The agency concluded that head restraints were a cost effective safety device.

In 1995, the Insurance Institute for Highway Safety (IIHS) evaluated the head restraints of 164 vehicles based on

their position relative to the H-point. Scores were reduced for adjustable restraints under the assumption that they typically are not adjusted properly. Eight percent of restraints were given an acceptable or better rating. Twenty-one percent were rated marginal and 71 percent were rated as poor.

NHTSA Report

The current NHTSA report attempts to identify and explore issues relevant to the regulation, design, and effectiveness of head restraints. The report discusses Standard No. 202's history, previous evaluations of the Standard and head restraint effectiveness, biomechanics of neck injury and related research, current whiplash rates, occupant/head restraint positioning, insurance industry evaluation, European standards, and future designs.

The agency hopes the report will generate a dialogue about head restraints. The information gained from this dialogue may be used to determine if Standard No. 202 needs to be modified, and if so, in what way.

NHTSA welcomes public review of the technical report and invites the reviewers to submit comments about the data and information contained therein. Reviewers are also encouraged to submit information to supplement the report and other comments relevant to the regulation, design and effectiveness of head restraints. To aid the agency in acquiring the information it needs from its partners, NHTSA is including a list of questions. For ease of reference, the questions are numbered consecutively. NHTSA encourages commenters to provide specific responses for each question for which they may have information or views. In addition, to facilitate tabulation of the written comments, please identify the number of each question to which you are responding. NHTSA requests the commenters provide as specific a rationale as possible for any position they are taking, including an analysis of safety consequences.

1. Are existing head restraints sufficient in preventing neck injuries in rear impacts? How can head restraints and seating systems be improved to reduce neck injuries? What means should be used to measure improvements?

2. Is Standard No. 202's height requirement of at least 27.5 inches sufficient? Should there be a requirement for the horizontal distance between the head and head restraint? Should adjustable head restraints have to lock in position?

3. If the Standard No. 202 height requirement is changed, should the performance requirement for the alternate 8 g dynamic test procedure be changed to maintain equivalence between the compliance options? Is a dynamic test procedure a necessity for active head restraints? Is the current knowledge base in neck injury criteria sufficient to extend the performance requirements of the dynamic procedure? Would changes to the Hybrid III neck have to be made?

4. In the past the agency has received comments opposing higher restraint height requirements due to the potential decrease of occupant visibility. Can a solution be reached which considers visibility and injury prevention?

5. The European analogue to Standard No. 202 is Economic Commission for Europe (ECE) Regulation No. 25. By the year 2000, this regulation will require front outboard seating positions to have a head restraint that can achieve a height of 31.5 inches above the H-point (This is four inches above the height required in Standard No. 202). The minimum ECE height at all seating positions will be 29.5 inches above the H-point. Should the agency pattern Standard No. 202 after the ECE requirements?

6. Would an upgrade of Standard No. 207, *Seating Systems,* affect requirements for head restraints? Should any change in Standard No. 202 be synchronized/integrated with changes in Standard 207?

7. In section 4.1 of the current report, NHTSA estimates the cost of whiplash injury to be approximately $4.5 billion annually, in 1995 dollars. Is this estimate accurate based on the assumptions made? What is the best way to reduce this cost? What specific changes to Standard 202 or any other Standard will reduce this cost. What would be the cost of these changes? What would be the resulting benefits?

Submission of Comments

Interested persons are invited to submit comments on the technical report. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be available for examination in the docket at the above address both before and after that date. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on December 11, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–32032 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 245
Thursday, December 19, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 13, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- Agricultural Marketing Service

Title: Sweet Cherries Grown in Designated Counties in Washington, Marketing Order No. 923.
OMB Control Number: 0581–0133.
Summary: The USDA needs information from growers and handlers to select committee members, to conduct referenda, and to amend the marketing order and agreement.
Need and Use of the Information: The information is needed to regulate the provisions of Marketing Order No. 923.
Description of Respondents: Business or other for-profit; farms.
Number of Respondents: 1265.
Frequency of Responses: Reporting: On occasion; biennially.
Total Burden Hours: 69.

- Agricultural Marketing Service

Title: Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon.
OMB Control Number: 0581–0087.
Summary: The USDA needs information from growers and handlers to select committee members, to conduct referenda, and to amend the marketing order and agreement.
Need and Use of the Information: The information is used to regulate the provisions of Marketing Order No. 958.
Description of Respondents: Business or other for-profit; farms.
Number of Respondents: 484.
Frequency of Responses: Recordkeeping; Reporting: On occasion, annually, biennially.
Total Burden Hours: 215.

- Agricultural Marketing Service

Title: Fresh Prunes Grown in Designated Counties in Washington and Umatilla County, Oregon.
OMB Control Number: 0581–0134.
Summary: The USDA needs information from growers and handlers to select committees members to conduct referenda, and to amend the Marketing Order and agreement.
Need and Use of the Information: The information is used to regulate the provisions of Marketing Order No. 924.
Description of Respondents: Business or other for-profit; farms.
Number of Respondents: 413.
Frequency of Responses: Reporting: On occasion, biennially.
Total Burden Hours: 23.

- Agricultural Marketing Service

Title: Application for Plant Variety Protection Certificate and Objective Description of Variety.
OMB Control Number: 0581-0055.
Summary: The applicant must provide information which shows the variety is eligible for protection and that it is indeed new, distinct, uniform, and stable as the law requires.
Need and Use of the Information: Information collected is required to provide expert examiners in the Plant Variety Protection Office a basis for issuing or denying a certificate of protection.
Description of Respondents: Business or other for-profit; not-for-profit institutions; Federal Government.
Number of Respondents: 118.
Frequency of Responses: Reporting: On occasion, quarterly.
Total Burden Hours: 1,509.

Larry Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 96–32168 Filed 12–18–96; 8:45 am]
BILLING CODE 3410–01–M

Rural Utilities Service

Associated Electric Cooperative, Inc.; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold scoping meeting and prepare an Environmental Assessment and/or Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) proposes to prepare an Environmental Assessment and/or an Environmental Impact Statement (EIS) for its Federal action related to a proposal by Associated Electric Cooperative, Inc., to construct a 250 megawatt combined cycle electric generating plant in Southeast Missouri.

MEETING INFORMATION: RUS will conduct a scoping meeting in an open house forum on January 22, 1997, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m.

at the Boot Hill Education Center of Southeast Missouri State University located at 700 North Douglas Street in Malden, Missouri.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, Rural Utility Service, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION:

Associated Electric Cooperative, Inc., proposes to construct the plant at one of three potential sites. These sites are in the Missouri counties of Butler, Dunklin, and Stoddard. The site in Butler County is located on State Highway 53 just north of Fagus, the site in Dunklin County is located just west of Glennonville on the east side of the St. Francis River, and the site in Stoddard County is located west of Idalia on County Road E.

The plant will incorporate an advanced technology Siemens combustion turbine which is considered one of the most efficient unit of its type on the market. The primary fuel for the plant will be natural gas with low sulfur fuel oil to be used as a backup fuel. The plant will include the construction of gas and steam turbines, heat recovery stream generator, cooling towers, water treatment facilitates, electrical switchyard, and a fuel oil storage tank.

Alternatives considered by RUS and Associated Electric Cooperative, Inc., to constructing the generation facility proposed include: (a) No action, (b) purchase of power, (c) load management and conservation, and (d) constructing a simple cycle combustion plant.

To be presented at the public scoping meeting will be a siting and alternatives study prepared by Associated Electric Cooperative, Inc. The siting and alternatives study is available for public review at RUS at the address provided in this notice or at Associated Electric Cooperative, Inc., 2814 South Golden, Springfield, Missouri, phone (417) 881–1204. This document will also be available at the following libraries:

City of Sikeston Library, 221 North Kingshighway, Sikeston, MO 63801, (573) 471–4140

Dexter Public Library, 34 South Elm, Dexter, MO 63841, (573) 624–3764

Dunklin County Public Library, 226 North Main Street, Kennett, MO 63857 (573) 888–3561

New Madrid Memorial Library, 431 Mill Street, New Madrid, MO 63869, (573) 748–2378

Poplar Bluff Public Library, 318 North Main Street, Poplar Bluff, MO 63901, (573) 686–8639

Piggot Public Library, 361 West Main Street, Piggot, Arkansas 72454, (501) 598–3666

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS, Associated Electric Cooperative, Inc., and Burns and McDonnell will be available at the scoping meeting to discuss RUS's environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the public scoping meeting. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the siting and alternatives study, input that may be provided by government agencies, private organizations, and the public, Associated Electric Cooperative, Inc., and Burns and McDonnell will prepare an environmental analysis to be submitted to RUS for review. If significant impacts are not evident based on a review of the environmental analysis and other relevant information, RUS will prepare an environmental assessment to determine if the preparation of an EIS is warranted.

Should RUS determine that the preparation of an EIS is not warranted, it will prepare a finding of no significant impact (FONSI). The FONSI will be made available for public review and comment for 30 days. Public notification of a FONSI would be published in the Federal Register and in newspapers with a circulation in the project area displaying this notice. RUS will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental procedures as prescribed by CEQ and RUS environmental policies and procedures.

Dated: December 12, 1996.

Adam M. Golodner,

Deputy Administrator—Program Operations.

[FR Doc. 96–32223 Filed 12–18–96; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Withdrawal of Panel Request

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of withdrawal of panel request.

SUMMARY: Notice is hereby given of the Withdrawal of the Request for Panel Review of the final results of the 6th Antidumping Duty Administration Review (December 1, 1991–November 30, 1992) respecting Porcelain-On-Steel Cooking Ware From Mexico (Secretariat File No. USA–96–1904–01). As of December 5, 1996, no Complaints were filed pursuant to Rule 39 of the *Rules of Procedure for Article 1904 Binational Panel Review*, no Notices of Appearance were filed pursuant to Rule 40 and no panel has been appointed. Therefore, there are no ''participants'' in this review as defined in Rule 3, and this panel review is hereby terminated.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the Federal Register on February 23, 1994 (59 FR 8686).

Dated: December 11, 1996.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 96–32204 Filed 12–18–96; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Southwest Region Logbook Family of Forms

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 18, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, California 90802, telephone 310–980–4034.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Federal Fisheries Logbook Program administered by the Southwest Region, NMFS, is the principal mechanism for monitoring the extent and nature of fishing in the pelagic longline, crustacean, bottomfish and precious corals fisheries in the western Pacific region. These fisheries are regulated under fishery management plans prepared by the Western Pacific Fishery Management Council and approved by the Secretary of Commerce. Persons who have permits to participate in these fisheries must maintain and provide to the Southwest Regional Administrator, NMFS, data concerning catch, effort, results of experimental fishing, or other records. These data are needed to ensure the ability to determine the effects of the fishery on the fish stocks, determine the economic and social values associated with the fisheries, evaluate the effectiveness of management and the impacts of potential changes in management, and enforce the regulations governing the fisheries.

II. Method of Collection

Where logbooks are required, permittees are provided with the required forms that are filled out while on a fishing trip and are submitted to the Regional Administrator on the completion of a trip. For experimental fishing, permittees are advised of the information that must be provided to the Regional Administrator at the completion of the experiment, but are left to furnish that information in the manner they see fit. NMFS will provide guidance as requested. Observers may be placed on vessels to ensure that more complete and accurate data are provided to NMFS than could reasonably be expected of the fishing vessel operator. Sales report forms are provided where appropriate. Pre-trip and pre-landings reports are made by radio or by messaging using automated vessel monitoring system equipment. Protected species interaction reports are made in a manner determined by the permittee.

III. Data

OMB Number: 0648–0214.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals and businesses (commercial fishermen).

Estimated Number of Respondents: 215.

Estimated Time Per Response: 5 minutes per logbook day, 5 minutes for sales reports and notifications, and 4 hours for experimental fishing reports.

Estimated Total Annual Burden Hours: 1,293.

Estimated Total Annual Cost to Public: $0—no capital, operations, or maintenance costs are expected.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 11, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–32173 Filed 12–18–96; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Rule Enforcement Review of Broker Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and request for comment.

SUMMARY: As part of a rule enforcement review of the programs in place at U.S. futures exchanges for monitoring trading by members of broker associations, and the operation of broker associations generally, the Commission is seeking public comment with regard to all aspects of broker association activities. Comments are particularly invited on: (a) any impact broker associations may have on the handling and execution of orders; (b) any impact on open outcry trading; (c) any relationship between broker associations and the potential for non-competitive trading; (d) any benefits of membership in a broker association, both for-profit and not for-profit; and (e) any restrictions that could appropriately be placed on trading among members within a broker association.

DATES: Comments must be received on or before January 21, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the broker association rule enforcement review.

FOR FURTHER INFORMATION CONTACT: Please contact Duane C. Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to Section 5a(a)(8) of the Commodity Exchange Act and Commission Regulation 1.51, the Commission's Division of Trading and Markets is conducting a ''horizontal,'' or ''issue-based,'' rule enforcement review of the

programs in place at U.S. futures exchanges for monitoring broker associations, including, among other things, membership, registration and trading activity. The purpose of the review is to examine exchange broker association programs for compliance with Sections 4j(d) (1) and (2) and 5a(a)(13) of the Commodity Exchange Act, Commission Regulations 156.1 through 156.3 and exchange rules and procedures. During the information gathering phase of the review, Commission staff intends to interview exchange compliance staff and exchange members and will consider written comment from all interested persons.

Any person interested in submitting written data, views or arguments on the subject of broker associations should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 12, 1996 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–32196 Filed 12–18–96; 8:45 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, January 31, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–32391 Filed 12–17–96; 2:52 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, January 24, 1996.

PLACE: 1155 21st St., N.W., Washington, DC 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–32392 Filed 12–17–96; 2:52 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, January 17, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–32393 Filed 12–17–96; 2:52 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, January 10, 1996.

PLACE: 1155 21st St., NW., Washington, D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–32394 Filed 12-17–96; 8:45 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, January 3, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–32395 Filed 12–17–96; 2:52 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974, Announcement of System of Records

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of system of records.

DATES: The system of records will become effective on January 28, 1997, unless comments are received which require a contrary determination.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, Telephone (301) 504–0980.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission is publishing notice of a system of records for incident reports submitted to the Commission.

The Commission's statutory responsibilities include ''to collect, investigate, analyze, and disseminate injury data, and information relating to the causes and prevention of death, injury, and illness associated with consumer products.'' (15 U.S.C. 2054(a)(1)). In carrying out these responsibilities, the Commission encourages the public to report injuries, deaths, and suspected hazards associated with consumer products and to make inquiries about such matters. Incident reports and queries are submitted to the Commission's Hotline by toll free telephone calls. Submitters are encouraged to supply their names, addresses, and telephone numbers and that of victims, if different, but need not do so. The Commission may use this personal information to contact the submitter or the victim to verify the information submitted, to request additional information about the reported incident, to help determine the cause of injuries and deaths associated with consumer products, or to respond to follow-up questions from submitters about Commission actions taken.

The volume of incident reports and their complexity makes it necessary to store these reports as a system of records in a computer database. Access to the database is limited to selected Commission staff with a need to know, and requires two separate passwords.

The Chairman of the Committee on Governmental Affairs of the Senate, the Chairman of the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget have been notified of this system.

Dated: December 12, 1996.

Todd A. Stevenson,

Deputy Secretary, Consumer Product Safety Commission.

CPSC–4

SYSTEM NAME:

Hotline Database—CPSC–4.

SYSTEM LOCATION:

Consumer Product Safety Commission, Office of Information

Systems, 4330 East West Highway, Bethesda, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who contact the Consumer Product Safety Commission's Hotline to report consumer product associated injuries, illnesses, deaths, incidents, or perceived hazards associated with consumer products; and other persons identified by the reporting persons as victims of consumer product associated incidents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about accidents, injuries, illnesses, deaths, and suspected safety hazards associated with consumer products. The records contain free form narratives, and a variety of fields dedicated to specific data about different types of products or incidents. Records contain personal information such as the name, address, and telephone number of the person submitting the information and the name of the victim, if different.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 5 of the Consumer Product Safety Act, 15 U.S.C. 2054.

PURPOSE(S):

To collect data on hazards, defects, injuries, illnesses, and deaths associated with consumer products; to respond to inquiries from the public; to record personal information to permit further interaction with persons submitting data or persons named by those who submit data; to further public safety by helping determine the cause of injuries and deaths associated with consumer products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

Records are disclosed to contractor personnel who operate the Consumer Product Safety Commission's Hotline and who enter data into the database. Copies of records are mailed to callers for their verification of the information provided. Copies of records may also be sent to sources of consumer products identified in the records (e.g., manufacturers, distributors, or retailers) and may be distributed to others, but any personal identifying information is deleted before such disclosure unless permission to disclose such personal identifying information has been explicitly granted in writing by the person in question.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained by a computer database management system on a local and wide area network. Paper copies of individual records are made by the Hotline staff but these are not stored by name or other individual identifier. Other paper copies are made available to Commission staff but are not stored by name or other individual identifier.

RETRIEVABILITY:

Records are retrievable by a variety of fields, including the name of the person who submitted the information, but not by the name of the victim, if different from the person who submitted the information.

SAFEGUARDS:

Access to the computer records requires the use of two passwords: One to access the agency's computer network and another to access the database. Access is limited to those with a particular need to know the information—selected Commission employees and the contractor employees who operate the Hotline.

RETENTION AND DISPOSAL:

Computer records are maintained indefinitely. Paper records are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Hotline Project Officer, Communication Services Division, Office of Information Systems, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records is initially supplied by persons who contact the Commission. The Commission may solicit additional or verifying information from those persons or from other persons who were identified as victims.

[FR Doc. 96–32129 Filed 12–18–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Epidemiologic Studies of Morbidity Among Gulf War Veterans: A Search for Etiologic Agents and Risk Factors; OMB Control No. 0720-0010.

Type of Request: Extension.

Number of Respondents: 9,000.

Responses per Respondent: 1.05.

Annual Responses: 9,450.

Average Burden per Response: 13 minutes.

Annual Burden Hours: 2,070 hours.

Needs and Uses: This collection of information is necessary to conduct Congressionally directed studies of the health consequences of military service in Southwest Asia during the Persian Gulf War. Information collected hereby will be used to improve the identification, resolution, or prevention of reproductive health illnesses, and the formulation of policy.

Respondents are current and former members of all services of the U.S. Military, including reservists and members of the National Guard, as well as female veterans who were pregnant during the Persian Gulf War.

Affected Public: Individuals or households.

Frequency: One time and Follow-up.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: December 12, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–32131 Filed 12–18–96; 8:45 am]

BILLING CODE 5000–04–M

Fourth Annual National Security Education Program (NSEP) Institutional Grants Competition

AGENCY: Department of Defense, National Security Education Program (NSEP).

ACTION: Notice.

SUMMARY: The NSEP announces the opening of its Fourth Annual Competition for Grants to U.S. Institutions of Higher Education.

DATES: Grants Solicitations (applications) will be available beginning Monday, February 10, 1997. Preliminary Proposals are due Friday, April 18, 1997. Electronic submissions will *not* be accepted.

ADDRESSES: Request copies of the solicitations (applications) from NSEP, Institutional Grants, Rosslyn P.O. Box 20010, 1101 Wilson Blvd., Suite 1210, Arlington, VA 22209–2248, by FAX to (703) 696–5667, or via INTERNET: nsepo@nsep.policy.osd.mil. Also, after February 10, 1997 the NSEP Institutional Grant Solicitation will be available on the NSEP homepage: http://www.dtic.mil/defenselink/pubs/nsep.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Arlington, VA 22209–2248; (703) 696–1991 Electronic mail address: collier@nsep.policy.osd.mil.

Dated: December 13, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–32133 Filed 12–18–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: December 17, 1996 (1100 am to 1600 pm).

ADDRESS: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Michael W. Lamb, Maj, USAF, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: December 13, 1996.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 96–32132 Filed 12–18–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Notice of Availability of Invention of Licensing; Government Owned Invention

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Copies of the patent cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $3.00 each. Requests for copies of the patent should include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

U.S. Patent No. 5,551,349: INTERNAL CONDUIT VEHICLE; Patented September 3, 1996.

Dated: December 10, 1996.

D. E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–32209 Filed 12–18–96; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Intent To Grant Exclusive Patent License; Banix Corporation

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Banix Corporation, a revocable, nonassignable, exclusive license in the United States to practice the Government owned invention described in U.S. Patent No. 5,551,349 entitled ''Internal Conduit Vehicle,'' issued, September 3, 1996.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5600.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: December 10, 1996.

D. E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–32214 Filed 12–18–96; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Intent to Grant Exclusive Patent License; SmithKline Beecham Biologicals S.A.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to SmithKline Beecham Biologicals S.A., a revocable, nonassignable, exclusive license in the United States to practice the Government owned invention described in U.S. Patent No. 5,198,535 entitled ''Protective Malaria Sporozoite Surface Protein Immunogen and Gene,'' issued March 30, 1993 in the field of human vaccines to prevent and/or treat malaria based on proteins, polypeptides and/or peptides.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: December 10, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–32208 Filed 12–18–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 18, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 13, 1996.

Linda Tague,

Acting Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision.
Title: Fiscal Operations Report and Application to Participate in Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant, and Federal Work-Study Programs.
Frequency: Annually.
Affected Public: Business or other for-profit; not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 4,800
Burden Hours: 80,241
Abstract: This data will be used to compute the amount of funds needed by each institution during the 1998–99 Award Year. The Fiscal operations report data will be used to assess program effectiveness, account for funds expended during the 1996–97 Award Year, and as part of the institutional funding process.

Office of the Under Secretary

Type of Review: New.
Title: Congressionally Mandated Study of Migrant Student Participation in Title I Schoolwide Programs.
Frequency: One Time.
Affected Public: State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,315
Burden Hours: 1,498
Abstract: Congress required a study of services to migrant children in schoolwide projects. This study uses school surveys, case studies, and document reviews to meet that requirement. A final report will be submitted to Congress in December 1997.

[FR Doc. 96–32176 Filed 12–18–96; 8:45 am]
BILLING CODE 4000–01–P

[CFDA No.: 84.250F]

Vocational Rehabilitation Service Projects for American Indians With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: To provide vocational rehabilitation services to American Indians with disabilities who reside on Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

Eligible Applicants: Applications may be submitted only by the governing bodies of Indian Tribes and consortia of those governing bodies located on Federal or State reservations.

Deadline for Transmittal of Applications: May 12, 1997

Applications Available: December 20, 1996

Available Funds: $1,000,000

Estimated Range of Awards: $250,000–$300,000

Estimated Average Size of Awards: $275,000

Estimated Number of Awards: 3–4

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 80, 81, and 82; and (b) The regulations for this program in 34 CFR Parts 369 and 371.

Priority

Under 34 CFR 75.105(c)(2)(i) and section 130(b)(4) of the Rehabilitation Act the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 10 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Competitive Preference Priority—Continuation of Previously Funded Tribal Programs

Section 130(b)(4) of the Rehabilitation Act provides that in making new awards under this program the Secretary gives priority consideration to applications for the continuation of tribal programs that have been funded under this program. For this competition in fiscal year 1997, the Secretary implements this priority by giving a competitive preference of 10 bonus points, in accordance with CFR 75.105(c)(2)(i), to applications that meet this priority.

For Applications: To request an application package, please call (202) 205–8351 or write to Joyce R. Jones, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3038, Switzer Building, Washington, D.C. 20202–2649.

FOR FURTHER INFORMATION CONTACT: Pamela Martin, U.S. Department of

Education, 600 Independence Avenue, S.W., Room 3314, Switzer Building, Washington, D.C., 20202–2650. Telephone: (202) 205–8494.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov/); or on the World Wide Web (at http://gcs.ed.gov). This information can also be viewed on the Rehabilitation Services Administration's electronic bulletin board, telephone (202) 401–6147. However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 711(c) and 750.

Dated: December 13, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–32178 Filed 12–18–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Final Programmatic Environmental Impact Statement for the Storage and Disposition of Weapons-Usable Fissile Materials (S&D Final PEIS) (DOE/EIS–0229). In accordance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and the Department's NEPA Implementation Procedures (10 CFR Part 1021), the Department has prepared the S&D PEIS to evaluate alternatives for the storage of weapons-usable fissile materials and the disposition of surplus plutonium.

DATES: A Record of Decision on the Storage and Disposition program will be issued no earlier than January 13, 1997. The Department will consider and reflect, as appropriate, in the Record of Decision any comments received before issuance of the Record of Decision.

ADDRESSES: To request copies of the S&D Final PEIS, copies of the Summary, technical reports or other information; or to provide comments on the S&D Final PEIS write to: United States Department of Energy, Office of Fissile Materials Disposition, P.O. Box 23786, Washington, DC 20026–3786. Written (Facsimile) and oral requests and comments can also be submitted using the toll free line at 1–800–820–5156. Facsimiles should be marked Storage and Disposition Final PEIS.

FOR FURTHER INFORMATION CONTACT: For information on DOE's National Environmental Policy Act process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Availability of the S&D Final PEIS

Copies of the S&D Final PEIS (over 4,000 pages in four volumes plus a summary) have been distributed to Federal, State, Indian tribal, and local officials; interested agencies; organizations; and individuals. The S&D Final PEIS summary is available, along with numerous other Fissile Materials Disposition Program documents on the program's Electronic Bulletin Board/World Wide Web Page (http://web.fie.com/htdoc/fed/doe/fsl/pub/menu/any/). Copies of the S&D Final PEIS, summary and supporting technical reports are available to the public at the DOE Reading Rooms listed at the end of this notice.

Background

On March 8, 1996, the Department published a Notice of Availability (NOA) in the Federal Register (61 FR 9443) on the Storage and Disposition of Weapons-Usable Fissile Materials Draft Environmental Impact Statement for public review and comment. The NOA invited the public to comment on the draft PEIS during a 45 day comment period that was to end on May 7, 1996. Subsequently, in response to public requests, the Department announced in the Federal Register (61 FR 22038; May 13, 1996) an extension of the comment period until June 7, 1996. Public workshops on the draft PEIS were held in Denver, CO on March 26, 1996; Las Vegas, NV on March 28 and 29, 1996; Oak Ridge, TN on April 2, 1996; Richland, WA on April 11, 1996; Idaho Falls, ID on April 15, 1996; Washington, DC on April 17 and 18, 1996; Amarillo, TX on April 22 and 23, 1996; and North Augusta, SC on April 30, 1996.

Alternatives Considered

Storage: The S&D Final PEIS assesses the environmental impacts of four alternatives, and a No Action alternative, for the storage of weapons-usable fissile materials. The action alternatives are Upgrade at Multiple Sites alternative, Consolidate Storage of Plutonium alternative, Collocation of Plutonium and Highly Enriched Uranium alternative and a combination of the other alternatives. The S&D PEIS also analyzed sub-alternatives. The candidate sites for implementation of the alternatives are Hanford, Nevada Test Site, Idaho National Engineering Laboratory, Pantex Plant, Oak Ridge Reservation, and Savannah River Site. Each of the these alternatives, except for the No Action alternative, would phaseout the storage of weapons-usable fissile materials at the Rocky Flats Environmental Technology Site.

Disposition: The S&D Final PEIS assesses the environmental impacts of nine action alternatives in three categories and a No Action alternative for the disposition of up to 50 metric tons of plutonium that has been or in the future may be declared surplus to national security needs. The PEIS analyzed the Deep Borehole category (two alternatives—Direct Disposition and Immobilization); the Immobilization category (three alternatives—Vitrification, Ceramic Immobilization, and Electrometallurgical Treatment); and the Reactor category (four alternatives—Existing Light Water Reactors, Partially Completed Light Water Reactors, Evolutionary Light Water Reactors and CANDU Reactors) and the No Action alternative. The preferred alternative (a combination of the above alternatives) was also analyzed.

Preferred Alternative

The Department's preferred alternative is to reduce, over time, the number of locations where plutonium and highly enriched uranium (HEU) are stored, and to pursue a disposition strategy that allows for immobilization of the surplus plutonium in glass or ceramic forms and use of surplus plutonium in mixed oxide (MOX) fuel at existing domestic reactors.

Regarding storage, the Department's preferred alternative involves:

- Phasing out storage of all weapons-usable plutonium at Rocky Flats Environmental Technology Site (RFETS) beginning in 1997; moving pits to Pantex, and moving Rocky Flats'

separated and stabilized non-pit materials to Savannah River Site (SRS) when the expansion of the planned Actinide Packaging and Storage Facility (APSF) is complete.

• Upgrading storage facilities at Zone 12 South at Pantex to store those pits currently stored at Pantex, and pits from RFETS, pending disposition. Storage facilities at Zone 4 would continue to be used for these pits prior to completion of the upgrade.

• In accordance with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Stockpile Stewardship and Management (Stockpile Stewardship and Management PEIS), store Strategic Reserve pits at Pantex in the facilities discussed above. To the extent not reflected above, store Strategic Reserve materials in accordance with the Preferred Alternative in the Stockpile Stewardship and Management PEIS.

• Expanding the planned APSF at SRS to store those surplus, non-pit plutonium materials currently at SRS and surplus non-pit plutonium materials from RFETS, pending disposition.

• Continuing current storage of surplus plutonium at Hanford, Idaho National Engineering Laboratory (INEL) and Los Alamos National Laboratory pending disposition.

• Taking No Action at the Nevada Test Site (NTS).

• Upgrading of storage facilities at the Y–12 Plant at Oak Ridge Reservation to store non-surplus HEU and surplus HEU pending disposition.

Regarding surplus plutonium disposition, the Department's preferred alternative is to pursue a dual track strategy that allows for immobilization of plutonium in glass or ceramic forms and burning of the surplus plutonium as MOX fuel in existing reactors.

The Department would retain using MOX fuel in Canadian Deuterium Uranium (CANDU) reactors in Canada in the event that a multilateral agreement to use CANDU reactors is negotiated among Russia, Canada, and the United States. DOE would engage in a test and demonstration for CANDU MOX fuel as appropriate and consistent with future cooperative efforts with Russia and Canada.

The actual percentage and timing for disposition of the surplus plutonium using either or a combination of both of the technological approaches would depend on the results of international agreements, future technology development and demonstrations, site-specific environmental assessments, and detailed cost proposals to be completed within the next 2 years. The results of these efforts, as well as nonproliferation considerations and negotiations with Russia and other nations, will ultimately determine the timing and extent to which either or both technologies are deployed for disposition of surplus plutonium.

Deployment of this strategy would involve the implementation of supporting actions which include constructing and operating a plutonium vitrification or ceramic immobilization facility at either Hanford or SRS (including use of the ''can in canister'' approach utilizing the already operational Defense Waste Processing Facility at SRS); constructing and operating a facility at either of these same sites for conversion of non-pit plutonium materials (metal and oxides) to oxide forms for immobilization; constructing and operating a pit disassembly/conversion facility at Hanford, INEL, Pantex or SRS; and, constructing and operating a domestic, government-owned, MOX fuel fabrication facility at Hanford, INEL, Pantex, or SRS.

The fundamental purpose of the surplus plutonium disposition effort is to irreversibly ensure that plutonium produced for nuclear weapons and now declared excess to national security needs is never again used for nuclear weapons. Both disposition approaches can achieve this goal and preserve the long-time U.S. policy of not using civilian reactors to produce fissile materials for nuclear weapons. Burning of surplus plutonium in existing reactors would not involve subsequent reprocessing of the spent fuel. Each of these technologies would dispose of surplus weapons plutonium in a manner which would help assure it would not again be used in nuclear weapons.

DOE Public Reading Rooms

Copies of the S&D Final PEIS and summary as well as technical data reports and other supporting documents are available for public review at the following locations:

Department of Energy Headquarters

Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20825, 202–586–6020

Nevada Operations Office

U.S. Department of Energy, 2753 S. Highland Avenue, P.O. Box 98518, Las Vegas, Nevada 89193–8518, 702–295–1274

Oak Ridge Operations Office

Public Reading Room, 55 Jefferson Avenue, Oak Ridge, Tennessee 37830, 615–576–0887

Public Reading Room, 200 Administration Road, P.O. Box 2001, Oak Ridge, Tennessee 37831–8501

Rocky Flats Office

Front Range Community Reading Room, 3645 West 112th Avenue, Westminister, CO 80030, 303–469–4435

Amarillo Area Office

Reference Department, Lynn Library and Learning Center, Amarillo College, P.O. Box 447, Amarillo, TX 79178, 806–371–5400

U.S. Department of Energy Public Reading Room, Carson County Public Library, 401 Main Street, P.O. Box 339, Panhandle, Texas 79068, 806–537–3742

Richland Operations Office

Washington State University, Tri-Cities Branch Campus, 300 Sprout Road, Room 130 West, Richland, WA 99352, 509–376–8583

Albuquerque Operations Office

Technical Vocational Institute, 525 Buena Vista, SE, Albuquerque, NM 87106, 505–845–4370

National Atomic Museum Public Reading Room, Kirtland Air Force Base, Building 20358, Wyoming Boulevard, Albuquerque, New Mexico 87115, 505–845–6670/4378

Los Alamos Area Office

Community Reading Room, Museum Park Office Complex, 1450 Central Avenue, Suite 101, Los Alamos, New Mexico 87544, 505–665–2127 or 1–800–543–2342

Savannah River Operations Office

Gregg-Granite Library, University of South Carolina-Aiken, 171 University Parkway, Aiken, SC 29801, 803–725–1408

Sandia National Laboratory/CA

Livermore Public Library, 1000 S. Livermore Avenue, Livermore, CA 94550, 510–373–5500

Idaho Operations Office

Idaho Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83402, 208–526–0271

Issued in Washington, DC, December 13, 1996.

Gregory P. Rudy,

Acting Director, Office of Fissile Materials Disposition.

[FR Doc. 96–32198 Filed 12–18–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Intent to Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings for the Proposed Low Emission Boiler System (LEBS) Project

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) to assess the potential environmental impacts of a new coal-fired proof-of-concept Low Emission Boiler System (LEBS) for electric power generation. This EIS will support a DOE decision on whether to provide funding of up to 50 percent of the total cost for one or more approaches for LEBS technology development at the proof-of-concept scale. This Notice describes the proposed EIS and invites the public to submit comments regarding the scope of the EIS.

DATES: Comments must be received by February 3, 1997 to ensure consideration. Late comments will be considered to the extent practicable. Public scoping meetings will be held in Richmond, Indiana and Elkhart, Illinois during the 45-day scoping period. The dates and specific locations will be announced in local media at least 15 days prior to the meetings.

ADDRESSES: *Comments should be addressed to:* Mr. Lloyd Lorenzi, NEPA Compliance Officer, Pittsburgh Energy Technology Center, U.S. Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236; telephone 412–892–6159; fax 412–892–6127; or E-mail LORENZI@PETC.DOE.GOV. Individuals who would like to participate in this process may also call the following toll-free telephone number: 1–800–276–9851.

FOR FURTHER INFORMATION CONTACT: Those who would like to receive a copy of the draft EIS for review when it is issued should notify Mr. Lloyd Lorenzi at the address provided above. For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119; telephone 202–586–4600; or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: DOE announces its intent to prepare an EIS in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Parts 1500–1508), and the DOE NEPA regulations (10 CFR Part 1021). The purpose of this Notice of Intent (NOI) is to inform the public about the proposed action; announce the plans for public scoping meetings; invite public participation in (and explain) the scoping process that DOE will follow to comply with the requirements of NEPA; and solicit public comments for consideration in establishing the proposed scope and content of the EIS.

The EIS will evaluate the impacts of DOE's proposal to cost-share LEBS technology development at the proof-of-concept scale to demonstrate the technical, environmental, and economic viability of LEBS technology. Research to develop LEBS technology has been performed for DOE by three separate organizations awarded cost-shared contracts after a competitive solicitation in 1992. The LEBS technology must meet the following minimum performance objectives:

(1) Nitrogen oxide (NO_x) emissions less than 0.2 (with a target of 0.1) pounds (lbs) per million British thermal units (Btu) of energy input;

(2) Sulfur oxide (SO_x) emissions less than 0.2 (with a target of 0.1) lbs per million Btu of energy input; and

(3) Particulate emissions less than 0.015 (with a target of 0.01) lbs per million Btu of energy input.

These performance objectives must be achievable at: electricity costs comparable to, and preferably less than, the costs for a new conventional electric power generating station firing coal in compliance with current Federal emission standards (New Source Performance Standards) for large fossil-fuel-fired steam generating plants; and energy recovery efficiencies at least as high as the most efficient, modern, conventional coal-fired plant meeting New Source Performance Standards, preferably approaching 42% recovery of the energy content of coal as electrical energy. The research performed since 1992 has resulted in three distinct technology approaches for developing LEBS, and each approach holds promise for meeting DOE's objectives. The three approaches, each proposed to be tested at proof-of-concept scale at a different site, have been offered to DOE for cost-shared development. A preferred alternative does not exist at this stage in the technology development program. The EIS will consider the environmental effects of each proposed technology, of installation and operation at the site where proof-of-concept testing is being considered, and of the specific approaches being considered to meet the objectives of the LEBS proof-of-concept project, as well as reasonable alternative technologies, sites, sizes, and the no-action alternative.

Background

Currently, over one-half of the electricity needs of the United States are met by steam-electric generating stations fired with pulverized coal. Over the next several decades, increases in demand for electric power and replacement of a significant amount of aging electric generating capacity that is approaching the end of its design service life are expected to require the construction of new electric generating stations. As the most abundant domestic energy source, coal continues to represent an attractive energy source for these forthcoming generating stations, particularly through advanced technologies that offer to improve dramatically environmental performance and efficiency.

The LEBS is one of two components that comprise the Combustion 2000 program that DOE has undertaken pursuant to section 1301 of the Energy Policy Act of 1992 (42 U.S.C. 13331). Cost-shared and federally funded, Combustion 2000 is a long-term fossil energy research and development program that will help advance coal-fired power generation technology into the next century. LEBS-related research is to be performed by private industry and involves the application of conventional (near-term) technologies to reduce emissions of coal-fired power plants.

As an early step in the LEBS process, DOE's Pittsburgh Energy Technology Center (PETC) reviewed evolving technologies in 1989–1990 to evaluate the prospective opportunities for advanced technologies to achieve the desired improvements in the environmental performance of coal-fired power plants. The review encompassed advanced technologies and techniques for coal combustion and for control of air emissions. Emphasis was focused on near-term approaches with potential for significant reductions in emissions of nitrogen oxides, sulfur oxides, and particulate matter.

For nitrogen oxide reduction, advanced combustion techniques that provide for staged addition of coal and combustion air and control of combustion temperature and residence time were identified as providing

opportunities for reducing emissions to below 0.2 lbs per million Btu of heat input. This would be a factor of three reduction of emissions below New Source Performance Standards for allowable nitrogen oxide emissions from new coal-fired electric utility plants. Moreover, these techniques would be unlikely to involve significant increases in boiler system costs.

For sulfur oxide reduction, several techniques were identified as capable of reducing emissions to less than 0.2 lbs per million Btu of energy input, which would correspond to a factor of six reduction below New Source Performance Standards for coal combustion.

For particulate matter, advancements in electrostatic precipitators and fabric filters were identified as offering the opportunity for at least a two-fold improvement over New Source Performance Standards, with nearly all of the improvement associated with reducing emissions of small-sized particles that are particularly harmful to human health. The reduction of these particles, upon which the bulk of hazardous elements and condensed organic matter from coal combustion are deposited, also would produce a substantial reduction in emissions of potentially toxic substances.

In addition to these potential improvements in air emission control, PETC identified several other potential advancements in combustion and energy recovery technology. Coal combustion under slagging conditions could produce vitrified ash inherently resistant to leaching at ash disposal sites. Advanced sulfur removal methods could yield marketable by-products. Increases in efficiency could result from advances in combustion technology and heat exchanger construction materials. Also, increased heat recovery from low temperature flue gas could be achieved by using equipment and materials capable of operating near acid dew point temperatures and by further development of low temperature acid-resistant heat exchangers. Electric generating costs would be reduced as a result of these efficiency improvements, as would pollutant emissions per unit of electric energy produced, since less coal would need to be burned to produce a given amount of electricity.

Purpose and Need

To capture the potential benefits of these environmental, efficiency, and cost improvements in new coal combustion technology, the Pittsburgh Energy Technology Center conducted a competitive solicitation. DOE sought industrial involvement and support of industry-selected approaches for integrating advanced combustion and environmental control systems to establish a new generation of pulverized coal-fired boiler technology. As a result, three contracts were awarded in 1992 for research and development of advanced boiler technology designed for minimum emissions and full integration with high performance emission control technologies. The research conducted thus far under these contracts has focused on assessing and testing alternative concepts and equipment for meeting the performance expectations established for the technology development contracts; the three organizations performing this research under the three contracts have identified, tested, and demonstrated the potential of three distinct approaches for a Low Emission Boiler System that meets the established performance objectives. To confirm the commercial potential for Low Emission Boiler System technology to achieve these performance objectives, longer duration testing to demonstrate performance in an integrated system at a scale representative of a commercial system (termed proof-of-concept scale) now needs to be performed.

Accordingly, DOE proposes to provide up to 50 percent funding of the total cost to support one or more approaches for LEBS technology development at the proof-of-concept scale. The EIS will evaluate the potential impacts of the three alternative approaches offered to DOE for LEBS proof-of-concept development, along with reasonable alternatives. On the basis of the EIS and other pertinent information, DOE may select one or more of the three technology approaches offered by the industrial participants for development at the proof-of-concept scale.

Preliminary Alternatives

Reasonable alternatives to be considered in the EIS will represent a range of alternatives for meeting DOE's purpose and need. The following is a preliminary list and brief description of approaches that will be analyzed:

1. Alliance, Ohio, proof-of-concept development

This alternative would examine the impacts of an existing integrated 10 megawatt-electric (MWe) system currently using an advanced boiler design with staged combustion, low nitrogen oxide burners, limestone injection with dry scrubbing for sulfur oxide removal, and electrostatic precipitator and baghouse particulate removal. Development would occur through minor modification and implementation of the LEBS test program in an existing coal combustion facility operated by Babcock & Wilcox at the Alliance Research Center. No new construction would be required for this alternative.

2. Richmond, Indiana, proof-of-concept development

This alternative would examine the impacts of design, construction, and operation of an integrated 50 MWe system using advanced firing with staged combustion for in-furnace nitrogen oxide reduction, advanced dry lime scrubbing for sulfur oxide removal, ammonia/water mixture rather than water only as the working fluid for heat recovery, and baghouse particulate removal. Development would occur through replacement of an existing coal-fired boiler at Richmond Power & Light Company's Whitewater Valley Station.

3. Elkhart, Illinois, proof-of-concept development

This alternative would examine the impacts of design, construction, and operation of a new integrated 70 MWe system using: A slagging combustion system with air staging and coal reburning technology to reduce nitrogen oxides; flyash reinjection; copper oxide regenerable desulfurization system with nitrogen oxide removal capability; advanced low temperature heat recovery; and baghouse particulate removal. Development would occur through construction of a new facility at the Elkhart Mine of Turris Coal Company, Elkhart, Illinois, adjacent to Township Road 600N.

4. Alternative Size Facilities

This alternative would examine the impacts of alternative scale facilities for proof-of- concept testing, to provide the design and performance data needed for scale-up to commercial operation.

5. Alternative Technologies

This alternative would examine the impacts of alternative technology approaches for meeting the LEBS performance objectives.

6. Alternative Sites and Coal Feeds

This alternative would examine the impacts of alternative sites for location of a LEBS proof-of-concept system and use of alternative coals.

7. No Action Alternative

This alternative would examine the impacts of taking no action on the industrial participants' proposals for LEBS proof-of-concept testing. Under the no action alternative, Federal funds would not be spent on LEBS proof-of-concept development.

This list of alternatives is subject to modification by DOE based on consideration of suggestions from the public. In addition, the proposals at the Ohio, Illinois, and Indiana sites are

subject to withdrawal from consideration for proof-of-concept testing prior to completion of the EIS.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. This list is neither intended to be all inclusive nor a predetermined set of potential impacts but is presented to facilitate public comment on the scope of the EIS. Additions to or deletions from this list may occur as a result of the scoping process. The issues include:

(1) Potential air, surface water, and noise impacts produced during facility modification or construction, and operation;

(2) Potential transportation impacts produced during facility modification, construction, and operation;

(3) Pollution prevention and waste management practices, including potential solid waste impacts, during facility modification, construction, and operation;

(4) Potential socioeconomic and environmental justice impacts to the surrounding communities as a result of implementing the proposed action;

(5) Potential cumulative or long-term impacts from the proposed action and other past, present, or reasonably foreseeable future actions;

(6) Potential irreversible and irretrievable commitment of resources;

(7) Compliance with all applicable Federal, state, and local statutes and regulations; and

(8) Safety and health of workers and the public during construction and operation of the proposed facility.

Public Scoping Process

To ensure that the full range of issues related to this proposal is addressed, DOE will conduct an open process to define the scope of the EIS. The public scoping period will run for 45 days following publication of this NOI. Interested agencies, organizations, and the general public are encouraged to submit written comments or suggestions concerning the scope of the issues to be addressed, alternatives to be analyzed, and the range of environmental impacts to be addressed. Scoping comments should clearly describe specific issues or topics that the EIS should address. Comments or suggestions to assist DOE in identifying significant issues and the scope of the EIS will be considered in preparing the EIS and should be communicated within 45 days following publication of this NOI.

In addition to receiving comments in writing and by telephone on the 800 number, DOE will conduct public scoping meetings. The public is invited and encouraged to attend one or more scoping meetings which will be scheduled in or near the following cities where construction or operation of a new facility, or a major modification of an existing facility, would be required: Richmond, Indiana; and Elkhart, Illinois. Notices of the dates, times, and specific locations of the scoping meetings will be announced in the local media at least 15 days before the meetings.

DOE will begin each meeting with an overview of LEBS technology. The DOE contractor involved in cost-shared development of LEBS technology and offering to conduct proof-of-concept testing at each site indicated above will be available to provide additional information. Following the overview, all interested persons will be provided opportunities to speak concerning (1) the content and scope of the EIS, (2) issues the EIS should address, and (3) the alternatives that should be analyzed. While the meetings will be conducted in an informal manner to enhance opportunities for public participation, DOE recognizes that individuals, representing themselves or other parties, may desire to address all participants at the meeting. DOE requests that anyone who wishes to speak at one or more of the scoping meetings contact Mr. Lloyd Lorenzi, either by phone or in writing, at the address or phone numbers provided in the section of this Notice entitled **ADDRESSES.** A presiding officer will be designated by DOE to chair the meeting. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked to clarify their statements to ensure that DOE fully understands the comments or suggestions. The presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting. Speakers who wish to make presentations longer than five minutes should indicate the length of time desired in their response. Depending on the number of speakers, it may be necessary to limit speakers to five minute presentations initially, with the opportunity for additional presentation as time permits. Speakers can also provide additional written information to supplement their presentations. Individuals who do not make advance arrangements to speak may request time to speak at the meetings, after all previously scheduled speakers have been provided the opportunity to make their presentations. Written comments will also be accepted at the meeting.

Issued in Washington, D.C., this 13th day of December 1996.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 96–32197 Filed 12–18–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–144–000]

Aquila Gas Systems Corporation; Notice of Petition for Declaratory Order

December 13, 1996.

Take notice that on December 9, 1996, Aquila Gas Systems Corporation (Aquila), 8805 Indian Hills Drive, Suite 125, Omaha, NE 68114, filed a petition under Rule 207 of the Commission's Rules of Practice and Procedure, for an order declaring that Aquila's Moorland System is a gathering facility exempt from the jurisdiction of the Commission under Section 1(b) of the Natural Gas Act, all as more fully set forth in the application on file with the Commission and open to public inspection.

Aquila states that it owns and operates the Moorland System which is a natural gas pipeline facility located in Ellis, Woodward, Woods, Roger Mills and Harper Counties in Oklahoma.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 3, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32152 Filed 12–18–96; 8:45 am]

BILLING CODE 6717–01–M

CNG Transmission Corporation; Notice of Application

[Docket No. CP97–142–000]

December 13, 1996.

Take notice that on December 6, 1996, CNG Transmission Corporation (CNG)

445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP97–142–000 an application pursuant to Section 7 of the Natural Gas Act and Parts 381 and 385 of the Commission's regulations, for an order approving the treatment of various certificates gathering lines listed in First Revised Volume No. 1A of CNG's FERC Gas Tariff that were built and reported under CNG's budget and blanket certificates from 1980 through 1995 as uncertificated gathering lines, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that the lines at issue clearly provide gathering service and do not, therefore, require certification. CNG states that the approval of such treatment would streamline the administration of CNG's gathering services, since it is proposing to conduct any future termination of service for all of its gathering facilities solely through use of the Section 4 Notice of Termination procedure. In order to accomplish this, CNG states that it is requesting that the Commission determine that the lines are gathering and do not require or warrant treatment as certificated lines in the future. CNG contends that no change in classification of lines for rate purposes is being requested by CNG.

CNG states that the total certificate length of the approximately 332 lines is 205 miles and diameter ranges from 2 inches to 8 inches. CNG states that the requested authorization will allow it to treat all gathering lines identified in First Revised Volume No. 1A of CNG's FERC Gas Tariff similarly as CNG continues to rearrange its gathering and production facilities to the benefit of its customers. According to CNG, except for the facilities built under blanket and budget certificates, all other uncertificated gathering lines are subject to the Commission's requirement that CNG file a Section 4 Notice of Termination of Service 30 days prior to any abandonment by sale, removal from service or physical removal from the ground. CNG states that it is not proposing to treat all gathering lines consistently, which would eliminate the filing of abandonment applications where, but for the blanket or budget certificate, gathering lines could simply be sold or otherwise removed from service. However, CNG notes that it would still be subject to the Section 4 Notice of Termination of Service proceedings, with the concomitant procedure and other requirements instituted by the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 3, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32150 Filed 12–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–199–002]

Egan Hub Partners, L.P.; Notice of Petition To Amend

December 13, 1996.

Take notice that on December 11, 1996, Egan Hub Partners, L.P. (Egan Hub) 44084 Riverside Parkway, Suite 340, Leesburg, Virginia 20176, filed, in Docket No. CP96–199–002, an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations to amend the certificate of public convenience and necessity issued in Docket No. CP96–199–000 et al. on October 7, 1996 authorizing Egan Hub to adjust the operating capacity of its existing storage cavern at Egan Hub's salt dome storage facility in Acadia Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In the Commission's October 7, 1996 order, Egan Hub was authorized to operate two natural gas salt dome storage caverns with a total operating capacity of 9.5 Bcf. One cavern (Cavern I) is currently operational with a capacity of 4.5 Bcf. The second cavern (Cavern II) will be constructed by late 1997 with a capacity of 5.0 Bcf. Egan Hub seeks authorization to increase the operating capacity of Cavern I from 4.5 Bcf to 6.0 Bcf. Egan Hub says the proposed capacity increase in Cavern I will be offset by a reduction in the Cavern II capacity so that the total operating capacity of the two caverns would continue to be limited to the certificated total capacity of 9.5 Bcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 23, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed construction and operations are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be

unnecessary for Egan Hub to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32149 Filed 12–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–57–000]

NorAm Gas Transmission Company; Notice of Technical Conference

December 13, 1996.

In the Commission's order issued November 29, 1996, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Wednesday, January 8, 1997, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32154 Filed 12–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97-29-000]

Panhandle Eastern Pipe Line Company; Notice of Technical Conference

December 13, 1996.

In the Commission's order issued November 8, 1996, the Commission held that the issues raised by the protestors in the above captioned proceeding should be addressed in a technical conference.

Take notice that the technical conference will be held on Tuesday, January 14, 1997, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32153 Filed 12–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–185–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 13, 1996.

Take notice that on December 10, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing to become effective January 9, 1997.

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to establish the flexibility under Panhandle's tariff to negotiate rates in accordance with the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines. Docket No. RM95–6–000 and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Docket No. RM96–7–000 issued January 31, 1996 (Policy Statement).

Panhandle proposes to establish a negotiated/recourse rate program applicable to Panhandle's Part 284 firm transportation and storage services under Rate Schedules FT, EFT, LFT, IOS, WS, PS and FS consistent with the Policy Statement as well as Commission pronouncements respecting negotiated rate filings of other pipelines. The proposed modifications to its tariff provide Panhandle the flexibility to negotiate a rate which may be greater than, less than or equal to the existing cost-based maximum rate for the applicable service, but which shall not be less than the minimum rate for that service set forth in Panhandle's tariff.

Panhandle states that copies of this filing are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32155 Filed 12–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–651–000]

Portland General Electric Company, Southern California Edison Company; Notice of Filing

December 13, 1996.

Take notice that on November 29, 1996, Portland General Electric Company (PGE) and Southern California Edison Company (Edison) tendered for filing notices of cancellation of PGE and Edison's Long-Term Power Sale and Exchange Agreement, PGE Rate Schedule FERC No. 57, and Edison Rate Schedule FERC No. 213.

PGE and Edison request waiver of the 60-day prior notice requirement to allow the termination to become effective on December 31, 1996.

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 December 27, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 96–32157 Filed 12–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–186–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 13, 1996.

Take notice that on December 10, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing to become effective January 9, 1997.

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to establish the flexibility under Trunkline's tariff to negotiate rates in accordance with the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Docket No. RM95–6–000 and Regulation of

Negotiated Transportation Services of Natural Gas Pipelines, Docket No. RM96–7–000 issued January 31, 1996 (Policy Statement).

Trunkline proposes to establish a negotiated/recourse rate program applicable to Trunkline's Part 284 firm transportation and storage services under Rate Schedules FT, EFT, QNT, LFT, NNS–1 and FSS consistent with the Policy Statement as well as Commission pronouncements respecting negotiated rate filings of other pipelines. The proposed modifications to its tariff provide Trunkline the flexibility to negotiate a rate which may be greater than, less than or equal to the existing cost-based maximum rate for the applicable service, but which shall not be less than the minimum rate for that service set forth in Trunkline's tariff.

Trunkline states that a copies of this filing are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32156 Filed 12–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–143–000]

Western Transmission Corporation; Petition for Declaratory Order Disclaiming Jurisdiction and Request for Abandonment Authorization

December 13, 1996.

Take notice that on December 6, 1996, Western Transmission Corporation (WESTRANS), 1625 Broadway, Suite 2200, Denver, Colorado 80202, filed in Docket No. CP97–143–000, a Petition for Declaratory Order Disclaiming Jurisdiction and Request for Abandonment Authorization regarding all of its pipeline facilities, pursuant to Rule 207(a)(2) of the Commission's regulations, 18 CFR 385.207(a)(2) and Section 7(b) of the Natural Gas Act, 15 USC 717f(b), all as more fully set forth in the petition/request.

WESTRANS states that it owns and operates a small gas pipeline system in the Washakie Basin area Wyoming, consisting of a 26-mile 12¾-inch main pipeline, a 9.2 mile 4-inch line, and related gathering, dehydration and measuring facilities. WESTRANS states that the net book value of these facilities is $688,000. WESTRANS explains that these facilities were originally constructed to purchase, gather, transport, and sell gas to Colorado Interstate Gas Company (CIG) under a contract executed in 1963. WESTRANS says that its system now gathers gas from some 155 wells into the interstate transmission systems of CIG and Williams Natural Gas Company.

WESTRANS assets that its facilities have long-qualified as gathering under the Commission's primary function test, but that the Commission's ''Tarpon'' doctrine prohibited WESTRANS from seeking a gathering determination because its facilities were located in-between CIG's certificated interstate facilities. WESTRANS contends that since the CIG facilities upstream of WESTRANS' facilities were recently declared nonjurisdictional, the ''Tarpon'' prohibition no longer applies.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 3, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WESTRANS to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32151 Filed 12–18–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–20–000, et al.]

Encogen Northwest, L.P., et al.; Electric Rate and Corporate Regulation Filings

December 12, 1996.

Take notice that the following filings have been made with the Commission:

1. Encogen Northwest, L.P.

[Docket No. EG97–20–000]

On December 5, 1996, Encogen Northwest, L.P. (''Encogen Northwest''), c/o Enserch Development Corporation, 1817 Wood Street, Dallas, TX 75201, 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.

Encogen Northwest owns one eligible facility (an existing natural gas-fired cogeneration facility, a transformer and appurtenant interconnecting equipment), which is also a qualifying facility, in Bellingham, Washington.

Comment date: January 2, 1997, 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. Encogen Four Partners, L.P.

[Docket No. EG97–21–000]

On December 5, 1996, Encogen Four Partners, L.P. (''Encogen Four''), c/o Enserch Development Corporation, 1817 Wood Street, Dallas, TX 75201, 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.

Encogen Four owns one eligible facility (an existing natural gas-fired cogeneration facility, a transformer and appurtenant interconnecting

equipment), which is also a qualifying facility, in Buffalo, New York.

Comment date: January 2, 1997, 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., Midcon Power Services Corp., Midcon Power Services Corp., Equitable Power Services Company, Yankee Energy Marketing Company, Ensource, and NUI Corp-NUI Energy Brokers, Inc.

[Docket Nos. ER90–168–030, ER94–1329–008, ER94–1329–009, ER94–1539–012, ER96–146–003, ER96–1919–001, and ER96–2580–001 (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 December 9, 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 25, 1996, Midcon Power Services Corp., filed certain information as required by the Commission's August 11, 1994, order in Docket No. ER94–1329–000.

On November 25, 1996, Midcon Power Services Corp., filed certain information as required by the Commission's August 11, 1994, order in Docket No. ER94–1329–000.

On November 12, 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 December 4, 1996, Yankee Energy Marketing Company, filed certain information as required by the Commission's November 29, 1995, order in Docket No. ER96–146–000.

On December 6, 1996, Ensource, filed certain information as required by the Commission's July 10, 1996, order in Docket No. ER96–1919–000.

On December 5, 1996, NUI Corp-NUI Energy Brokers, Inc., filed certain information as required by the Commission's August 29, 1996, order in Docket No. ER96–2580–000.

4. Louisville Gas and Electric Company

[Docket Nos. ER96–2527–000, ER96–3126, ER96–3156–000, ER97–93–000, ER97–94–000, ER97–134–000, ER97–199–000, ER97–214–000, and ER97–241–000]

Take notice that on November 25, 1996, Louisville Gas and Electric Company tendered for filing an amendment in the above-referenced dockets.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Public Service Company

[Docket No. ER96–2554–000]

Take notice that on December 9, 1996, Maine Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER96–2664–000]

Take notice that on December 2, 1996, Entergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER96–2704–000]

Take notice that on December 2, 1996, Entergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. IES Utilities, Inc.

[Docket No. ER96–2774–000]

Take notice that on December 6, 1996, IES Utilities, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Sierra Pacific Power Company

[Docket No. ER96–2850–001]

Take notice that on November 12, 1996, Sierra Pacific Power Company tendered for filing Revision No. 1 to its service agreement with the City of Fallon.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company

[Docket No. ER96–2937–000]

Take notice that on December 4, 1996, Southwestern Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. United American Energy Corp.

[Docket No. ER96–3092–000]

Take notice that on November 27, 1996, United American Energy Corp., tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER97–277–000]

Take notice that on November 21, 1996, PECO Energy Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Citizens Utilities Company

[Docket No. ER97–311–000]

Take notice that on December 6, 1996, Citizens Utilities Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Great Bay Power Corporation

[Docket No. ER97–608–000]

Take notice that on December 6, 1996, Great Bay Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Dakota Electric Association

[Docket No. ER97–629–000]

Take notice that on November 27, 1996, Dakota Electric Association, tendered for filing a notice of cancellation of FERC Electric Service Tariff Volume 1, providing service to the Minnesota Valley Electric Cooperative and Cooperative Power, Inc.

The customer requested termination of the rate schedule.

Notice of the proposed cancellation has been served upon the following:

Mr. Roger Geckler, General Manager, Minnesota Valley Electric Cooperative, 125 Minnesota Valley Electric Drive, P.O. Box 125, Jordan, MN 55352

Mr. Julian Brix, General Manager, Cooperative Power, 14615 Lone Oak Road, Eden Prairie, MN 55344

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–642–000]

Take notice that on November 27, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 2, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of November 1, 1996.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–643–000]

Take notice that on November 27, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 112 for transmission service for New York State Electric & Gas Corporation (NYSEG). The Supplement provides for a decrease in the charges for transmission service. Con Edison has requested waiver of notice requirements so that the Supplement can be made effective as of April 1, 1996.

Con Edison states that a copy of this filing has been served by mail upon NYSEG.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Pennsylvania Power & Light Company

[Docket No. ER97–644–000]

Take notice that on November 27, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated November 14, 1996, with Morgan Stanley Capital Group, Inc. (Morgan) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Morgan as an eligible customer under the Tariff.

PP&L requests an effective date of November 27, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Morgan and to the Pennsylvania Public Utility Commission.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Pennsylvania Power & Light Company

[Docket No. ER97–645–000]

Take notice that on November 27, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated November 11, 1996, with NorAm Energy Services, Inc. (NorAm) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds NorAm as an eligible customer under the Tariff.

PP&L requests an effective date of November 27, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NorAm and to the Pennsylvania Public Utility Commission.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Pennsylvania Power & Light Company

[Docket No. ER97–646–000]

Take notice that on November 27, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated November 19, 1996, with Wisconsin Electric Power Company (Wisconsin Electric) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Wisconsin Electric as an eligible customer under the Tariff.

PP&L requests an effective date of November 27, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Wisconsin Electric and to the Pennsylvania Public Utility Commission.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Pennsylvania Power & Light Company

[Docket No. ER97–647–000]

Take notice that on November 27, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated November 8, 1996, with New York State Electric & Gas Corporation (NYSEG) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds NYSEG as an eligible customer under the Tariff.

PP&L requests an effective date of November 27, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NYSEG and to the Pennsylvania Public Utility Commission.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Pennsylvania Power & Light Company

[Docket No. ER97–648–000]

Take notice that on November 27, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated November 19, 1996, with Engelhard Power Marketing, Inc. (Engelhard) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Engelhard as an eligible customer under the Tariff.

PP&L requests an effective date of November 27, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Engelhard and to the Pennsylvania Public Utility Commission.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Toledo Edison Company

[Docket No. ER97–650–000]

Take notice that on November 27, 1996, Toledo Edison Company (Toledo Edison), tendered for filing with the Federal Energy Regulatory Commission an Electric Power Sales Tariff, providing for wholesale sales of electric energy and/or electric capacity to Eligible Customers under the tariff at cost-based rates.

Toledo Edison requests that its tariff be accepted for filing and allowed to become effective as soon as possible and in any event no later than sixty days from the date of its filing.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Interstate Power Company

[Docket No. ER97–652–000]

Take notice that on November 29, 1996, Interstate Power Company (IPW), tendered for filing two Transmission Service Agreements between IPW and Dairyland Power Cooperative (Dairyland). Under the Transmission Service Agreements, IPW will provide firm point-to-point transmission service to Dairyland.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. OA97–60–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 3, 1996,

tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and K N Marketing, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on K N Marketing, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Cinergy Services, Inc.

[Docket No. OA97–61–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 3, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Global Petroleum Corp.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Global Petroleum Corp., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Cinergy Services, Inc.

[Docket No. OA97–62–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 3, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Western Gas Resources Power Marketing, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Western Gas Resources Power Marketing, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Cinergy Services, Inc.

[Docket No. OA97–63–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 3, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Missouri Public Service.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Missouri Public Service, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Cinergy Services, Inc.

[Docket No. OA97–64–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 3, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and The City of Piqua Ohio.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on The City of Piqua, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Upper Peninsula Power Company

[Docket No. OA97–65–000]

Take notice that on December 3, 1996, Upper Peninsula Power Company tendered for filing a request for waiver of Order No. 889.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Cinergy Services, Inc.

[Docket No. OA97–66–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 4, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and PanEnergy Power Services, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on PanEnergy Power Services, Inc. the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Cinergy Services, Inc.

[Docket No. OA97–67–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 4, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Enron Power Marketing, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Enron Power Marketing, Inc. the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Cinergy Services, Inc.

[Docket No. OA97–68–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 4, 1996, tendered for filing on behalf of its operating companies, The Cincinnati

Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Federal Energy Sales, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Federal Energy Sales, Inc. the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. OA97–70–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 4, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Eastex Power Marketing, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Eastex Power Marketing, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Cinergy Services, Inc.

[Docket No. OA97–72–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 5, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and National Gas & Electric L.P.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on National Gas & Electric L.P., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Cinergy Services, Inc.

[Docket No. OA97–73–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 5, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Electric Clearinghouse, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Electric Clearinghouse, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Cinergy Services, Inc.

[Docket No. OA97–74–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 5, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Michigan Public Power Agency.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Michigan Public Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Cinergy Services, Inc.

[Docket No. OA97–75–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 5, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and AIG Trading Corporation.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on AIG Trading Corporation, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Cinergy Services, Inc.

[Docket No. OA97–76–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 5, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Heath Petra Resources, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Heath Petra Resources, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Cinergy Services, Inc.

[Docket No. OA97–77–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 5, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Powertec International, LLP.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Powertec International, L.L.P, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Cinergy Services, Inc.

[Docket No. OA97–78–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 5, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and VTEC Energy, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on VTEC, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. Cinergy Services, Inc.

[Docket No. OA97–79–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 5, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Southern Energy Marketing, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Southern Energy Marketing, Inc. the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Cinergy Services, Inc.

[Docket No. OA97–80–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 5, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and TransCanada Power Corp.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on TransCanada Power Corp., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

44. Cinergy Services, Inc.

[Docket No. OA97–81–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 5, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and CNG Power Services Corporation.

The modification are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on CNG Power Services Corporation, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

45. Cinergy Services, Inc.

[Docket No. OA97–82–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 5, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Vastar Power Marketing, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Vastar Power Marketing, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 6, 1997, 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. 96–32192 Filed 12–18–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG97–11–000, et al.]

PMDC Netherlands B.V., et al. Electric Rate and Corporate Regulation Filings

December 13, 1996.

Take notice that the following filings have been made with the Commission:

1. PMDC Netherlands B.V.

[Docket No. EG97–11–000]

On December 11, 1996, PMDC Netherlands (the ''Applicant'') whose address is 4e Etage, 3012 CA Rotterdam, The Netherlands, filed with the Federal Energy Regulatory Commission an amendment to its application (the ''Application'') for exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations, filed in the above-referenced Docket on November 4, 1996.

Comment date: December 27, 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. Hidro Iberica B.V.

[Docket No. EG97–12–000]

On December 11, 1996, Hidro Iberica B.V. (the ''Applicant'') whose address is 4e Etage, 3012 CA Rotterdam, The Netherlands, filed with the Federal Energy Regulatory Commission an amendment to its application (the ''Application'') for exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations, filed in the above-referenced Docket on November 4, 1996.

Comment date: December 27, 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. Boston Edison Company

[Docket No. EL97–14–000]

Take notice that on December 2, 1996, Boston Edison Company tendered for filing a request for exemption from determining interests as specified in Section 35.19a of the Commission's Rules of Practice and Procedure in connection with refunds on Spent Nuclear Fuel Disposal Costs from the Department of Energy.

Edison states that it has served a copy of this filing on all wholesale customers and the Massachusetts Department of Public Utilities.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Enova Corporation Pacific Enterprise

[Docket No. EL97–15–000]

Take notice that on December 9, 1996, Enova Corporation and Pacific Enterprises filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, for a declaratory order stating that the proposed reorganization of their businesses under a common holding company does not require Commission approval under Section 203(a) of the Federal Power Act, 16 U.S.C. 824(b).

Enova and Pacific state that they propose to combine by forming a new holding company to which they will transfer all of their stock. The new holding company will, in turn, be owned by their former shareholders. Enova and Pacific further state that, at the time of the proposed transaction, Pacific will have no interest in a ''public utility'' as defined under the Federal Power Act. Enova and Pacific argue that, in light of the language and history of the Federal Power Act and the Commission's interpretation thereof, the proposed combination is not subject to review by the Commission under Section 203(a).

Comment date: January 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company

[Docket No. ER91–480–004]

Take notice that on December 6, 1996, Jersey Central Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. JEB Corporation, K Power Company, Amoco Energy Trading Corp., Gateway Energy Marketing, Quantum Energy Resources, Inc., TECO EnergySource, Inc. and Gelber Group

[Docket Nos. ER94–1432–009, ER95–792–005, ER95–1359–005, ER96–795–002, ER96–947–003, ER96–1563–002 and ER96–1933–001] (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, JEB Corporation filed certain information as required by the Commission's September 8, 1994, order in Docket ER94–1432–000.

On December 9, 1996, K Power Company filed certain information as required by the Commission's June 19, 1995, order in Docket ER95–792–000.

On November 12, 1996, Amoco Energy Trading Corporation filed certain information as required by the Commission's November 29, 1995, order in Docket ER95–1359–000.

On December 9, 1996, Gateway Energy Marketing filed certain information as required by the Commission's March 7, 1996, order in Docket ER96–795–000.

On December 9, 1996, Quantum Energy Resources, Inc. filed certain information as required by the Commission's March 5, 1996, order in Docket ER96–947–000.

On December 4, 1996, TECO EnergySource, Inc., filed certain information as required by the Commission's June 11, 1996, order in Docket ER96–1563–000.

On December 3, 1996, Gelber Group filed certain information as required by the Commission's July 25, 1996, order in Docket ER96–1993–000.

7. Enova Energy, Inc.

[Docket No. ER96–2372–002]

Take notice that on December 6, 1996, Enova Energy, Inc., d.b.a. Enova Energy Management, submitted a revised compliance filing pursuant to the Commission's order of September 9, 1996 and subsequent requests from the Commission staff. The compliance filing modifies the code of conduct that Enova Energy submitted in this docket on September 24, 1996.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Dayton Power & Light Company

[Docket No. ER96–2602–001]

Take notice that on December 5, 1996, Dayton Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Sierra Pacific Power Company

[Docket No. ER96–2984–001]

Take notice that on November 26, 1996, Sierra Pacific Power Company tendered for filing a calculation of an unbundled transmission service rate applicable to the Electric Service Agreement between Sierra and Plumas Sierra Rural Electric Cooperative.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Company

[Docket No. ER96–3030–001]

Take notice that on November 29, 1996, Allegheny Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. P&T Power Company

[Docket No. ER97–18–000]

Take notice that on December 10, 1996, P&T Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Atlantic City Electric Company

[Docket No. ER97–243–000]

Take notice that on December 2, 1996, Atlantic City Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Unocal Corporation

[Docket No. ER97–262–000]

Take notice that on December 10, 1996, Unocal Corporation tendered for

filing an amendment in the above-referenced docket.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. ProLiance Energy, LLC

[Docket No. ER97–420–000]

Take notice that on December 9, 1996, ProLiance Energy, LLC tendered for filing an amendment in the above-referenced docket.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. CMS Electric Marketing Company

[Docket No. ER97–600–000]

Take notice that on November 22, 1996, CMS Electric Marketing Company tendered for filing its quarterly informational filing for the quarter ending September 30, 1996.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Energy Trading & Marketing, Inc.

[Docket No. ER97–604–000]

Take notice that on November 22, 1996, Southern Energy Marketing, Inc. tendered for filing a Notice of Succession advising the Commission that it has changed its name to Southern Energy Trading and Marketing, Inc.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Portland General Electric Company

[Docket No. ER97–653–000]

Take notice that on November 27, 1996, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service with Washington Water Power.

Pursuant to 18 CFR 35.11, PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreements to become effective November 3, 1996.

A copy of this filing was caused to be served upon Washington Water Power as noted in the filing letter.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Proler Power Marketing, Inc.

[Docket No. ER97–655–000]

Take notice that on November 27, 1996, Proler Power Marketing, Inc. tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 1.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. LG&E-Westmoreland Southampton L.P.

[Docket No. ER97–656–000]

Take notice that on November 27, 1996, LG&E-Westmoreland Southampton L.P. tendered for filing its rates, terms and conditions for wholesale sales of capacity, dispatch rights and electric energy to Virginia Electric & Power Company for the locked-in period of calendar year 1992.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Company

[Docket No. ER97–657–000]

Take notice that on November 29, 1996, New England Power Company (NEP), filed three service agreements with CPS Utilities, Baltimore Gas & Electric and Morgan Stanley Capital Group, Inc. for non-firm, point-to-point transmission service under NEP's open access transmission service, FERC Electric Tariff, Original Volume No. 9.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Northeast Utilities Service Company

[Docket No. ER97–658–000]

Take notice that on November 29, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Rochester Gas and Electric Corp. (RG&E) under the NU System Companies' Sale for Resale—Market-Based Rates, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to RG&E.

NUSCO requests that the Service Agreement become effective November 4, 1996.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. New York State Electric & Gas Corporation

[Docket No. ER97–659–000]

Take notice that on November 29, 1996, New York State Electric & Gas Corporation (NYSEG), filed a Service Agreement between NYSEG and Rochester Gas & Electric Corporation, (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed on July 9, 1996 in Docket No. OA96–195–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of October 29, 1996 for the Rochester Gas and Electric Corporation Service Agreement. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Interstate Power Company

[Docket No. ER97–660–000]

Take notice that on November 29, 1996, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Jpower Inc. (Jpower). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Jpower.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Interstate Power Company

[Docket No. ER97–661–000]

Take notice that on November 29, 1996, Interstate Power Company (IPW), tendered for filing three transmission Service Agreements between IPW and CornBelt Power Cooperative (CornBelt). Under the Transmission Service Agreement, IPW will provide firm point-to-point transmission service to CornBelt.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Interstate Power Company

[Docket No. ER97–662–000]

Take notice that on November 29, 1996, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and NorAm Energy Services, Inc. (NorAm). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to NorAm.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Washington Water Power

[Docket No. ER97–663–000]

Take notice that on November 29, 1996, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission

pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with IGI Resources, Inc.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Ohio Edison Company Pennsylvania Power Company

[Docket No. ER97–664–000]

Take notice that on November 29, 1996, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, a Power Sales Tariff. This initial rate schedule will enable Ohio Edison and Pennsylvania Power Company to sell capacity and energy in accordance with the terms of the Tariff.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Cinergy Services, Inc.

[Docket No. ER97–665–000]

Take notice that on December 2, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and The Power Company.

Cinergy and The Power Company are requesting an effective date of December 1, 1996.

Comment date: December 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Clear Lake Cogeneration Limited Partnership

[Docket No. QF83–205–006]

On December 5, 1996, Clear Lake Cogeneration Limited Partnership (Clear Lake), 333 Clay Street, Suite 3200, Houston, Texas 77002 submitted for filing an application for Commission recertification as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the facility is a 377 MW, natural gas-fueled cogeneration facility located in Pasadena, Texas. The Commission previously certified the facility as a qualifying facility in *Capitol Cogeneration Co., Ltd.*, 24 FERC ¶ 62,086 (1983). The facility consists of three combustion turbine generators and a condensing steam turbine generator. Thermal energy recovered from the facility will be used by the Clear Lake plant for its process requirements. Power from the facility is sold to Houston Lighting & Power Company and Texas-New Mexico Power Company. According to the applicant, the instant recertification is requested to assure that the facility will remain a qualifying facility following a change in the ownership of the parent company Enron/Dominion Cogen Corp.

Comment date: 15 days after the date of publication of this notice in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

30. Cogenron Inc.

[Docket No. QF85–116–003]

On December 5, 1996, Cogenron Inc. (Cogenron), 333 Clay Street, Suite 3200, Houston, Texas 77002 submitted for filing an application for Commission recertification as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the facility is a 450 MW, natural gas-fueled cogeneration facility located in Galveston, Texas. The Commission previously certified the facility as a qualifying facility in *Northern Cogeneration One Company,* 30 FERC ¶ 62,364 (1985). The facility consists of three combustion turbine generators and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used by Union Carbide Corporation chemical plant for its process requirements. Power from the facility is sold to Texas Utilities Electric Company. In Docket No. QF85–116–002, applicant filed a notice of self-certification to transfer ownership to the applicant. According to the applicant, the instant recertification is requested to assure that the facility will remain a qualifying facility following a change in the ownership of the parent company Enron/Dominion Cogen Corp.

Comment date: 15 days after the date of publication of this notice in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

31. Brooklyn Navy Yard Cogeneration Partners, L.P.

[Docket No. QF95–302–004]

On December 6, 1996, Brooklyn Navy Yard Cogeneration Partners, L.P. (Applicant), 366 Madison Avenue, Suite 1103, New York, New York 10017, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.205(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to Applicant, the natural gas-fired topping-cycle cogeneration facility is located in Kings County, Brooklyn, New York. The facility consists of two combustion turbine generators, two unfired heat recovery boilers, two extraction/condensing steam turbine generators, and related interconnection equipment. The maximum net electric power production capacity of the facility is 315 MW. Thermal energy recovered from the facility is used for space heating, water distillation and waste water treatment purposes.

Comment date: December 30, 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. 96–32191 Filed 12–18–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5667–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Trade Secrets Claims for Emergency Planning and Community Right-To-Know Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Requests (ICR) have been forwarded to

the Office of Management and Budget (OMB) for review and approval: Trade Secret Claims for Emergency Planning and Community Right-to-Know Information, ''OMB Control #2050–0078, EPA ICR # 1428.04, expiring 02/28/97. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1428.04.

SUPPLEMENTARY INFORMATION:

Title: Trade Secret Claims for Emergency Planning and Community Right-to-Know Information (OMB Control #2050–0078) expiring 02/28/97. This is a request for extension of a currently approved collection.

Abstract: Section 322 of Title III allows a facility to withhold the specific chemical identity from Title III reports required under Sections 302, 304, 311, 312 and 313 of the statute, if the facility asserts a claim of trade secrecy for that chemical identity. The provision establishes the requirements and procedures that facilities must follow to request trade secrecy treatment of chemical identities, as well as the procedures for submitting public petitions to the Agency for review of the sufficiency of trade secrecy claims.

Congress's intent in writing trade secrecy provisions under Title III was to balance industry's concern with the protection of legitimate trade secrets with communities' right-to-know chemical identification information, by establishing procedures for asserting claims, for the public to obtain review of their validity, and for an Agency claim review process which eliminates legally invalid and frivolous claims.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 30, 1996 (FRL–5618–6); Zero comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 26.7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 324 annually.

Estimated Number of Respondents: 324 annually.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 8,641 hours.

Estimated Total Annualized Cost Burden: $452,535.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1428.04, and OMB Control No. 2050–0078 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: December 16, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–32238 Filed 12–18–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5667–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Emergency Planning and Community Right-To-Know Act (EPCRA), Community Right-To-Know Reporting Requirements, (EPCRA Sections 311.312)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Community Right-to-Know Reporting Requirements, (EPCRA sections 311/312). OMB #2050–0072, expiring January 31, 1997. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1352.04.

SUPPLEMENTARY INFORMATION:

Title: Community Right-to-Know Reporting Requirements, (EPCRA sections 311/312) (OMB #2050–0072; EPA ICR #1352.04), expiring January 31, 1997. This is a request for an extension of a currently approved collection.

Abstract: Section 311 requires that the owner or operator of any facility which is required to prepare or have available material safety data sheets (MSDSs) for a hazardous chemical under OSHA regulations shall submit an MSDS for such chemical, or a list of chemicals, to the LEPC, SERC and local fire department. This submittal allows both local emergency planners/responders and the community to have information regarding the hazards of chemicals used at the facility.

Section 312 requires the same owners and operators to annually report the inventories of the chemicals reported under section 311. EPA published two ''formats'' required under EPCRA. Tier I is the minimum amount of information to comply with this section. Tier II is chemical specific information and only needs to be submitted if specifically requested by the SERC or LEPC.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 30, 1996 (61 FR 51107); one comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3.1 hours per

response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Businesses and other for profit organizations; State, local and tribal governments.

Estimated Number of Respondents: 868,527

Frequency of Response: one per year

Estimated Total Annual Hour Burden: 2,963,209 hours

Estimated Total Annualized Cost Burden: $82,626,000

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1352.04 and OMB Control No. 2050–0072 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 12, 1996

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–32240 Filed 12–18–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5668–1]

Acid Rain Program: Draft Permit Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit modification.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment a draft modification to the sulfur dioxide (SO_2) compliance plan of a previously issued final Phase I Acid Rain Permit in accordance with the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on the draft modification must be received no later than January 21, 1997 or the date of publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: *Administrative Records.* The administrative record for the permit, except information protected as confidential, may be viewed during normal operating hours at EPA Region 3, 841 Chestnut Building, Philadelphia, PA, 19107.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to Thomas Maslany, Division Director, Air, Radiation and Toxics Division, EPA Region 3, (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting an SO_2 compliance plan.

FOR FURTHER INFORMATION CONTACT: Call Linda Miller, (215) 566–2068.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish the Acid Rain Program to reduce the adverse environmental and public health effects of acidic deposition. Under the program, each affected unit at an electric utility generating plant must hold one allowance for each ton of SO_2 that is emitted during the year, and each plant must have a permit with a plan for complying. In today's action, EPA is issuing, for public comment, a draft modification to an existing permit, allocating SO_2 emission allowances and approving an SO_2 compliance plan, to the following utility plant:

Martins Creek in Pennsylvania: one substitution plan for 1996–1999, in which units 1 and 2 designate units 3 and 4 as substitution units; 12,553 substitution allowances are allocated unit 3 for each year 1996–1999, and 11,548 substitution allowances are allocated to unit 4 for each year 1996–1999. The designated representative for Martins Creek is Robert J. Shovlin.

Dated: December 12, 1996.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 96–32239 Filed 12–18–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5667–6]

Proposed Settlement Pursuant to Sections 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of a proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA''), Region II, announces a proposed administrative settlement pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), relating to the Quanta Resources Syracuse Superfund Site (''Site''). The Site is located at 2802–2810 Lodi Street, Syracuse, Onondaga County, New York. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. The proposed administrative settlement has been memorialized in an Administrative Settlement Agreement between EPA and sixty-three settling parties (''Respondents''). The administrative settlement will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper or inadequate, and EPA, in accordance with Section 122(i)(3) of CERCLA, modifies or withdraws its consent to this Agreement. The administrative settlement memorializes an agreement made in conjunction with a

concurrently-executed Administrative Order on Consent pursuant to Section 106(a) of CERCLA, obligating Respondents to perform certain response actions at the Site. Pursuant to CERCLA Section 122(h)(1), the administrative settlement may not be issued without the prior written approval of the Attorney General or her designee. In accordance with that requirement, the Attorney General or her designee has approved the proposed administrative settlement in writing.

EPA intends to settle with other potentially responsible parties concerning reimbursement of EPA's remaining response costs.

DATES: Comments must be provided on or before January 21, 1997.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007 and should refer to: ''Quanta Resources Syracuse Superfund Site, U.S. EPA Index No. II–CERCLA–96–0216''. For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Jeannie M. Yu, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3178.

Dated: December 5, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 96–32243 Filed 12–18–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5668–2]

Agreement and Covenant Not To Sue Pursuant to Sections 9601–9675 of the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative agreement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA''), Region II, announces a proposed administrative settlement under CERCLA for a ''prospective purchaser'' relating to a portion of the former Marathon Battery Company Superfund Site (''Site''). The Site is located in the Village of Cold Spring, Putnam County, New York City, New York. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period, which begins on December 20, 1996 and concludes on January 19, 1997, and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

The proposed administrative settlement has been memorialized in an Agreement and Covenant Not to Sue (''Agreement'') between EPA and Scenic Hudson Land Trust, Inc. (''Respondent''). The Agreement will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper or inadequate, and EPA, in accordance with Section 122(i)(3) of CERCLA, modifies or withdraws its consent to the Agreement.

Under the Agreement, the United States covenants not to sue or take any other civil or administrative action against Respondent for any and all civil liability, for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to existing contamination, below EPA's action levels, present on or under the property in East Foundry Cove and East Foundry Cove Marsh as of the effective date of the Agreement. In return, the Respondent has agreed to accept a deed restriction which permits access for monitoring and maintenance and protects the EPA-approved remedy.

Pursuant to EPA guidance, the Agreement may not be issued without the written approval of the Attorney General or her designee. In accordance with that guidance, the Attorney General or her designee has approved the proposed Agreement in writing.

DATES: Comments must be provided on or before January 21, 1997.

ADDRESS: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007 and should refer to: ''Agreement and Covenant Not to Sue Scenic Hudson Land Trust, Incorporated, U.S. EPA Index No. II–CERCLA–97–0202''. For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Beverly Kolenberg, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3167.

Dated: December 13, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 96–32242 Filed 12–18–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5667–5]

Proposed Settlement Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA''), Region II, announces a proposed administrative settlement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), relating to the Muratti Environmental Superfund Site (''Site''). The Site is located in the town of Penuelas, Tallaboa Ward, Commonwealth of Puerto Rico. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. The proposed administrative settlement has been memorialized in an Administrative Order on Consent (''Order'') between EPA and ROHO Investment, Inc. (the ''Respondent''). This Order will become effective after the close of the public comment period, unless, comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate, and EPA, in accordance with Section 122(i)(3) of CERCLA, modifies or

withdraws its consent to this Agreement. Under the Order, the Respondent will be obligated to pay $20,000 to the Hazardous Substances Superfund.

Pursuant to CERCLA Section 122(h)(1), the Order may not be issued without the prior written approval of the Attorney General or her designee. In accordance with that requirement, the Attorney General or her designee has approved the proposed administrative order in writing.

EPA intends to pursue other potentially responsible parties concerning payment of additional amounts to EPA in respect of past costs.

DATES: Comments must be provided on or before January 21, 1997.

ADDRESS: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007 and should refer to: '' Muratti Environmental Superfund Site, U.S. EPA Index No. II CERCLA–96–0302''. For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Jean H. Regna, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3164.

Dated: December 5, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 96–32241 Filed 12–18–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Product, Establishment, and Biologics License Applications, Refusal to File; Meeting of Oversight Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of its standing oversight committee in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications (PLA's), establishment license applications (ELA's), and biologics license applications (BLA's). CBER's RTF oversight committee examines all RTF decisions which occurred during the previous quarter to assess consistency across CBER offices and divisions in RTF decisions.

DATES: The meeting will be held on January 7, 1997.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–4), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3079.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 15, 1995 (60 FR 25920), FDA announced the establishment and first meeting of CBER's standing oversight committee. As explained in the notice, the importance to the public health of getting new biological products on the market as efficiently as possible has made improving the biological product evaluation process an FDA priority. CBER's managed review process focuses on specific milestones or intermediate goals to ensure that a quality review is conducted within a specified time period. CBER's RTF oversight committee meetings continue CBER's effort to promote the timely, efficient, and consistent review of PLA's, ELA's, and BLA's.

FDA regulations on filing PLA's, ELA's, and BLA's are found in 21 CFR 601.2 and 601.3. A sponsor who receives an RTF notification may request an informal conference with CBER, and thereafter may ask that the application be filed over protest, similar to the procedure for drugs described under 21 CFR 314.101(a)(3) (see 57 FR 17950, April 28, 1992).

CBER's standing RTF oversight committee consists of senior CBER officials, a senior official from FDA's Center for Drug Evaluation and Research, and FDA's Chief Mediator and Ombudsman. Meetings, ordinarily, will be held once a quarter to review all of the RTF decisions. The purpose of such a review is to assess the consistency within CBER in rendering RTF decisions.

Because the committee's deliberations will deal with confidential commercial information, all meetings will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain confidential commercial information, summaries of the committee's deliberations, with all confidential commercial information omitted, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If, following the committee's review, an RTF decision changes, the appropriate division will notify the sponsor.

Dated: December 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32272 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 96–2091]

Federal-State Joint Board on Universal Service: Staff To Hold Workshops on Proxy Cost Models on January 14–15, 1997

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On December 12, 1996 the Federal Communications Commission released a public notice to announce that the federal and state staff of the Federal-State Joint Board on Universal Service will be conducting workshops on January 14 and 15, 1997, regarding the selection of a proxy cost model. The purpose of the notice is to inform the general public of the time and place of the workshops.

FOR FURTHER INFORMATION CONTACT: Astrid Carlson, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau, at (202) 530–6023.

SUPPLEMENTARY INFORMATION: The federal and state staff will hold workshops on proxy cost models on Tuesday, January 14, 1997 and Wednesday, January 15, 1997 at 9:00 a.m. in Room 856 at 1919 M Street, N.W.,Washington, D.C. The workshops will consist of round table discussions on issues relating to the selection of a proxy cost model for determining the cost of providing the service supported by the universal service support mechanism. It is anticipated that the workshops will start with a brief presentation by the proponents of the proxy models. Each proponent will highlight the characteristics of the current version of its model, any planned revisions to the model, and a time table for completing those revisions. The round table discussions will then follow. It is anticipated that the following issues may be discussed, including, for example: (1) modeling

network investment, including loop plant, switching costs, and other investments (e.g., interoffice network); (2) modeling operating and support expenses, including plant specific operating expenses, non-plant specific expenses, and treatment of joint and common costs; (3) modeling capital expenses, including rate of return on capital and debt, depreciation, and taxes; and (4) validation of the models.

The round table participants will include a broad representation of the telecommunications industry. Individuals interested in participating in one of the workshop round tables should submit their request in writing. Each request should include name, organization, address, telephone number, fax number, and a brief description of the person's expertise in this area. Such requests should be sent by no later than December 20, 1996, to Astrid Carlson, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau, FCC, 2100 M Street, Room 8607, Washington, D.C. 20554.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Bureau Chief, Common Carrier Bureau.

[FR Doc. 96–32190 Filed 12–18–96; 8:45 am]

BILLING CODE 6712–01–P

[CC Docket No. 92–237; DA 96–2086]

North American Numbering Council; Meetings

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On December 11, 1996, the Commission released a public notice announcing the third and fourth meetings of the North American Numbering Council and the Agenda for those meetings. The intended effect of this action is to make the public aware of the NANC's third and fourth meetings and its Agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, Administrative Assistant of the NANC, or Donna Scott Martin, both at (202) 418–2330. The address for both is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW., Suite 235, Washington, DC 20054. The fax number for both is: (202) 418–2345. The TTY number for both is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: December 11, 1996. The third and fourth meetings of the North American Numbering Council (NANC) will be held on Monday, January 13, 1997, at 9:30 a.m. EST at the ANA Hotel, 2401 M Street, NW., Washington, DC and on Tuesday, January 28, 1997, at 9:30 a.m. at the Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, DC, respectively. For the January 13 meeting, Council members will be billed for meeting costs (room and microphones) subsequent to the meeting.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Linda Simms or Donna Scott Martin, At the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Agenda

The planned agenda for the January 13, 1997 meeting is as follows:

1. Report of steering group activities.
2. Discussion of timing, process and deadline for selecting new North American Numbering Plan (NANP) Administrator, including specific duties of NANC, contract holder, CO code administration and cost recovery issues.
3. Reports from working groups, including discussion of non-consensus items, if any.
4. NANC Meeting Schedule.
5. Other Business.

The planned agenda for the January 28, 1997 meeting is as follows:

1. Dispute resolution. Status of proposal from Working Group.
2. Status of NANP Administrator Request for Proposal.
3. Working Group reports, including non-consensus items, if any.
4. Future of NANC.
5. Other Business.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 96–32075 Filed 12–18–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Financial Institutions Rating System

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) is revising the Uniform Financial Institutions Rating System (UFIRS), which is commonly referred to as the CAMEL rating system. The term ''financial institutions'' refers to those insured depository institutions whose primary Federal supervisory agency is represented on the FFIEC. The agencies comprising the FFIEC are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS). The revisions update the rating system to address changes in the financial services industry and in supervisory policies and procedures occurring since the rating system was adopted in 1979. The changes include: reformatting and clarification of component rating descriptions and component rating definitions; adding a sixth component addressing sensitivity to market risk; increasing emphasis on the quality of risk management practices in each of the rating components, particularly in the Management component; revising the composite rating definitions; and explicitly identifying the risks considered in assigning component ratings.

DATES: December 19, 1996.

FOR FURTHER INFORMATION CONTACT:

OCC: Lawrence W. (Bill) Morris, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5350, Office of the Comptroller of the Currency, 250 E Street SW, Washington, D.C. 20219.

FRB: Kevin Bertsch, Supervisory Financial Analyst, (202) 452–5265, or Constance Powell, Supervisory Financial Analyst, (202) 452–3506, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, D.C. 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, (202) 452–3544.

FDIC: Daniel M. Gautsch, Examination Specialist, (202) 898–6912,

Office of Policy, Division of Supervision. For legal issues, Linda L. Stamp, Counsel, (202) 898–7310, Supervision and Legislation Branch, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, D.C. 20429.

OTS: William J. Magrini, Senior Project Manager, (202) 906–5744, Supervision Policy, Office of Thrift Supervision, 1700 G Street NW, Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background Information

On July 18, 1996, the FFIEC published a notice and request for comment in the Federal Register (July Notice), 60 FR 37472, requesting comment on proposed revisions to the UFIRS. The UFIRS is an internal rating system used by the Federal supervisory agencies and State supervisory agencies for evaluating the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special supervisory attention or concern. The UFIRS takes into consideration a careful evaluation of managerial, operational, financial, and compliance performance factors common to all institutions. The UFIRS is used by the supervisory agencies to monitor aggregate trends in the overall soundness of financial institutions. The UFIRS also provides a means for the supervisory agencies to monitor, for various statistical and supervisory purposes, the types and severity of problems that institutions may be experiencing, and to determine the level of supervisory concern that is warranted.

Under the UFIRS, each financial institution is assigned a composite rating based on an evaluation and rating of essential components of an institution's financial condition and operations. Under the former UFIRS, the component factors addressed the adequacy of capital, the quality of assets, the capability of the board of directors and management, the quality and level of earnings, and the adequacy of liquidity. The composite and component ratings are assigned on a 1 to 5 numerical scale. A 1 indicates the strongest performance and management practices and the lowest degree of supervisory concern. A 5 indicates the weakest performance and management practices and the highest degree of supervisory concern.

The UFIRS is an effective tool for the supervisory agencies to determine the safety and soundness of financial institutions. A number of changes, however, have occurred in the financial services industry and in supervisory policies and procedures since the rating system was adopted in 1979. As a result, the FFIEC is making certain enhancements to the rating system but is retaining its basic framework. The enhancements include: reformatting and clarifying the component rating descriptions and component rating definitions; adding a new sixth component, Sensitivity to Market Risk; increasing emphasis on the quality of risk management processes in each of the component ratings, particularly in the Management component; adding language in the composite rating definitions to parallel the changes in the component rating descriptions; and identifying the types of risk associated with each component area.

The FFIEC notes that some Federal supervisory agencies' regulations reference the institution's UFIRS or CAMEL rating in determining an institution's status under those regulations. The Federal supervisory agencies may consider amending those regulations to incorporate changes made to the UFIRS system.

Comments Received and Changes Made

The FFIEC received 55 comments regarding the proposed revisions to UFIRS. Thirty-four of the comments were from banks and thrifts, ten from state banking departments, five from trade associations, two from FRB offices, two from consultants, and two from Federal bank examiners.

Commenters generally favored the changes to the rating system regarding structure and format, reference to risk management practices, identification of risk types, and revisions to the composite and component rating definitions. However, commenters were divided regarding the new component on sensitivity to market risk.

Examiners field tested the revised rating system during 185 bank and thrift examinations conducted between July and October, 1996. The examiners provided comments regarding the revised rating system. Examiner response generally was favorable for the revised rating system, including the new sixth component. Few significant problems or rating differences were encountered between the former and the updated UFIRS.

Many commenters and examiners recommended clarifying changes to various aspects of the revised rating system. The FFIEC carefully considered each comment and examiner response and is making certain changes. The following discussion describes the comments received and changes made to the UFIRS in response to the comments. The updated UFIRS is included at the end of this Notice.

July Notice Specific Questions

In addition to requesting general comments regarding the proposed rating system, the FFIEC invited comments on two specific questions:

(1) *Does the proposed, revised rating system capture the essential aspects of a financial institution's condition, compliance with laws and regulations, and overall operating soundness? If not, what additional or different components should be considered?*

The majority of responses to this question were positive and indicated no additional or different components should be considered. Some commenters noted concerns with or the need for clarification of the new sixth component. These concerns are addressed later in this Notice.

(2) *Does the proposed management component rating adequately represent an assessment of the quality of the board of directors' and management's oversight regarding an institution's operating performance, risk management practices, and internal controls? If not, what other factors should be considered when rating management?*

The majority of responses to this question were favorable. A number of commenters recommended that the Management component make a clearer distinction between the role of the board of directors and the role of senior management.

The FFIEC added language to the Management component that recognizes the different responsibilities of these two management groups.

Structure and Format of Component Descriptions

The July Notice enhanced and clarified component rating descriptions by reformatting each component into three distinct sections: (1) An introductory paragraph discussing the areas to be considered when rating each component; (2) a bullet-style listing of the evaluation factors to be considered when assigning component ratings; and (3) a brief, qualitative description of the five rating grades that can be assigned to a particular component.

Several commenters expressed concern that component descriptions and component rating definitions need clear distinction and differentiation between rating levels.

The FFIEC acknowledges the need for clear distinction and differentiation between component rating levels. The UFIRS now reflects changed or added language to clarify that the component

rating assessments consider an institution's size, the nature and complexity of its business activities, and its risk profile. Sentence structure, coupled with other minor language changes, were made to enhance parallelism and to improve differentiation between component rating levels.

Some commenters expressed concern regarding the number of evaluation factors within each component, the subjectivity associated with the evaluation factors, the order in which evaluation factors were listed, the redundancy of evaluation factors between components, and the need for clarification of some of the evaluation factors.

The FFIEC made revisions to the UFIRS to better structure and identify the factors that examiners traditionally consider as part of their assessment of a component area. This allows examiners and bankers to have a better understanding of what is being assessed under each component. Since its inception, the UFIRS has always contained elements of subjectivity and examiner judgment when assigning a rating, particularly as it relates to qualitative assessments of policies, practices, processes, and systems. Subjectivity and judgment cannot be eliminated but, as in the past, it can be reasonably applied based on the examiner's experience and knowledge, and their familiarity with the unique characteristics of the institution being examined.

The list of evaluation factors under each component is not meant to be all inclusive and appropriate language is added to the UFIRS noting that the evaluation factors are not listed in any particular order of importance. This allows examiners the flexibility of assessing factors that are most pertinent to the institution's situation and risk profile.

The FFIEC also acknowledges that there is a certain degree of redundancy between the component evaluation factors. For example, certain factors, such as the ability of management to identify, measure, monitor, and control risk, apply to each of the components and are an integral part of each component's rating. In addition, the level of classified assets will also impact the Asset Quality component and the Capital and Earnings components. This analysis should not be considered as ''double counting,'' but rather as a balanced assessment of how an evaluation factor can impact several component areas.

The FFIEC, however, has removed the evaluation factor referring to compliance with laws and regulations from all but the Management component. In addition, minor language changes are made to some of the component evaluation factors for clarification purposes.

Sensitivity to Market Risk Component

The July Notice added a sixth rating component addressing sensitivity to market risk and the degree to which changes in interest rates, foreign exchange rates, commodity prices, or equity prices can adversely affect a financial institution's earnings or economic capital.

A number of commenters noted that the sensitivity to market risk already is considered under the existing components and questioned the need for the new component.

The FFIEC acknowledges that market risk is already considered under the UFIRS; however, adding a new component provides a more precise indication of an institution's ability to monitor and manage its market risk. Since the sensitivity to market risk is already considered when assigning UFIRS ratings, the addition of the new component should not result in a change to the composite ratings being assigned.

The principal benefit of this new component is that it gives a clearer indication of supervisory concerns related to market risk than can be gained from the former UFIRS. For example, a financial institution with weak earnings and poor liquidity also might have significant and poorly managed exposures to interest rate risk. Less than satisfactory component ratings for earnings or liquidity accorded an institution under the former UFIRS would not specifically note a problem with exposure to, or the management of, market risk. Under the updated UFIRS, however, it is now possible to determine whether an institution has less than satisfactory earnings, a deficiency in its level or management of liquidity, *and* a problem with its exposure to market risks.

Other commenters objected to the new component on the grounds that it will place too much weight on a risk that is insignificant to most institutions and may result in examiners requiring elaborate market risk management systems where relatively basic management practices would suffice.

The FFIEC acknowledges that, for most institutions, market risk primarily reflects exposures to changes in interest rates.

Currently, interest rate risk is not a significant problem for the industry. In light of the level of risk embodied in this component for most institutions, the Federal supervisory agencies do not anticipate examiners overemphasizing this component when assigning a composite rating.

For the institutions that choose to take on greater market risk through holdings of complicated investments or hedging instruments or as part of significant trading activities, the exposure to, and management of, market risk is more significant to their overall risk profile. Thus, it is possible more weight will be assigned to the new component in determining the composite rating under UFIRS for institutions engaging in these activities. This is consistent with the Federal supervisory agencies' views that, when assigning a composite rating, examiners should determine the weight placed on each component based upon the particular situation of the institution, not on an arithmetic average of the components.

Thus, supervisory expectations for the management of market risk remain unchanged; the quality of management systems must be commensurate with risk exposure. Accordingly, the new component does not imply a requirement to develop enhanced management systems where market risk already is being identified, measured, monitored, and controlled in a manner appropriate to the institution's market risk exposure.

Several commenters also raised concerns about a perceived emphasis on the absolute level of market risk in the rating descriptions for the sensitivity to market risk component.

The FFIEC agrees that the evaluation of market risk must take into account the capital and earnings of an institution and the quality of its risk management practices. Accordingly, the description of the new component and its rating definitions have been revised to reflect this view.

Risk Management

The revised rating system reflects an increased emphasis on risk management processes. The Federal supervisory agencies currently consider the quality of risk management practices when applying the UFIRS, particularly in the management component. Changes in the financial services industry, however, have broadened the range of financial products offered by institutions and accelerated the pace of transactions. These trends reinforce the importance of institutions having sound risk management systems. Accordingly, the revised rating system contains explicit language in each of the components emphasizing management's ability to

identify, measure, monitor, and control risks.

Several commenters expressed concern that the revised rating system would add to an institution's regulatory burden; require additional policies, processes, and highly formalized management information systems; or prevent institutions from attaining the highest ratings if they did not have formalized risk management policies and systems.

The FFIEC recognizes that management practices, particularly as they relate to risk management, vary considerably among financial institutions depending on their size and sophistication, the nature and complexity of their business activities, and their risk profile. Each institution must properly manage its risks and have appropriate policies, processes, or practices in place that management follows and uses. Activities undertaken in a less complex institution engaging in less sophisticated risk-taking activities may only need basic management and control systems compared to the detailed and formalized systems and controls needed for the broader and more complex range of activities undertaken at a larger and more complex institution.

The FFIEC added appropriate language clarifying that the UFIRS does not add to the regulatory burden of institutions, but promotes and complements efficient examination processes. The FFIEC also added language clarifying that detailed or highly formalized management systems and controls are not required for less complex institutions engaging in less sophisticated risk taking activities to receive the higher composite and component ratings.

Composite Rating Definitions

The July Notice retained the basic context of the existing composite rating definitions. The composite ratings are based on a careful evaluation of an institution's managerial, operational, financial, and compliance performance. The revised composite rating definitions contain an explicit reference to the quality of overall risk management practices.

A number of commenters recommended that the composite rating definitions contain a clearer distinction between rating levels, include a better perspective on examiner flexibility in considering the evaluation factors, and clarify other language to ensure consistent and uniform application by supervisory agencies.

The FFIEC agrees and has made certain changes in the structure and language of the composite rating definitions to address the concerns raised about examiner flexibility when assigning ratings based on an institution's particular circumstances. The principal change includes language to note explicitly that examiners consider an institution's size, complexity, and risk profile when assessing risk management practices. Other changes include sentence structure and other language changes in each of the composite rating definitions for better parallelism and readability from one definition to another and to provide clearer distinction between rating levels.

Peer Data Comparisons

Some commenters noted the lack of references to peer comparisons in component descriptions and rating definitions in the UFIRS.

The FFIEC acknowledges that it does not include peer comparison data in the updated rating system. The principal reason is to avoid over reliance on statistical comparisons to justify the component rating being assigned. Examiners are encouraged to consider all relevant factors when assigning a component rating. The rating system is designed to reflect an assessment of the individual institution. Peer data are a part of the overall assessment process, however.

Component Rating Disclosure

Several commenters noted that component ratings should be disclosed to an institution's board of directors and senior management.

The FFIEC agrees that component ratings should be disclosed to an institution's board of directors and senior management and recommended that the FDIC, FRB, OCC, and OTS begin disclosing component ratings in reports of examination no later than January 1, 1997. The FDIC began disclosing component ratings in reports of examination in process after September 30, 1996. The other Federal supervisory agencies expect to begin such disclosures on or before January 1, 1997.

The FFIEC inserted into the Overview section of the UFIRS appropriate language noting that both composite and component ratings are disclosed to an institution's board of directors and senior management.

Specialty Area Examinations

Some commenters recommended that the specialty area examinations, i.e., Bank Information Systems, Fiduciary, Consumer Compliance, CRA, etc., be integrated into the rating system.

The FFIEC acknowledges that results of such specialty examinations currently are taken into consideration when assigning an institution's composite rating or component ratings, as appropriate. Generally, the impact of specialty area examination findings are reflected in the composite and Management component ratings. However, other factors, such as reimbursable violations under Regulation Z (12 CFR Part 226), if substantial, could impact an institution's capital or earnings performance.

The FFIEC added appropriate language to the revised UFIRS noting that Foreign Branch examination and specialty examination findings (Compliance, CRA, Government Security Dealers, Information Systems, Municipal Security Dealers, Transfer Agent, and Fiduciary) and the ratings assigned to those areas are taken into consideration, as appropriate, when assigning a composite rating and component ratings under UFIRS.

Implementation Date

The FFIEC recommends that the Federal supervisory agencies implement the updated UFIRS no later than January 1, 1997. This date provides the Federal supervisory agencies flexibility to implement the updated UFIRS in conjunction with procedures for disclosing both composite and component ratings, as appropriate, to institutions' boards of directors and senior management. This date also ensures that institutions with examinations commenced in 1997 will be assessed under the updated UFIRS.

Text of the Revised Uniform Financial Institutions Rating System

Uniform Financial Institutions [1] Rating System

Introduction

The Uniform Financial Institutions Rating System (UFIRS) was adopted by the Federal Financial Institutions Examination Council (FFIEC) on November 13, 1979. Over the years, the UFIRS has proven to be an effective internal supervisory tool for evaluating

[1] For purposes of this rating system, the term ''financial institution'' refers to those insured depository institutions whose primary Federal supervisory agency is represented on the Federal Financial Institutions Examination Council (FFIEC). The agencies comprising the FFIEC are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. The term ''financial institution'' includes Federally supervised commercial banks, savings and loan associations, mutual savings banks, and credit unions.

the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special attention or concern. A number of changes, however, have occurred in the banking industry and in the Federal supervisory agencies' policies and procedures which have prompted a review and revision of the 1979 rating system. The revisions to UFIRS include the addition of a sixth component addressing sensitivity to market risks, the explicit reference to the quality of risk management processes in the management component, and the identification of risk elements within the composite and component rating descriptions.

The revisions to UFIRS are not intended to add to the regulatory burden of institutions or require additional policies or processes. The revisions are intended to promote and complement efficient examination processes. The revisions have been made to update the rating system, while retaining the basic framework of the original rating system.

The UFIRS takes into consideration certain financial, managerial, and compliance factors that are common to all institutions. Under this system, the supervisory agencies endeavor to ensure that all financial institutions are evaluated in a comprehensive and uniform manner, and that supervisory attention is appropriately focused on the financial institutions exhibiting financial and operational weaknesses or adverse trends.

The UFIRS also serves as a useful vehicle for identifying problem or deteriorating financial institutions, as well as for categorizing institutions with deficiencies in particular component areas. Further, the rating system assists Congress in following safety and soundness trends and in assessing the aggregate strength and soundness of the financial industry. As such, the UFIRS assists the agencies in fulfilling their collective mission of maintaining stability and public confidence in the nation's financial system.

Overview

Under the UFIRS, each financial institution is assigned a composite rating based on an evaluation and rating of six essential components of an institution's financial condition and operations. These component factors address the adequacy of capital, the quality of assets, the capability of management, the quality and level of earnings, the adequacy of liquidity, and the sensitivity to market risk. Evaluations of the components take into consideration the institution's size and sophistication, the nature and complexity of its activities, and its risk profile.

Composite and component ratings are assigned based on a 1 to 5 numerical scale. A 1 indicates the highest rating, strongest performance and risk management practices, and least degree of supervisory concern, while a 5 indicates the lowest rating, weakest performance, inadequate risk management practices and, therefore, the highest degree of supervisory concern.

The composite rating generally bears a close relationship to the component ratings assigned. However, the composite rating is not derived by computing an arithmetic average of the component ratings. Each component rating is based on a qualitative analysis of the factors comprising that component and its interrelationship with the other components. When assigning a composite rating, some components may be given more weight than others depending on the situation at the institution. In general, assignment of a composite rating may incorporate any factor that bears significantly on the overall condition and soundness of the financial institution. Assigned composite and component ratings are disclosed to the institution's board of directors and senior management.

The ability of management to respond to changing circumstances and to address the risks that may arise from changing business conditions, or the initiation of new activities or products, is an important factor in evaluating a financial institution's overall risk profile and the level of supervisory attention warranted. For this reason, the management component is given special consideration when assigning a composite rating.

The ability of management to identify, measure, monitor, and control the risks of its operations is also taken into account when assigning each component rating. It is recognized, however, that appropriate management practices vary considerably among financial institutions, depending on their size, complexity, and risk profile. For less complex institutions engaged solely in traditional banking activities and whose directors and senior managers, in their respective roles, are actively involved in the oversight and management of day-to-day operations, relatively basic management systems and controls may be adequate. At more complex institutions, on the other hand, detailed and formal management systems and controls are needed to address their broader range of financial activities and to provide senior managers and directors, in their respective roles, with the information they need to monitor and direct day-to-day activities. All institutions are expected to properly manage their risks. For less complex institutions engaging in less sophisticated risk taking activities, detailed or highly formalized management systems and controls are not required to receive strong or satisfactory component or composite ratings.

Foreign Branch and specialty examination findings and the ratings assigned to those areas are taken into consideration, as appropriate, when assigning component and composite ratings under UFIRS. The specialty examination areas include: Compliance, Community Reinvestment, Government Security Dealers, Information Systems, Municipal Security Dealers, Transfer Agent, and Trust.

The following two sections contain the composite rating definitions, and the descriptions and definitions for the six component ratings.

Composite Ratings

Composite ratings are based on a careful evaluation of an institution's managerial, operational, financial, and compliance performance. The six key components used to assess an institution's financial condition and operations are: capital adequacy, asset quality, management capability, earnings quantity and quality, the adequacy of liquidity, and sensitivity to market risk. The rating scale ranges from 1 to 5, with a rating of 1 indicating: the strongest performance and risk management practices relative to the institution's size, complexity, and risk profile; and the level of least supervisory concern. A 5 rating indicates: the most critically deficient level of performance; inadequate risk management practices relative to the institution's size, complexity, and risk profile; and the greatest supervisory concern. The composite ratings are defined as follows:

Composite 1

Financial institutions in this group are sound in every respect and generally have components rated 1 or 2. Any weaknesses are minor and can be handled in a routine manner by the board of directors and management. These financial institutions are the most capable of withstanding the vagaries of business conditions and are resistant to outside influences such as economic instability in their trade area. These financial institutions are in substantial compliance with laws and regulations. As a result, these financial institutions exhibit the strongest performance and

risk management practices relative to the institution's size, complexity, and risk profile, and give no cause for supervisory concern.

Composite 2

Financial institutions in this group are fundamentally sound. For a financial institution to receive this rating, generally no component rating should be more severe than 3. Only moderate weaknesses are present and are well within the board of directors' and management's capabilities and willingness to correct. These financial institutions are stable and are capable of withstanding business fluctuations. These financial institutions are in substantial compliance with laws and regulations. Overall risk management practices are satisfactory relative to the institution's size, complexity, and risk profile. There are no material supervisory concerns and, as a result, the supervisory response is informal and limited.

Composite 3

Financial institutions in this group exhibit some degree of supervisory concern in one or more of the component areas. These financial institutions exhibit a combination of weaknesses that may range from moderate to severe; however, the magnitude of the deficiencies generally will not cause a component to be rated more severely than 4. Management may lack the ability or willingness to effectively address weaknesses within appropriate time frames. Financial institutions in this group generally are less capable of withstanding business fluctuations and are more vulnerable to outside influences than those institutions rated a composite 1 or 2. Additionally, these financial institutions may be in significant noncompliance with laws and regulations. Risk management practices may be less than satisfactory relative to the institution's size, complexity, and risk profile. These financial institutions require more than normal supervision, which may include formal or informal enforcement actions. Failure appears unlikely, however, given the overall strength and financial capacity of these institutions.

Composite 4

Financial institutions in this group generally exhibit unsafe and unsound practices or conditions. There are serious financial or managerial deficiencies that result in unsatisfactory performance. The problems range from severe to critically deficient. The weaknesses and problems are not being satisfactorily addressed or resolved by the board of directors and management. Financial institutions in this group generally are not capable of withstanding business fluctuations. There may be significant noncompliance with laws and regulations. Risk management practices are generally unacceptable relative to the institution's size, complexity, and risk profile. Close supervisory attention is required, which means, in most cases, formal enforcement action is necessary to address the problems. Institutions in this group pose a risk to the deposit insurance fund. Failure is a distinct possibility if the problems and weaknesses are not satisfactorily addressed and resolved.

Composite 5

Financial institutions in this group exhibit extremely unsafe and unsound practices or conditions; exhibit a critically deficient performance; often contain inadequate risk management practices relative to the institution's size, complexity, and risk profile; and are of the greatest supervisory concern. The volume and severity of problems are beyond management's ability or willingness to control or correct. Immediate outside financial or other assistance is needed in order for the financial institution to be viable. Ongoing supervisory attention is necessary. Institutions in this group pose a significant risk to the deposit insurance fund and failure is highly probable.

Component Ratings

Each of the component rating descriptions is divided into three sections: an introductory paragraph; a list of the principal evaluation factors that relate to that component; and a brief description of each numerical rating for that component. Some of the evaluation factors are reiterated under one or more of the other components to reinforce the interrelationship between components. The listing of evaluation factors for each component rating is in no particular order of importance.

Capital Adequacy

A financial institution is expected to maintain capital commensurate with the nature and extent of risks to the institution and the ability of management to identify, measure, monitor, and control these risks. The effect of credit, market, and other risks on the institution's financial condition should be considered when evaluating the adequacy of capital. The types and quantity of risk inherent in an institution's activities will determine the extent to which it may be necessary to maintain capital at levels above required regulatory minimums to properly reflect the potentially adverse consequences that these risks may have on the institution's capital.

The capital adequacy of an institution is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The level and quality of capital and the overall financial condition of the institution.
- The ability of management to address emerging needs for additional capital.
- The nature, trend, and volume of problem assets, and the adequacy of allowances for loan and lease losses and other valuation reserves.
- Balance sheet composition, including the nature and amount of intangible assets, market risk, concentration risk, and risks associated with nontraditional activities.
- Risk exposure represented by off-balance sheet activities.
- The quality and strength of earnings, and the reasonableness of dividends.
- Prospects and plans for growth, as well as past experience in managing growth.
- Access to capital markets and other sources of capital, including support provided by a parent holding company.

Ratings

1 A rating of 1 indicates a strong capital level relative to the institution's risk profile.

2 A rating of 2 indicates a satisfactory capital level relative to the financial institution's risk profile.

3 A rating of 3 indicates a less than satisfactory level of capital that does not fully support the institution's risk profile. The rating indicates a need for improvement, even if the institution's capital level exceeds minimum regulatory and statutory requirements.

4 A rating of 4 indicates a deficient level of capital. In light of the institution's risk profile, viability of the institution may be threatened. Assistance from shareholders or other external sources of financial support may be required.

5 A rating of 5 indicates a critically deficient level of capital such that the institution's viability is threatened. Immediate assistance from shareholders or other external sources of financial support is required.

Asset Quality

The asset quality rating reflects the quantity of existing and potential credit risk associated with the loan and

investment portfolios, other real estate owned, and other assets, as well as off-balance sheet transactions. The ability of management to identify, measure, monitor, and control credit risk is also reflected here. The evaluation of asset quality should consider the adequacy of the allowance for loan and lease losses and weigh the exposure to counterparty, issuer, or borrower default under actual or implied contractual agreements. All other risks that may affect the value or marketability of an institution's assets, including, but not limited to, operating, market, reputation, strategic, or compliance risks, should also be considered.

The asset quality of a financial institution is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The adequacy of underwriting standards, soundness of credit administration practices, and appropriateness of risk identification practices.
- The level, distribution, severity, and trend of problem, classified, nonaccrual, restructured, delinquent, and nonperforming assets for both on- and off-balance sheet transactions.
- The adequacy of the allowance for loan and lease losses and other asset valuation reserves.
- The credit risk arising from or reduced by off-balance sheet transactions, such as unfunded commitments, credit derivatives, commercial and standby letters of credit, and lines of credit.
- The diversification and quality of the loan and investment portfolios.
- The extent of securities underwriting activities and exposure to counterparties in trading activities.
- The existence of asset concentrations.
- The adequacy of loan and investment policies, procedures, and practices.
- The ability of management to properly administer its assets, including the timely identification and collection of problem assets.
- The adequacy of internal controls and management information systems.
- The volume and nature of credit documentation exceptions.

Ratings

1 A rating of 1 indicates strong asset quality and credit administration practices. Identified weaknesses are minor in nature and risk exposure is modest in relation to capital protection and management's abilities. Asset quality in such institutions is of minimal supervisory concern.

2 A rating of 2 indicates satisfactory asset quality and credit administration practices. The level and severity of classifications and other weaknesses warrant a limited level of supervisory attention. Risk exposure is commensurate with capital protection and management's abilities.

3 A rating of 3 is assigned when asset quality or credit administration practices are less than satisfactory. Trends may be stable or indicate deterioration in asset quality or an increase in risk exposure. The level and severity of classified assets, other weaknesses, and risks require an elevated level of supervisory concern. There is generally a need to improve credit administration and risk management practices.

4 A rating of 4 is assigned to financial institutions with deficient asset quality or credit administration practices. The levels of risk and problem assets are significant, inadequately controlled, and subject the financial institution to potential losses that, if left unchecked, may threaten its viability.

5 A rating of 5 represents critically deficient asset quality or credit administration practices that present an imminent threat to the institution's viability.

Management

The capability of the board of directors and management, in their respective roles, to identify, measure, monitor, and control the risks of an institution's activities and to ensure a financial institution's safe, sound, and efficient operation in compliance with applicable laws and regulations is reflected in this rating. Generally, directors need not be actively involved in day-to-day operations; however, they must provide clear guidance regarding acceptable risk exposure levels and ensure that appropriate policies, procedures, and practices have been established. Senior management is responsible for developing and implementing policies, procedures, and practices that translate the board's goals, objectives, and risk limits into prudent operating standards.

Depending on the nature and scope of an institution's activities, management practices may need to address some or all of the following risks: credit, market, operating or transaction, reputation, strategic, compliance, legal, liquidity, and other risks. Sound management practices are demonstrated by: active oversight by the board of directors and management; competent personnel; adequate policies, processes, and controls taking into consideration the size and sophistication of the institution; maintenance of an appropriate audit program and internal control environment; and effective risk monitoring and management information systems. This rating should reflect the board's and management's ability as it applies to all aspects of banking operations as well as other financial service activities in which the institution is involved.

The capability and performance of management and the board of directors is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The level and quality of oversight and support of all institution activities by the board of directors and management.
- The ability of the board of directors and management, in their respective roles, to plan for, and respond to, risks that may arise from changing business conditions or the initiation of new activities or products.
- The adequacy of, and conformance with, appropriate internal policies and controls addressing the operations and risks of significant activities.
- The accuracy, timeliness, and effectiveness of management information and risk monitoring systems appropriate for the institution's size, complexity, and risk profile.
- The adequacy of audits and internal controls to: promote effective operations and reliable financial and regulatory reporting; safeguard assets; and ensure compliance with laws, regulations, and internal policies.
- Compliance with laws and regulations.
- Responsiveness to recommendations from auditors and supervisory authorities.
- Management depth and succession.
- The extent that the board of directors and management is affected by, or susceptible to, dominant influence or concentration of authority.
- Reasonableness of compensation policies and avoidance of self-dealing.
- Demonstrated willingness to serve the legitimate banking needs of the community.
- The overall performance of the institution and its risk profile.

Ratings

1 A rating of 1 indicates strong performance by management and the board of directors and strong risk management practices relative to the institution's size, complexity, and risk profile. All significant risks are consistently and effectively identified, measured, monitored, and controlled.

Management and the board have demonstrated the ability to promptly and successfully address existing and potential problems and risks.

2 A rating of 2 indicates satisfactory management and board performance and risk management practices relative to the institution's size, complexity, and risk profile. Minor weaknesses may exist, but are not material to the safety and soundness of the institution and are being addressed. In general, significant risks and problems are effectively identified, measured, monitored, and controlled.

3 A rating of 3 indicates management and board performance that need improvement or risk management practices that are less than satisfactory given the nature of the institution's activities. The capabilities of management or the board of directors may be insufficient for the type, size, or condition of the institution. Problems and significant risks may be inadequately identified, measured, monitored, or controlled.

4 A rating of 4 indicates deficient management and board performance or risk management practices that are inadequate considering the nature of an institution's activities. The level of problems and risk exposure is excessive. Problems and significant risks are inadequately identified, measured, monitored, or controlled and require immediate action by the board and management to preserve the soundness of the institution. Replacing or strengthening management or the board may be necessary.

5 A rating of 5 indicates critically deficient management and board performance or risk management practices. Management and the board of directors have not demonstrated the ability to correct problems and implement appropriate risk management practices. Problems and significant risks are inadequately identified, measured, monitored, or controlled and now threaten the continued viability of the institution. Replacing or strengthening management or the board of directors is necessary.

Earnings

This rating reflects not only the quantity and trend of earnings, but also factors that may affect the sustainability or quality of earnings. The quantity as well as the quality of earnings can be affected by excessive or inadequately managed credit risk that may result in loan losses and require additions to the allowance for loan and lease losses, or by high levels of market risk that may unduly expose an institution's earnings to volatility in interest rates. The quality of earnings may also be diminished by undue reliance on extraordinary gains, nonrecurring events, or favorable tax effects. Future earnings may be adversely affected by an inability to forecast or control funding and operating expenses, improperly executed or ill-advised business strategies, or poorly managed or uncontrolled exposure to other risks.

The rating of an institution's earnings is based upon, but not limited to, an assessment of the following evaluation factors:

- The level of earnings, including trends and stability.
- The ability to provide for adequate capital through retained earnings.
- The quality and sources of earnings.
- The level of expenses in relation to operations.
- The adequacy of the budgeting systems, forecasting processes, and management information systems in general.
- The adequacy of provisions to maintain the allowance for loan and lease losses and other valuation allowance accounts.
- The earnings exposure to market risk such as interest rate, foreign exchange, and price risks.

Ratings

1 A rating of 1 indicates earnings that are strong. Earnings are more than sufficient to support operations and maintain adequate capital and allowance levels after consideration is given to asset quality, growth, and other factors affecting the quality, quantity, and trend of earnings.

2 A rating of 2 indicates earnings that are satisfactory. Earnings are sufficient to support operations and maintain adequate capital and allowance levels after consideration is given to asset quality, growth, and other factors affecting the quality, quantity, and trend of earnings. Earnings that are relatively static, or even experiencing a slight decline, may receive a 2 rating provided the institution's level of earnings is adequate in view of the assessment factors listed above.

3 A rating of 3 indicates earnings that need to be improved. Earnings may not fully support operations and provide for the accretion of capital and allowance levels in relation to the institution's overall condition, growth, and other factors affecting the quality, quantity, and trend of earnings.

4 A rating of 4 indicates earnings that are deficient. Earnings are insufficient to support operations and maintain appropriate capital and allowance levels. Institutions so rated may be characterized by erratic fluctuations in net income or net interest margin, the development of significant negative trends, nominal or unsustainable earnings, intermittent losses, or a substantive drop in earnings from the previous years.

5 A rating of 5 indicates earnings that are critically deficient. A financial institution with earnings rated 5 is experiencing losses that represent a distinct threat to its viability through the erosion of capital.

Liquidity

In evaluating the adequacy of a financial institution's liquidity position, consideration should be given to the current level and prospective sources of liquidity compared to funding needs, as well as to the adequacy of funds management practices relative to the institution's size, complexity, and risk profile. In general, funds management practices should ensure that an institution is able to maintain a level of liquidity sufficient to meet its financial obligations in a timely manner and to fulfill the legitimate banking needs of its community. Practices should reflect the ability of the institution to manage unplanned changes in funding sources, as well as react to changes in market conditions that affect the ability to quickly liquidate assets with minimal loss. In addition, funds management practices should ensure that liquidity is not maintained at a high cost, or through undue reliance on funding sources that may not be available in times of financial stress or adverse changes in market conditions.

Liquidity is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The adequacy of liquidity sources compared to present and future needs and the ability of the institution to meet liquidity needs without adversely affecting its operations or condition.
- The availability of assets readily convertible to cash without undue loss.
- Access to money markets and other sources of funding.
- The level of diversification of funding sources, both on- and off-balance sheet.
- The degree of reliance on short-term, volatile sources of funds, including borrowings and brokered deposits, to fund longer term assets.
- The trend and stability of deposits.
- The ability to securitize and sell certain pools of assets.

• The capability of management to properly identify, measure, monitor, and control the institution's liquidity position, including the effectiveness of funds management strategies, liquidity policies, management information systems, and contingency funding plans.

Ratings

1 A rating of 1 indicates strong liquidity levels and well-developed funds management practices. The institution has reliable access to sufficient sources of funds on favorable terms to meet present and anticipated liquidity needs.

2 A rating of 2 indicates satisfactory liquidity levels and funds management practices. The institution has access to sufficient sources of funds on acceptable terms to meet present and anticipated liquidity needs. Modest weaknesses may be evident in funds management practices.

3 A rating of 3 indicates liquidity levels or funds management practices in need of improvement. Institutions rated 3 may lack ready access to funds on reasonable terms or may evidence significant weaknesses in funds management practices.

4 A rating of 4 indicates deficient liquidity levels or inadequate funds management practices. Institutions rated 4 may not have or be able to obtain a sufficient volume of funds on reasonable terms to meet liquidity needs.

5 A rating of 5 indicates liquidity levels or funds management practices so critically deficient that the continued viability of the institution is threatened. Institutions rated 5 require immediate external financial assistance to meet maturing obligations or other liquidity needs.

Sensitivity to Market Risk

The sensitivity to market risk component reflects the degree to which changes in interest rates, foreign exchange rates, commodity prices, or equity prices can adversely affect a financial institution's earnings or economic capital. When evaluating this component, consideration should be given to: management's ability to identify, measure, monitor, and control market risk; the institution's size; the nature and complexity of its activities; and the adequacy of its capital and earnings in relation to its level of market risk exposure.

For many institutions, the primary source of market risk arises from nontrading positions and their sensitivity to changes in interest rates. In some larger institutions, foreign operations can be a significant source of market risk. For some institutions, trading activities are a major source of market risk.

Market risk is rated based upon, but not limited to, an assessment of the following evaluation factors:

• The sensitivity of the financial institution's earnings or the economic value of its capital to adverse changes in interest rates, foreign exchanges rates, commodity prices, or equity prices.

• The ability of management to identify, measure, monitor, and control exposure to market risk given the institution's size, complexity, and risk profile.

• The nature and complexity of interest rate risk exposure arising from nontrading positions.

• Where appropriate, the nature and complexity of market risk exposure arising from trading and foreign operations.

Ratings

1 A rating of 1 indicates that market risk sensitivity is well controlled and that there is minimal potential that the earnings performance or capital position will be adversely affected. Risk management practices are strong for the size, sophistication, and market risk accepted by the institution. The level of earnings and capital provide substantial support for the degree of market risk taken by the institution.

2 A rating of 2 indicates that market risk sensitivity is adequately controlled and that there is only moderate potential that the earnings performance or capital position will be adversely affected. Risk management practices are satisfactory for the size, sophistication, and market risk accepted by the institution. The level of earnings and capital provide adequate support for the degree of market risk taken by the institution.

3 A rating of 3 indicates that control of market risk sensitivity needs improvement or that there is significant potential that the earnings performance or capital position will be adversely affected. Risk management practices need to be improved given the size, sophistication, and level of market risk accepted by the institution. The level of earnings and capital may not adequately support the degree of market risk taken by the institution.

4 A rating of 4 indicates that control of market risk sensitivity is unacceptable or that there is high potential that the earnings performance or capital position will be adversely affected. Risk management practices are deficient for the size, sophistication, and level of market risk accepted by the institution. The level of earnings and capital provide inadequate support for the degree of market risk taken by the institution.

5 A rating of 5 indicates that control of market risk sensitivity is unacceptable or that the level of market risk taken by the institution is an imminent threat to its viability. Risk management practices are wholly inadequate for the size, sophistication, and level of market risk accepted by the institution.

End of Proposed Text of Uniform Financial Institutions Rating System

Dated: December 13, 1996.

Keith J. Todd,

Assistant Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 96–32174 Filed 12–18–96; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6710–01–P; 6720–01–P

FEDERAL MARITIME COMMISSION

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.

Satt International Forwarding Inc., 147–35 Farmers Blvd., Jamaica, NY 11434, Officers: Agnes Tang, President, Flora Chen, Vice President

Latin American Brokers, Inc., 9581 Fontainebleau Blvd., #606, Miami, FL 33172, Officer: Alex Sklavounos, President

Diversified Transport Services, Ltd., 53 Nelson Blvd., Brewster, NY 10509, Officers: Andrew J. Quinn, Jr., President, Andrew J. Quinn, Sr., Vice President

Pegasus Transair, Inc., 1100 E. Dallas Road, Suite 310, Grapevine, TX 76051, Officer: Kenneth C. Beam, President

Dated: December 16, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–32268 Filed 12–18–96; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee.

Times and dates: 8 a.m.–5 p.m., January 8, 1997.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters to be discussed: Agenda items include an orientation for new members regarding the roles and responsibilities of an advisory committee member; an update on the HCFA/American Society for Cytotechnology (ASCT) contract for laboratory surveys; an update on cytology proficiency testing (PT); and a review of CDC laboratory-related research activities.

Agenda items are subject to change as priorities dictate.

Contact person for additional information: John C. Ridderhof, Dr.P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, M/S G–25, Atlanta, Georgia 30341–3724, telephone 770/488–4674.

Dated: December 13, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–32183 Filed 12–18–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

[Proposed Program Priorities—ACF/ACYF/RHYP 97–1]

Runaway and Homeless Youth Program: Fiscal Year (FY) 1997 Proposed Program Priorities

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth, and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of request for public comments on proposed Fiscal Year 1997 Runaway and Homeless Youth (RHY) Program Priorities for the following programs for runaway and homeless youth: Basic Center, Street Outreach for Runaway and Homeless Youth and the Transitional Living Program for Homeless Youth.

The Runaway and Homeless Youth Act requires the Secretary to publish annually, for public comment, a proposed plan specifying priorities the Department will follow in awarding grants and contracts under the Act. The final priorities selected will take into consideration the comments and recommendations received from the public in response to this notice.

The public, particularly those knowledgeable about and experienced in providing services to runaway and homeless youth, are urged to respond. The actual solicitations for grant applications will be published at later dates in the Federal Register. No proposals, concept papers or other form of application should be submitted at this time.

We welcome specific comments and suggestions on these proposed program priorities.

DATES: The closing date for submission of public comments is February 3, 1997.

ADDRESSES: Comments should be sent to: James A. Harrell, Deputy Commissioner, Administration on Children, Youth and Families, Attention: Family and Youth Services Bureau, P.O. Box 1182, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Anita Wright, Youth Development Program Specialist, (202) 205–8030.

SUMMARY: The Family and Youth Services Bureau of the Administration on Children, Youth and Families announces that public comments are being requested on proposed program priorities for Fiscal Year 1997 for the following programs, prior to being announced in its final form: Runaway and Homeless Youth Basic Center Grant Program (BCP): The purpose of the Runaway and Homeless Youth Basic Center Grant Program is to provide financial assistance to establish or strengthen locally-controlled centers that address the immediate needs (e.g., outreach, temporary shelter, counseling, and aftercare services) of runaway and homeless youth and their families.

Street Outreach for Runaway and Homeless Youth: The purpose of the Street Outreach Program is to provide street-based outreach and education, including treatment, counseling, and information and referral services for runaway, homeless, and street youth who have been subjected to or are at risk of sexual abuse. Grants will be awarded for street-based outreach and education and referral for runaway, homeless, and street youth who have been subjected to or are at risk of being subjected to sexual abuse.

Transitional Living Program for Homeless Youth (TLP): The purpose of the Transitional Living Program for Homeless Youth is to support projects which provide long term shelter, skill training and support services in local communities to homeless youth to assist them in making a smooth transition to self-sufficiency and to prevent long-term dependency on social services.

Financial Assistance from the Family and Youth Services Bureau for RHY programs is contingent upon the availability of funds. As indicated in previous proposed priorities, the Department proposes to award continuation funding to the National Communications System and to fund a number of program support activities during Fiscal Year 1997.

Central to all FYSB programs and activities is a priority that services be delivered with a comprehensive youth development approach. Practicing youth workers are well aware that ''single-problem'' youth are rare, and that interventions from many different perspectives, and supports, including funding, from many different sources, are required to effectively help adolescents.

Interventions from a developmental perspective view adolescence and youth as the passage from the almost total dependence of the child into the independence and self-sufficiency of the adult.

The various emotional, intellectual and physical changes, stages, and growth spurts of the passage may be considered as the youth's natural, healthy responses to the challenges and opportunities provided by functional families, peers, neighborhoods, schools and churches.

The tasks of youth services providers are seen, thus, not as correcting the ''pathologies'' of troubled youth, but rather as providing for the successive developmental needs of maturing individuals: The psychological need to develop a clear self-identity; the sociological need to resolve disagreements through talking and negotiating; the economic need to prepare for and enter into a career; and the familial needs for sharing, for trusting, for giving love and receiving

love, for commitment, and for all that establishing a family entails. This developmental approach is fundamental to all of FYSB programs and activities.

a. Basic Center Program Grants

Approximately 65 percent of the Basic Center grants awarded will be non-competing continuation grants and approximately 35 percent will be competitive new awards in Fiscal Year 1997.

Eligible applicants for new awards are current grantees with project periods ending in Fiscal Year 1997 and otherwise eligible applicants who are not current grantees. The applications will be reviewed by State, and awards will be made during the last quarter of Fiscal Year 1997 (July—September 1997).

Section 385(a)(2) of the Act requires that ninety percent of the funds appropriated for Basic Center grants will be used to establish and strengthen runaway and homeless youth Basic Centers.

b. Transitional Living Program Grants

All potential Fiscal Year 1997 TLP funds will be awarded in the form of continuation grants and as new grants to applicants who competed successfully during fiscal year 1996. Consideration will be given to soliciting applications for competitive review in Fiscal Year 1997. However, grant awards to successful 1997 applicants will be made during the first and second quarters of Fiscal Year 1998 using Fiscal Year 1998 funds, if available.

c. Street Outreach for Runaway and Homeless Youth

The Domestic Violence/Violence Against Women Act of the 1994 Crime Bill provides for education and prevention grants to reduce the sexual abuse of runaway, homeless, and street youth. Fiscal Year 1997 funds will be used to award new grants to eligible applicants. In addition, non-competitive continuation awards will again be made to current basic center grantees who competed successfully for a Street Outreach Program grant in Fiscal Year 1996.

d. National Communications System

In Fiscal Year 1994, a five-year grant was awarded to the National Runaway Switchboard, Inc., in Chicago, Illinois, to operate a National Communications System to assist runaway and homeless youth in communicating with their families and with service providers. Non-competitive continuation funding will be awarded to the grantee in Fiscal Year 1997.

e. Support Services for Runaway and Homeless Youth Programs

(1) *Training and Technical Assistance*

Part D, Section 342 of the Act authorizes the Department to make grants to statewide and regional nonprofit organizations to provide training and technical assistance (T&TA) to organizations receiving service grants under the Act. The purpose of this T&TA is to strengthen the programs and to enhance the knowledge and skills of youth service workers.

The Family and Youth Services Bureau has ten Cooperative Agreements, one in each of the ten Federal Regions, to provide T&TA to agencies funded by FYSB to provide services to runaway and homeless youth. Each Cooperative Agreement is unique, being based on the characteristics and different T&TA needs in the respective Region. Each has a five-year project period that will end in Fiscal Year 1999. Non-competitive continuation funding will be awarded to the ten T&TA grantees in Fiscal Year 1997.

(2) *National Clearinghouse on Runaway and Homeless Youth*

The Family and Youth Services Bureau supports a National Clearinghouse on Youth and Families (NCFY). The purpose of the clearinghouse is to disseminate information to professionals and agencies involved in youth development efforts and/or the delivery of direct services to runaway, homeless and at-risk youth. The Clearinghouse collects, maintains and disseminates reports and other materials, identifies areas in which new or additional information is needed, and carries out other activities designed to provide the field with the information needed to improve services to runaway and homeless youth.

The contract with the National Clearinghouse on Families and Youth expires this fiscal year. A Request for Proposals will be published and a new five year contract will be awarded this fiscal year to sustain the National Clearinghouse for Runaway and Homeless Youth.

(3) Runaway and Homeless Youth Management Information System (RHYMIS)

The Family and Youth Services Bureau awarded a contract, which expires this fiscal year, for the development and implementation of a Runaway and Homeless Youth Management Information System (RHYMIS) for FYSB programs. The data generated by the system are used to produce reports and information regarding FYSB's programs, including information for required reports to Congress. The RHYMIS also serves as a management tool for FYSB and for the individual programs.

In Fiscal Year 1997 a procurement for this activity will be published and a new contract awarded.

(4) Monitoring Support for FYSB Programs

The Family and Youth Services Bureau uses a standardized, comprehensive monitoring instrument and site visit protocols, including a peer-review component for monitoring runaway and homeless youth programs. The Family and Youth Services Bureau has a contractual agreement, which expires this fiscal year, to provide logistical support for the peer review monitoring process, including nationwide distribution of the monitoring instrument. The findings from the monitoring visits have been used by the Regional Offices and the T&TA providers as a basis for their activities. In Fiscal Year 1997 a procurement for this activity will be published and a new contract awarded.

f. Research and Demonstration Initiatives

Section 315 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning and to improve services for runaway and homeless youth. These activities serve to identify emerging issues and to develop and test models which address such issues.

(1) Services for Youth With Developmental Disabilities

The Family and Youth Services Bureau and the Administration on Development Disabilities are collaborating to address the needs of youth with developmental disabilities. In 1995, a competitive review process resulted in jointly funded grant awards to three projects designed to improve local coordination of services to youth with developmental disabilities. Non-competitive continuation funding will be awarded to these grantees in Fiscal Year 1997.

(2) Analysis, Synthesis, and Interpretation of New Information Concerning Runaway and Homeless Youth Programs

Over the past few years, considerable new knowledge and information has been developed concerning the runaway and homeless youth programs

administered by FYSB, and the youth and families served. The main sources of this new information are the Runaway and Homeless Youth Management Information System (RHYMIS), the results of RHY monitoring visits, and a number of evaluation studies underway or recently completed. The RHYMIS, monitoring reports, and the evaluation studies contain descriptions of FYSB's grantee agencies, along with detailed data on the youth and families served.

A contract was awarded in Fiscal Year 1995 to analyze and synthesize this valuable data and to explore program and policy implications. Results from this effort will be available in Fiscal Year 1997.

(3) Youth Development Framework

In Fiscal Year 1995 a contract was awarded to develop a youth development framework from a theoretical perspective. This framework will be designed to enhance the capacity of policy and program developers, program managers, and youth services professionals to develop service models and approaches that will redirect youth in high risk situations toward positive pathways of development.

It is our expectation that this document will serve as a basis for securing consensus on a working definition of youth development and for increasing awareness of the importance and benefits of a youth development perspective in serving youth. The report from this contract will be available in Fiscal Year 1997.

(4) Performance Based Outcomes for Youth Services

Much of the data gathering and assessment tools currently used by the Family and Youth Services Bureau are process oriented. Beginning in Fiscal Year 1997, FYSB will explore the feasibility of developing youth development performance based indicators and/or outcome measures as an alternative method to evaluating the effectiveness of youth services. Such a method would add an important dimension to FYSB's program monitoring and information gathering efforts and would, in addition, be useful to local youth service grantees.

g. Collaboration with State Units of Government

Establishing and/or maintaining effective local youth service delivery systems is increasingly contingent upon successful collaborations between federal government agencies, state governments and local community based organizations.

During Fiscal Year 1997 FYSB will begin a process in which FYSB and States engage in conversations about youth development, identify concerns and issues regarding youth services, provide expert information and assistance to each other, and encourage and foster State relationships with community based organizations that serve youth. This process might evolve to include FYSB/State partnerships and/or pilot efforts which also include local youth service providers.

h. Priorities for Administrative Changes

To support the increased emphasis on youth development, a number of management or administrative changes will be continued:

- The Regional Offices have and will continue to play a significant role in the assessment of grant applications. This role includes Regional staff involvement (1) as chairpersons for peer review panels held in Washington, D.C., and (2) in conduct of administrative reviews of new start applications. This level of regional office involvement will continue in fiscal year 1997.

- The Administration on Children and Families (ACF) will again change the deadline for receipt of a Runaway and Homeless Youth grant application from the postal date of the application to the actual receipt date of the application by ACF. Applicants should carefully examine information on receipt dates in Fiscal Year 1997 Federal Register announcements to assure that they meet deadlines in the manner prescribed.

- Efforts will be continued to avoid the problems of gaps in financial support between the expiration of one grant and the beginning of a new grant for current grantees that are successful in competition.

We welcome specific comments and suggestions on these proposed program priorities.

(*Catalog of Federal Domestic Assistance* Number 93.623, Runaway and Homeless Youth Program; Number 93.657, Transitional Living Program for Homeless Youth; and Number 93.557, Street Outreach for Runaway and Homeless Youth)

Dated: December 12, 1996.

James A. Harrell,

Deputy Commissioner,Administration on Children, Youth and Families.

[FR Doc. 96–32184 Filed 12–18–96; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 96N–0374]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the approval and labeling of food additives.

DATES: Submit written comments on the collection of information by February 18, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kim A. Sanders, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1473.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3520, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice

of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on the following: (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 proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Parts 171, 172, 173, 175–178, and 180 Food Additives and Food Additive Petitions (21 CFR Parts 171, 172, 173, 175–178, and 180) (OMB Control Number 0910–0016—Reinstatement)

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)) provides that any particular use or intended use of a food additive shall be deemed to be unsafe, unless the additive and its use or intended use are in conformity with a regulation issued under Section 409 of the act that describes the condition(s) under which the additive may be safely used, or unless the additive and its use or intended use conform to the terms of an exemption for investigational use. Food additive petitions are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 175–178, and 180 contain labeling requirements for certain food additives to ensure their safe use.

FDA scientific personnel review food additive petitions to ensure the safety of the intended use of the food additive in or on food, or of a food additive that may be present in food as a result of its use in articles that contact food. FDA requires food additive petitions to contain the information specified in § 171.1 in order to determine whether a petitioned use for a food additive is safe, as required by the act. This regulation (§ 171.1) implements section 409(b)(2) of the act.

Respondents are businesses engaged in the manufacture or sale of food, food ingredients, or substances used in materials that come into contact with food.

FDA estimates the burden of complying with the information collection provisions of the agency's food additive petition regulations as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
171.1	44	1	44	2,876	126,560
Part 172	44	1	44	0	0
Part 173	44	1	44	0	0
Part 175–178	44	1	44	0	0
Part 180	44	1	44	0	0
Total	44				126,560

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the average number of new food additive petitions received in fiscal year 1995 and the total hours expended by petitioners to prepare the petitions. The burden varies with the complexity of the petition submitted, because food additive petitions involve the analysis of scientific data and information, as well as the work of assembling the petition itself. Because labeling requirements under parts 172, 173, 175–178, and 180 for particular food additives involve information required as part of the food additive petition safety review process under § 171.1, the estimate for the number of respondents is the same and the burden hours for labeling are included in the estimate for § 171.1.

Dated: December 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32125 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0448]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed survey of FDA Safety Alert and Public Health Advisory recipients.

DATES: Submit written comments on the collection of information by February 18, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600

Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA 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 proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Survey of FDA Safety Alert/Public Health Advisory

Section 705(b) (21 U.S.C. 375(b)) of the Federal Food, Drug, and Cosmetic Act (the act) authorizes FDA to disseminate information concerning imminent danger to public health by any regulated product. The Center for Devices and Radiological Health (CDRH) communicates these risks to user communities through two publications: (1) The FDA Safety Alert and (2) the Public Health Advisory. Safety alerts and advisories are sent to organizations such as hospitals, nursing homes, hospices, home health care agencies, manufacturers, retail pharmacies, and other health care providers. Subjects of recent alerts include spontaneous combustion risks in large quantities of patient examination gloves, hazards associated with the use of electric heating pads, and retinal photic injuries from operating microscopes during cataract surgery.

Section 1701(a)(4) (42 U.S.C. 300u(a)(4)) of the Public Health Service Act authorizes FDA to conduct research relating to health information. FDA seeks to evaluate the clarity, timeliness, and impact of safety alerts and public health advisories by surveying a sample of recipients. Subjects will receive a questionnaire to be completed and returned to FDA. The information to be collected will address how clearly the problem discussed in the alert or advisory is identified, how easily the problem is understood, how clearly actions for reducing risk are explained, the timeliness of the information, and whether the reader has taken any action to eliminate or reduce risk as a result of information in the alert. Subjects will also be asked whether they wish to receive future alerts electronically, as well as how the safety alert program might be improved.

The information collected will be used to shape FDA's editorial policy for the safety alerts and public health advisories. Understanding how target audiences view these publications will aid in deciding what changes should be considered in their content, format, and method of dissemination.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
308	3	924	.17	157

There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the history of the safety alert and public health advisory program, it is estimated that an average of three collections will be conducted a year. The total burden of response time was estimated at 10 minutes per survey. This was derived by CDRH staff completing the survey, in addition to discussions with contacts in trade associations.

Dated: December 11,1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32189 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–01–F

[FDA–225–96–4000]

Memorandum of Understanding Between the Food and Drug Administration and the United States Customs Service

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the FDA and the United States Customs Service. The purpose of this MOU is to establish a partnership between both agencies to participate in an international trade Compliance Measurement (CM) Program.

DATES: The agreement became effective October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas D. Gardine, Division of Import Operations and Policy, Office of Regulatory Affairs (HFC–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOU's between FDA and other shall be published in the Federal Register, the agency is publishing notice of an MOU.

Dated: December 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

Memorandum of Understanding Between the United States Customs Service and the United States Food and Drug Administration

The parties of this Memorandum of Understanding (MOU) are the United States Food and Drug Administration, hereinafter called Customs.

The purpose of this MOU is to establish a partnership between both agencies to participate in an international trade Compliance Measurement (CM) Program.

The Customs CM Program assesses the potential risk that importations do not comply with the law based on a statistically valid random methodology. Customs has the authority to examine and detain all imported merchandise for the purpose of ensuring that such merchandise complies with all U.S. laws governing admissibility; or, Customs may conditionally release the merchandise under bond pending a final admissibility determination. This authority applies to merchandise for which a particular determination relating to admissibility is vested in other government agencies. To streamline initiatives in the area of public health and safety, Customs intends to work more closely with other Government agencies regarding commodities which pose a risk to the United States from a public health and safety standpoint. By working jointly with FDA to determine the compliance rates of specific commodities entering the United States, each agency intends to gain a better understanding of the public health and safety threat these commodities pose to the public. Coordinating activities as part of the CM Program is intended to enhance each agency's overall mission performance.

Specifically, this MOU provides the framework for the cooperative efforts of Customs and FDA under the Compliance Measurement Program to ensure maximum compliance with the laws enforced by both agencies and the regulations promulgated thereunder, and that appropriate procedures pertaining to importation are followed. This MOU is intended to establish improved communications between the signatories. Further, the goals of the MOU include increasing efficiency, reducing individual agency costs through the pooling of resources, and expediting clearance of compliant imported products into the United States. Having both agencies working together on the Customs CM Program assists in the implementation of the aforementioned goals.

This MOU serves to solidify our positions regarding cooperation among government agencies as described in Vice President Al Gore's Reports of the National Performance Review, From Red Tape to Results: Creating a Government That Works Better & Costs Less (1993) and the Government Performance and Results Act of 1993, 103 Pub. L. No. 62, 107 Stat. 285.

Both Customs and the FDA recognize that this MOU in no way compromises the efforts of both agencies in protecting the public health and safety of the United States from merchandise that falls outside the parameters of the Customs CM Program.

I. Customs Agrees To:

1. Incorporate into Customs FY 96 CM Program for the second quarter of the fiscal year (FY), the Harmonized Tariff Schedule (HTS) numbers FDA and Customs jointly agree to include in the program. These HTS numbers may be modified in the second quarter of FY 96 and beyond.

2. Notify FDA of all compliance measurement examination results of these selected products.

3. In accordance with FDA's written instructions, examine the products FDA and Customs jointly agree to be included in the CM Program.

4. Assign a representative to facilitate communication and interaction between Customs and FDA.

II. FDA Agrees To:

1. Provide Customs with written instructions to use to examine the products FDA and Customs jointly agree to be included in the CM Program.

2. Provide Customs with a list of HTS numbers and advise Customs of any changes to the list.

3. Provide training and/or material necessary to accomplish examination procedures, e.g., equipment, tools, forms, etc., as outlined in the examination instructions written by FDA.

4. Assign a representative to facilitate communication and interaction between Customs and FDA.

III. It is Mutually Understood And Agreed That:

1. This MOU is to develop a partnership between the two agencies with respect to Customs CM Program solely. This MOU does not supersede, or relate in any way, to any other MOU's signed by the two agencies. This MOU is to define in general terms the basis on which the parties concerned will cooperate and, as such, does not constitute a financial obligation to serve as a basis for expenditures. No transfer of Federal funds will be involved under this MOU.

2. This MOU is a FY 96–97 planning document. Implementation of the CM Program initiatives commence October 1, 1995.

3. The above provisions will be exercised to the extent authorized by law, Customs and FDA directives, statutes, and regulations, and will be consistent with the respective agency's missions. To that extent, it is understood that a Customs compliance measurement determines only whether there is reason to believe merchandise is noncompliant. Furthermore, Customs release of merchandise following a compliance measurement examination does not constitute a determination by Customs that the merchandise does or does not comply with FDA law. Any final determination of admissibility under FDA law remains vested in the FDA.

4. If, for any reason, the HTS numbers, examination instructions, or necessary training/materials, are not acceptable to either Customs or FDA, modifications will be made to ensure mutual agreement by both agencies.

5. This MOU is an internal Government agreement and is not intended to confer any right or benefit on any private person or party.

6. Information gathered as a result of the CM Program may be highly sensitive, proprietary information. Any information obtained by one agency from the other will be used only for the purpose of enforcing applicable laws and regulations; the information will not be released to third parties except as provided by statute or regulation. In accordance with 44 U.S.C. 3510, any information obtained by one agency from the other will continue to be subject to all the provisions of law of the originating agency.

7. Access to the information described in this MOU is based on the compliance of both FDA and Customs with the Privacy Act of 1974 (5 U.S.C. 552a).

8. This MOU shall become effective upon the date of final signature by both agencies and remain in effect for 5 years or until cancelled by either party upon a 30-day notice in writing.

This MOU may be amended or continued by mutual consent of the parties hereto in writing.

By: George J. Weise.

Title: Commissioner, United States Customs Service.

Date: October 23, 1995.

By: Mary K. Pendergast,

Title: Deputy Commissioner/Senior Advisor to the Commissioner, United States Food and Drug Administration, for the Commissioner of Food and Drugs.

[FR Doc. 96–32274 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–01–F

[FDA–225–96–4006]

Memorandum of Cooperation Between the Food and Drug Administration and the Economy, Development, and Reconstruction Ministry of Chile

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of cooperation (MOC) between FDA and the Economy, Development, and Reconstruction Ministry of Chile. The purpose of the MOC is to facilitate the trade of safe and wholesome fish and fishery products.

DATES: The agreement became effective May 13, 1996.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Office of Seafood (HFS–400), Food and Drug Administration, 1110 Vermont Ave. NW., Washington, DC 20005, 202–418–3150.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of cooperation between FDA and others shall be published in the Federal Register, the agency is publishing notice of this memorandum of cooperation.

Dated: December 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination

Memorandum of Cooperation Between the Food and Drug Administration (FDA) Department of Health and Human Services of the United States of America and Servicio Nacional de Pesca (SERNAP) the Economy, Development and Reconstruction Ministry of Chile Concerning an Exchange of Information and Technical Cooperation With Regard to Food Control Practices to Protect Public Health and to Facilitate Trade in Fish and Fishery Products

In keeping with a mutual desire of the Governments of the United States and Chile to facilitate the trade of safe and wholesome fish and fishery products, and

Desiring to strengthen the bonds of cooperation between the two governments, and

Recognizing that both countries wish to ensure the public health and the wholesomeness of foodstuffs consumed by their citizens, and

Noting that increasing global trade of foodstuffs and the related global trade agreements provide an incentive for countries to harmonize food safety control measures and sanitary practices to facilitate trade without compromising food safety, sanitation and wholesomeness, and

Recognizing that the existing Memorandum of Understanding between the United States and Chile regarding the safety and wholesomeness of shellfish remains in place, and that shellfish are separate and apart form the fish and fishery products considered in this Memorandum of Cooperation,

FDA of the Department of Health and Human Services of the United States and SERNAP, of the Economy, Development and Reconstruction Ministry of Chile, have reached the following general understanding to guide their cooperation:

I. Objectives

The objectives of this Memorandum of Cooperation are to:

A. Exchange information about food laws, regulations, standards, food inspection and the enforcement practices that comprise the fish and fishery products control procedures and practices of each country.

B. Determine whether there exist appropriate food safety laws, regulations, guidelines, and an inspection infrastructure for exported fish and fishery products that will, at a minimum, provide assurances that these products meet the same level of protection as for the domestic fishery products of the trading partner, or meet other stipulated standards. Particular areas of interest include: Laboratories and analytical methodologies and standards, use of Hazard Analysis Critical Control Point (HACCP) controls, extent and provisions for HACCP training, permitted food and color additives, permitted drugs and allowable drug residues in aquacultured fishery products.

C. Determine whether each country is prepared to adhere to the principle of ''transparency'' (the continuing open exchange of regulatory and compliance information or changes therein) as described in the World Trade Organization agreement on Sanitary and Phytosanitary Measures.

D. Provide confidence in the ability of government agencies or government sanctioned agencies to effectively oversee the compliance of the fish and fishery products industry with acceptable sanitary and food safety practices, and thereby provide a foundation for future agreements on measures to facilitate the unencumbered trade of these products between the United States and Chile.

E. Discuss the development of a framework for the resolution of issues of mutual concern related to differences in regulations or practices that may have an effect on the level of protection afforded consumers with regard to the safety, sanitary processing methods, identification of species, and the wholesomeness of exported fish and fishery products.

II. Implementation

Both sides will seek to:

A. Establish a procedure for the exchange of information and documents as permitted by law, as may be deemed necessary by either participant, that establish, support, or explain fish and fishery products safety, sanitation, and enforcement procedures used by either country, and the level of public health protection afforded by them. All information and documents exchanged under this Memorandum may not be further disclosed by the receiving participant without the written consent of the other participant.

B. Discuss, explain, and promote an understanding of how these legal and regulatory provisions work in practice, identify the government departments or authorities that are responsible for ensuring their effectiveness (identification of the competent authorities), and explain their operations, with particular regard for their role in the import and export of fishery products and the oversight of HACCP control measures.

C. Facilitate visits by representatives of the competent authorities of each country, at their own expense, to an agreed-upon number of facilities in the other country that process fish and fishery products for export, to evaluate inspection methods and other regulatory practices in these facilities.

D. Establish procedures to discuss emerging issues and promote cooperation in carrying out these objectives. The discussions should alternate between countries and be held on mutually agreeable dates and at mutually agreeable places. The host country should designate a Chairperson for the discussions who should develop an agenda and circulate appropriate information and materials to participants prior to the talks. Agenda topics and briefing papers should be identified as items for active discussion or information requests. In addition, the Chairperson will obtain agreement on the minutes of the talks.

III. Records

A. The working language and the draft minutes of discussions will be in Spanish and English. The Chairperson should obtain interpreters for the talks, as may be necessary.

B. Each participant to this Memorandum should name a contact person to implement the decisions reached during the discussions.

Cooperation under this Memorandum will begin on the last date of signature of the participants. After five years the participants plan to evaluate the Memorandum and may mutually consent in writing to additional five year periods. It may be amended by mutual written consent of both participants and may be terminated by either participant upon thirty days written notice to the other participant.

For the Servicio Nacional de Pesca of the Economy, Development and Reconstruction Ministry of Chile:
By: Juan Rusque Alcaino
Title: Director Nacional de Pesca
Date: May 13, 1996
Place: Washington, DC

For the Food and Drug Administration, Department of Health and Human Services of the United States of America:
By: William B. Schultz
Title: Deputy Commissioner for Policy
Date: May 13, 1996
Place: Washington, DC

[FR Doc. 96–32187 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–01–F

Memorandum of Understanding Revised Annex Between the Food and Drug Administration and the Russian Federation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a Revised Annex to a Memorandum of Understanding Between the FDA and the Russian Federation. The purpose of the Revised Annex is to reaffirm their cooperation under the principles of cooperation established in the MOU initially

effective February 15, 1994, and to clarify and expand the procedures for registration under this MOU. The purpose of the initial MOU is to exchange information on drugs and biological products and to facilitate the development of the Russian health care sector by establishing in Russia a streamlined registration procedure for U.S. drugs and biological products.

DATES: The agreement became effective January 30, 1996.

FOR FURTHER INFORMATION CONTACT: Philip M. Budashewitz, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which state that all written agreements and memoranda of understanding between FDA and others shall be published in the Federal Register, the agency is publishing notice of this memorandum of understanding.

Dated: December 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

Statement on the Revised Annex to the Memorandum of Understanding Between the Food and Drug Administration Department of Health and Human Services and the Ministry of Health and Medical Industry of the Russian Federation and the State Committee for Sanitary and Epidemiological Surveillance of the Russian Federation Concerning Cooperation and Information Exchange on Drugs and Biological Products Facilitating Importation

In order to reaffirm their cooperation under the principles of cooperation established in the Memorandum of Understanding (MOU) between the parties initially effective on February 15, 1994, and to clarify and expand the procedures for registration under this MOU, the following revisions are agreed to and become effective upon signature by representatives of the parties.

The following revised Annex I is incorporated into the Memorandum of Understanding and replaces the original Annex I. This revised Annex I is the authoritative description of the procedures and requirements for the registration in the Russian Federation of products and substances manufactured in the United States under the jurisdiction of the U.S. Food and Drug Administration.

The additional Annex II constitutes guidelines from the Pharmacopeial Committee of the Ministry of Health and Medical Industries relating the types of information expected to be submitted by firms in the Methods of Analysis and Specifications section of the Application described in Addendum 2 of Annex I.

These Annexes will be made available to firms covered by this Memorandum for their guidance from the Ministry of Health and Medical Industries of the Russian Federation, the U.S. Food and Drug Administration, and the U.S. and Foreign Commercial Service, Moscow.

Points of Contact for Annexes I and II

In order to facilitate the registration of pharmaceuticals and substances, the following additional contacts under the Memorandum of Understanding are adopted and appended to those specified in the original documents effective in February, 1994.

For the Food and Drug Administration

Director
Division of Drug Labeling and Nonprescription Drug Compliance
Center for Drug Evaluation and Research (HFD–310)
(Currently Bradford W. Williams)
Food and Drug Administration
7520 Standish Place
Rockville, MD 20855
U.S.A.
Telephone: 301–594–0063
Fax: 301–594–0165

For the Ministry of Health and Medical Industry

Chief of Inspection
State Control Inspection of Pharmaceuticals and Medical Technology
(Currently Ramil U. Khabriev)
Ministry of Health and Medical Industry of the Russian Federation
Rakhmanovsky per. 3
101431 Moscow
Russian Federation
Telephone: 7095–927–2875
Fax: 7095–925–0128

Done at Washington, D.C. on the 30th of January, 1996

For the Department of Health and Human Services of the United States of America:

Donna E. Shalala

For the Food and Drug Administration of the United States of America:

Mary Pendergast

For the Ministry of Health and Medical Industry of the Russian Federation:

Alexander Tsaregorodtsev

For the State Committee for Sanitary and Epidemiological Surveillance of the Russian Federation:

Gennady Onischenko

Revised Annex I

Instructions and Requirements for Registration in the Russian Federation of Pharmaceuticals and Substances Produced in the United States under the Jurisdiction of the U.S. Food and Drug Administration

The following instructions establish the system and organization for registration in the Russian Federation of pharmaceuticals and substances (active substances) produced in the United States of America under the jurisdiction of the U.S. Food and Drug Administration (hereinafter referred to as the ''FDA'') in accordance with the Memorandum of Understanding between the parties.

Registration

These instructions are mandatory for manufacturers and/or their authorized representatives seeking registration or re-registration of pharmaceuticals and substances produced in the U.S. under the jurisdiction of the FDA.

All pharmaceuticals and substances registered in the Russian Federation must be registered in the name of their manufacturer and/or in the name of their authorized representative. In addition, the pharmaceutical or substance must be registered and listed with the FDA by the manufacturer.

The registration will be conducted in accordance with the form specified in addenda 1 and 2.

1. General Regulations

According to the existing laws of the Russian Federation, all pharmaceuticals (substances) may only be purchased for medical purposes after they have been registered in accordance with the established system of the Ministry of Health and Medical Industries of the Russian Federation.

2. Procedure for the Evaluation of Applications for Registration of Pharmaceuticals and Substances Produced in the U.S. under the Jurisdiction of the U.S. Food and Drug Administration.

2.1 A manufacturer (applicant), hereinafter referred to as ''Company'', that wishes to register a pharmaceutical (substance) in the Russian Federation must submit one (1) copy of a package in English and three (3) copies of the same package in the Russian language consisting of the following: a letter of intent (see Addendum 1), an application (see Addendum 2), and the appropriate documentation (specified in Addendum 1) for the pharmaceutical (or substance) to the Chief of Inspection, State Control Inspection of Medicaments and Medical Technology, hereinafter referred to as ''Inspection on State Control.''

2.2 Inspection on State Control will then forward the documents to:

- the Bureau of Registration of Pharmaceuticals, Medical Technology, and Medical Substances, hereinafter referred to as ''Bureau of Registration'' one copy of the complete application in Russian and the English copy (file);
- the State Pharmacological Committee, hereinafter referred to as ''Pharmacological Committee'': one complete copy of the application in Russian and one sample of the pharmaceutical;
- the State Pharmacopeial Committee, hereinafter referred to as the ''Pharmacopeial Committee'': one complete copy of the application in Russian and one sample of the pharmaceutical.

2.3 The Pharmacological Committee will make a preliminary evaluation of the application and will meet within thirty (30) days of its receipt of the documents.

2.4 The Pharmacological Committee or its Presidium will meet on the application

and the minutes of the meeting of the Pharmacological Committee or its Presidium will be signed by the Chairman of the Committee and the Academic Secretary; the decision will be confirmed by the Head of the Inspection on State Control. Copies of the minutes will be signed by the Chairman of the Pharmacological Committee or the Academic Secretary and forwarded to the Inspection on State Control, the Company and the Pharmacopoeial Committee within five (5) days of the confirmation of the minutes. The Pharmacological Committee and the Inspection for State Control will complete the step described in 2.3 and 2.4 within thirty five (35) days from the submission of the application to the Inspection on State Control by the Company.

2.5 The Pharmacopoeial Committee will complete its evaluation of the application for the pharmaceutical (or substance) within thirty (30) days of its receipt of the documents.

2.6 Recommendations for registration will be made by the Presidium of the Pharmacopoeial Committee and a Declaration of the decision will be issued.

2.7 This Declaration will be signed by the Chairman of the Pharmacopoeial Committee and the Academic Secretary; the decision will be confirmed by the Head of the Inspection on State Control within five (5) days after the meeting of the Pharmacopoeial Committee. The Pharmacopoeial Committee and the Inspection for State Control will complete the step described in 2.6 and 2.7 within thirty five (35) days from the submission of the application to the Inspection on State Control by the Company.

2.8 The Inspection on State Control cannot guarantee timeless in regard to the evaluation of documents, if the documents are not complete or in accordance with the appropriate list.

2.9 The Inspection on State Control has the right to suspend consideration of the application for registration of the pharmaceutical (substance) if the Company does not answer questions of the Pharmacological Committee or the Pharmacopeial Committee due to an incomplete application within ninety (90) days. In this case, the documentation provided by the Company and any registration fee(s) will not be returned to the Company. The Company will be notified of this suspension in writing within ten (10) days of the decision.

2.10 All decision to be made by the Pharmacological Committee, Pharmacopeia Committee, and the Inspection on State Control will be in accordance with the terms of the Memorandum of Understanding between the parties.

3. Procedure for the Registration of Pharmaceuticals and Substances produced in the United States under the Jurisdiction of the U.S. Food and Drug Administration.

3.1 The Bureau of Registration will, on the basis of the authorization of the Inspection on State Control, within five (5) days, issue an official Certificate of Registration (see Addendum 7) for manufacturers or Certificate of Registration and forward it to the Head of the Inspection on State Control for signature.

3.2 The Bureau of Registration will send the issued Certificate of Registration to the Company and simultaneously will send copies to the Inspection on State Control, the Pharmacological Committee, and the Pharmacopeial Committee. The Bureau of Registration will send the Certificate of Registration to the Company within ninety (90) days of the submission of the application to the Inspection on State Control by the Company.

3.3 The Certificate of Registration is valid for five (5) years with the option for re-registration (as provided in section 5 below) when the term has expired.

3.4 The Pharmacopoeial Committee shall distribute the normative documents to the State Scientific Research Institute within ten (10) days after registration and to all other organizations who implement quality control of medical preparations and substances within sixty (60) days after registration.

4. The System of Changing and Supplementing the Application

4.1 In order to change or supplement an application, the Company must send a supplemental application (see Addenda 7 and 9) describing the change being made and confirming the necessity to change or supplement the documentation. These supplemental applications should be provided as follows: three (3) copies in Russian and one (1) copy in English.

4.2 The Inspection on State Control will then forward the documents to:

- the Bureau of Registration - one (1) Russian language Copy and one (1) English language copy
- the Pharmacological Committee - one (1) Russian language copy
- the Pharmacopoeial Committee - one (1) Russian language copy

4.3 The Pharmacological and Pharmacopoeial Committees will within sixty (60) days, according to the established system of the meetings of their Presidiums, decide on the expediency of the changes and supplements and will in turn inform the Inspection on State Control of their decisions any changes or supplements which have been approved by the FDA will be accepted according to the terms of the MOU.

4.4 The Inspection on State Control will inform the Company and the Bureau of Registration of the accepted decision in writing with in ninety (90) day of the submission of the application of the application to the Inspection on State Control by the Company.

5. The System of Re-Registering Pharmaceuticals (Substances).

5.1 The re-registration of pharmaceuticals (substances) is undertaken when the validity of the registration has expired after five (5) years. For re-registration of the pharmaceutical, the Company should submit a written letter of intent (see Addendum 1) and documentation in accordance with Addendum 8 or 9.

5.2 Re-registration is undertaken according to sections 4.2, 4.3 and 4.4 of the present instructions.

5.3 A document confirming the re-registration (Addendum 11) is sent to the Company within ninety (90) days of the submission of the re-registration application to the Inspection on State Control by the Company.

Revised Annex I

Addendum I

Letter of Intent/Application for Pharmaceutical (Substances) under the Jurisdiction of the FDA

Chief of Inspection,
State Control Inspection of Pharmaceuticals and Medical Technology
Ministry of Health and Medical Industry of the Russian Federation
3, Rakhmanovsky per.
Moscow, 101431, Russian Federation

With the present letter, the company _____ informs of its intent to register/re-register in the Russian Federation a pharmaceutical (or substance), produced by the company _____. The given pharmaceutical (or substance) is _____ (include form). The above pharmaceutical (or substance) is produced in the United States of America and is subject to the jurisdiction of the U.S. Food and Drug Administration, is freely marketed in the United States, and is manufactured in accordance with all U.S. Current Good Manufacturing Practice regulations. All information provided in this application is truthful, accurate and complete to the best of our knowledge.

This letter contains the following attachments:

1.1 The Application (Addendum 2) for the registration/re-registration of the pharmaceutical (or substance)-three (3) copies in Russian and one (1) copy in English;

1.2 One copy in English of the letter of approval from the Food and Drug Administration and a Russian translation (3 copies); *OR*

For products subject to an FDA Over-the-Counter (OTC) monograph, one (1) copy in English and three (3) copies of a Russian translation of the relevant sections of the Final Monograph or Tentative Final Monograph with a Certification by the firm (in Russian) that the product conforms in all respects to the Final Monograph or Tentative Final Monograph.

1.3 For each type of pharmaceutical, additional information as provided in the Addenda specified:
- For drug products subject to a U.S. New Drug Application approved by FDA: Addendum 3.
- For Prescription Generic Drug Products approved by the FDA: Addendum 4
- For Substances: Addendum 5
- To supplement to report changes: Addendum 7
- To re-register when no changes have occurred: Addendum 8
- To re-register when changes have occurred: Addendum 9

1.4 Samples of the pharmaceutical in the proposed packaging form: five (5) samples for pharmaceuticals, two (2) for substances.

Signature
Corporate Seal

(This letter should accompany each pharmaceutical or substance with the signature of the authorized official of the Company).

Revised Annex I

Addendum 2

Application

Application for the Registration of Pharmaceutical Products and Substances under the Jurisdiction of the FDA

1. Manufacturing Company and address of the manufacturing facility
2. Holder of the patent(s), if any exist, Expiration Date of the patent(s)
3. Name of the pharmaceutical preparation
4. International non-proprietary name (INN)
5. Main synonyms of the preparation
6. Composition of the preparation
7. Therapeutic class
8. Medical form
9. Dosage of the preparation (quantitative)
10. Route of administration (oral, injectable, etc.)
11. Authorized indications and instructions for use
12. Shelf life (expiration dating) and storage requirements
13. Description of standard package form, including copies of all labels and labeling
14. For a substance, the product(s) in which it is to be used
15. Methods of analysis and release specifications: Guidelines on documentation are contained in Annex II.
16. Most recent FDA–483 Notice of Investigational Observations.
17. The name, address, telephone number, facsimile number, and the internet e-mail address (if any) of firm's authorized representative(s) AND IN THE CASE OF A DISTRIBUTOR REPRESENTING A MANUFACTURER:
18. Notarized Letter from Manufacturing Company under corporate seal authorizing distribution company to distribute and register products (substances) in the Russian Federation.
19. Complete labels and labeling for distributor shall be submitted if different than that of the manufacturer. In all cases, Distributor's labels and labeling must bear names and addresses of both manufacturing and distributing firms in the form ''Distributed by _____'', ''Manufactured by _____''

Signature
Corporate Seal
NOTE: For substances, items 8, 9, 10 and 12 do not apply.

Revised Annex I

Addendum 3

Documents Necessary for the Registration of New Pharmaceuticals under the Jurisdiction of the U.S. Food and Drug Administration

1. A Summary (expert report) of results of pre-clinical and clinical studies of the pharmaceutical. This report must include a collection of general information concerning the pharmaceutical made up of short summaries of each of the following points:
   A. Pharmacological report (specifications) supporting all indications for usage as stated in the instructions, including summary of the pivotal clinical trial(s)
   B. Toxicology report (acute, subacute, subchronic, and chronic toxicology)
   C. Specific activity report related to the following: side effects, birth defects, allergies, skin irritations
2. In a short summary of information on use of the pharmaceutical in clinical conditions and after FDA approval. A copy of any scientific publications concerning the pharmaceutical should be submitted.
3. A short summary of information about side effects of the pharmaceutical and any adverse experiences with the pharmaceutical learned since FDA approval.

Revised Annex I

Addendum 4

Documentation Necessary for the Registration of Generic Pharmaceuticals under the Jurisdiction of the U.S. Food and Drug Administration

1. A summary of bioequivalence study and results.

Revised Annex I

Addendum 5

Documentation Necessary for the Registration of Substances under the Jurisdiction of the U.S. Food and Drug Administration

1. Certificate of Analysis for the substance from the manufacturing company (original copy or notarized copy).

Revised Annex I

Addendum 6

Sample Registration Certificate for Pharmaceuticals (Substances) under the Jurisdiction of the FDA

Ministry of Health Care and Medical Industries of the Russian Federation

Registration Certificate

No. _____

This certificate has been issued to _____ (*company-producer, country*) and testifies that in accordance to the regulations for registration of pharmaceuticals in the Russian Federation _____ (*name of pharmaceutical (substance)*) in the medical form _____ has been registered in the Russian Federation.
This certificate is valid for five (5) years and does not serve as an obligation to purchase the above mentioned pharmaceutical.

_____
Date of Registration

Head of the Inspection on State Control or Pharmaceuticals and Medical Equipment

Bureau of Registration of Pharmaceuticals, Medical Equipment, and Products with Medicinal Value

Revised Annex I

Addendum 7

Supplemental Application to Report Changes for Pharmaceuticals (Substances) under the Jurisdiction of the FDA

A special supplemental application is necessary to report any changes to the original registration application within 30 days of occurrence of the changes.

1. Letter from Manufacturer (''Company''), under corporate seal, submitting information on any changes in the information submitted at the last registration, including any changes in FDA approved labels or labeling.

Revised Annex I

Addendum 8

Application for Re-registration (Renewal) of Pharmaceuticals (Substances) Subject to the Jurisdiction of the U.S. Food and Drug Administration when No Changes Have Been Made Since the Original Registration.

1. Letter of Intent to Re-register - see Addendum 1.
2. Letter from Manufacturer (''Company'') certifying that no changes in ingredients, labeling or Good Manufacturing Practice status have occurred since the time of the last registration.

Signature
Corporate Seal

Revised Annex I

Addendum 9

Application for Re-registration (Renewal) of Pharmaceuticals (Substances) Subject to the Jurisdiction of the U.S. Food and Drug Administration to Report Concomitant Changes

1. Company-applicant
2. Name of the pharmaceutical preparation
3. Main synonyms of the preparation
4. Composition of the preparation
5. If changes have occurred in the ingredients or manufacturing procedure since the time of the original registration, indicate changes
6. Medical forms
7. Dosage of the preparations
8. Administration (oral, injectable, etc.)
9. Main indications for administration

10. Shelf Life (expiration dating) and storage requirements
11. Description of standard package form and copies of all labeling

Signature
Corporate Seal

Revised Annex I

Addendum 10

Sample Re-registration Certificate for Pharmaceutical (Substances) under the Jurisdiction of the FDA

Confirmation of the Re-registration of a Pharmaceutical(Substance)

The Inspection on State Control of Pharmaceuticals and Medical Equipment confirms that: _____ (*name of pharmaceutical(substance)*) has been registered as of _____ (*date of registration*) as number _____ (*reg.number*) and retains its registration number until the next routine re-registration. In the event that the company-producer changes the composition of the pharmaceutical, the indications and warnings for usage or the methods of control and technological production, the company-producer is obliged to inform the Inspection on State Control of Pharmaceuticals and Medical Equipment of such changes.
No. _____ (*registration number*)
_____ (*date of registration*)

Head of the Inspection on State Control of Pharmaceuticals and Medical Equipment

Bureau of Registration of Pharmaceuticals, Medical Equipment, and Products with Medicinal Value

Annex II

Addendum 1

Supplemental Requirements when Appropriate for Submission of Methods of Analysis and Release Specifications in Applications for Synthetic Chemical Compounds (substances) for Registration in the Russian Federation

Where appropriate for the substance submitted:

1. Description of material (appearance)
2. Identification test(s)
3. Solubility
4. Flash point/evaporation point
5. Melting point and Boiling point
6. Specific gravity/density
7. Specific rotation
8. Absorbance test (Specific Absorbance)
9. Refractive index
10. Clarity and color of solution
11. Impurity(ies) test(s) (Chromatographic Profile)
12. pH test
13. Chlorides test
14. Sulphates test
15. Loss on drying
16. Water contents assessed by Carl Fisher titration (include weight tested)
17. Residual solvents test
18. Heavy metals test
19. Assay
20. Microbiological tests
21. Residue on Ignition

Annex II

Addendum 2

Supplemental Requirements when Appropriate for the Submission of Methods for Analysis and Release Specifications in Applications for Liquid Injection Dosage Form Products for Registration in the Russian Federation

Where appropriate for the product submitted:

1. Description (appearance)
2. Identification test
3. Transmittance/Absorbance test
4. Particle size (in cases of suspension, emulsion)
5. Solution pH
6. Specific rotation
7. Specific gravity/density
8. Impurity(ies) test(s) (Chromatographic Profile)
9. Net contents test/Deliverable Volume
10. Pyrogen test(L.A.L. test)
11. Sterility testing
12. Completeness of solution and particulate test
13. Clarity and color of solution
14. Assay

Annex II

Addendum 3

Guidelines on Information Appropriate for Submission of Methods for Analysis and Release Specifications in Applications for Solid Dosage Forms for Preparation of Injections and Antibiotics for Registration in the Russian Federation

Where appropriate for the product submitted:

1. Description (appearance)
2. Solubility
3. Net contents test
4. Identification test
5. Melting range
6. Specific rotation
7. Specific absorbance
8. Completeness of solution and particulate test
9. Impurity(ies) test(s) (Chromatographic Profile)
10. pH test
11. Chlorides test
12. Sulphates test
13. Loss on drying
14. Water test determined using Carl Fisher titration
15. Heavy metals
16. Pyrogenicity tests (chemical test)
17. Test for sterility
18. Assay
19. Uniformity of Dosage Units
20. Clarity and color of solution

Annex II

Addendum 4

Supplemental Requirements when Appropriate for the Submission of Methods for Analysis and Release Specifications in Applications for Liquid Ophthalmic Dosage Form Products for Registration in the Russian Federation

Where appropriate for the product submitted:

1. Description (appearance, color, clarity, particulate matter)
2. Identification test
3. Impurity(ies) test(s) (Chromatographic Profile)
4. Transmittance/Absorbance test
5. Viscosity (for solutions containing methyl cellulose or similar substances)
6. pH test
7. Determination of fill volume (method and allowable deviations)
8. Sterility test
9. Assay
10. Particulates count- clear liquids
11. Particle size- suspensions

Annex II

Addendum 5

Supplemental Requirements when Appropriate for the Submission of Methods for Analysis and Release Specifications in Applications for Liquid Dosage Forms for Internal and External Use Products for Registration in the Russian Federation

Where appropriate for the product submitted:

1. Description (appearance, color)
2. Identification test
3. pH test
4. Specific gravity/density
5. Viscosity
6. Particle size test (in cases of suspension, emulsion)
7. Net contents test
8. Assay
9. Microbiological purity test(s)
10. Impurity(ies) test(s) (Chromatographic Profile)

Annex II

Addendum 6

Supplemental Requirements when Appropriate for the Submission of Methods for Analysis and Release Specifications in Applications for Aerosol Dosage Forms for Registration in the Russian Federation

Where appropriate for the product submitted:

1. Description
2. Container integrity test
3. Pressure test
4. Assay
5. Uniformity of delivered dose
6. Net contents test and number of doses in container (for dosed aerosols)
7. Percent total volume delivered
8. Aerosol particle size test
9. Identification test
10. Water content test (method and allowable limits)
11. Impurity(ies) test(s) (Chromatographic Profile)
12. Microbiology purity (description of test or reference to Pharmacopeia)

Annex II

Addendum 7

Supplemental Requirements when Appropriate for the Submission of Methods for Analysis and Release Specifications in Applications for Tablets and Dragee Dosage Form Products for Registration in the Russian Federation

Where appropriate for the product submitted:

1. Description (appearance, color of tablets, appearance in fracture, size of tablets, diameter and height, strength)
2. Average mass of tablets, method, allowable deviations
3. Identification test
4. Impurity(ies) test(s) (Chromatographic Profile)
5. Insoluble Ash test (HCl)
6. Disintegration test (method)
   AND/OR
7. Dissolution test
   OR
   Release rate test
8. Uniformity of Dosage Units test/Content uniformity test
9. Assay
10. Microbiology purity test(s)

''Requirement #8 shall apply for tablets in which proportion of active ingredient in one tablet amounts to 50 mg or less.

Annex II

Addendum 8

Supplemental Requirements when Appropriate for the Submission of Methods for Analysis and Release Specifications in Applications for Solid Oral Capsule Dosage Form Products for Registration in the Russian Federation

Where appropriate for the product submitted:

1. Description of capsule and its contents (appearance, form, color)
2. Identification test
3. Average weight of capsule contents/ weight variation test (method and allowable deviations)
4. Disintegration test (method and norms)
   AND/OR
   Dissolution test
   OR
   Rate of Release test
5. Uniformity of Dosage Units test/Content uniformity
6. Solubility test
7. Assay
8. Microbiology purity test
9. Impurity(ies) test(s) (Chromatographic Profile)

Requirements 5 and 6 apply to capsules in which proportion of active ingredient per one capsule amounts to 50 mg. or less.

Annex II

Addendum 9

Supplemental Requirements when Appropriate for the Submission of Methods for Analysis and Release Specifications in Applications for Suppository Products for Registration in the Russian Federation

Where appropriate for the product submitted:

1. Description (appearance, color, form, diameter, homogeneity)
2. Average weight of dosage unit test
3. Identification test
4. Melting point or measuring full deformation time (lipophilic bases)
5. Dissolution time (hydrophilic bases)
6. Test for Uniformity of Dosage Units (Content Uniformity)
7. Assay
8. Microbiology purity test(s)
9. Impurity(ies) test(s) (Chromatographic Profile)

Requirement 5 shall be observed for suppositories where proportion of active ingredient in one suppository amounts to 50 mg. or less.

Annex II

Addendum 10

Supplemental Requirements when Appropriate for the Submission of Methods for Analysis and Release Specifications in Applications for Topical Solid Products for External Use for Registration in the Russian Federation

Where appropriate for the product submitted:

1. Description (appearance, color)
2. Identification test
3. Net Contents test
4. pH of aqueous extraction solution
5. Uniformity of Dosage Unit test
6. Particle size test (Size determination of drug particles)
7. Sterility test(for eye ointments)
8. Assay
9. Microbiological purity tests
10. Impurity(ies) test(s) (Chromatographic Profile)

Requirement 6 shall apply in accordance with the type of ointment.

Annex II

Addendum 11

Supplemental Requirements when Appropriate for the Submission of Methods for Analysis and Release Specifications in Applications for Tincture and Extract products for Registration in the Russian Federation

Where appropriate for the product submitted:

1. Alcohol test
2. Description (appearance, color)
3. Identification test
4. Heavy metals
5. Specific gravity/density.
6. Residue on drying
7. Net contents test
8. Assay
9. Moisture content test

NOTE: This Applies only to tincture and extract regulated as drug products.

Medicinal Plants and Teas are not covered under this MOU.

[FR Doc. 96–32188 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–849–FN]

Medicare Program; Recognition of the Ambulatory Surgical Center Standards of the Joint Commission on the Accreditation of Healthcare Organizations and the Accreditation Association for Ambulatory Health Care

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

ACTION: Final notice.

SUMMARY: This notice grants deemed status to two organizations, the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) and the Accreditation Association for Ambulatory Health Care (AAAHC), for their accredited ambulatory surgical centers (ASCs) that request Medicare certification. We believe that accreditation of ASCs by either organization demonstrates that all Medicare ASC conditions are met or exceeded, and, thus, we grant deemed status to each organization.

EFFECTIVE DATE: The provisions of this notice are effective beginning on December 19, 1996 through December 19, 2002.

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FOR FURTHER INFORMATION CONTACT: Bob Cereghino, (410) 786–4645.

SUPPLEMENTARY INFORMATION:

I. Background

A. Determining Compliance of Ambulatory Surgical Centers—Surveys and Deeming

In order to participate in the Medicare program, ambulatory surgical centers (ASCs) must meet conditions for coverage specified in regulations that implement Title XVIII of the Social Security Act (the Act). ASCs enter into a Medicare participation agreement but generally only after they are certified by a State survey agency as complying with the ASC conditions for coverage set forth in the Act and regulations. ASCs are subject to regular surveys by State agencies to determine whether they continue to meet these requirements; an ASC that does not meet these requirements is considered out of compliance and risks having its participation in the Medicare program terminated. Section 1865 of the Act includes a provision that permits ASCs to be exempt from routine surveys by the State survey agencies to determine compliance with the Medicare conditions for coverage. Specifically, section 1865(b) of the Act provides that if we find that accreditation of a provider entity by a national accrediting body demonstrates that all Medicare conditions or requirements are met or exceeded, we would (for certain providers, including ASCs) ''deem'' these entities as meeting the applicable Medicare conditions. Under our regulations at 42 CFR 416.40 (''Condition for coverage—Compliance with State licensure law''), an ASC must still meet the State's licensure requirements.

In making our finding as to whether the accreditation body demonstrates all Medicare conditions or requirements, we consider factors such as the body's accreditation requirements, its survey procedures, its ability to provide adequate resources for conducting required surveys and supplying information for use in enforcement activities, its monitoring procedures for provider entities found to be out of compliance with the conditions or requirements, and its ability to provide us with necessary data for validation.

ASCs as suppliers are included by definition of provider entity in section 1865(b)(4) of the Act. Thus, if we were to recognize an ASC accreditation organization's program as demonstrating that all the Medicare ASC conditions are met, the ASCs it accredits would be considered, or ''deemed,'' to meet the same conditions for which the accreditation standards have been recognized. The Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) and the Accreditation Association for Ambulatory Health Care (AAAHC) are the first two organizations that we grant deemed status for ASCs.

It has been brought to our attention that some ASCs are under the mistaken impression that once deemed authority is granted by HCFA to an accreditation body, then ASCs must be accredited by that body to receive Medicare certification. accreditation by an organization is voluntary and not required by HCFA for Medicare certification.

B. Deeming Authority Process

On November 23, 1993, we published a final rule (58 FR 61816) that set forth the procedure that we would use to review and approve national accreditation organizations that wish to be recognized as providing reasonable assurance that Medicare conditions are met (§ 488.4, ''Application and reapplication procedures for accreditation organizations''). A national accreditation organization applying for approval of deeming authority must furnish to us information and materials listed in our regulations at § 488.4. Our regulations at § 488.8 (''Federal review of accreditation organizations'') detail the Federal review and approval process of applications for deeming authority. On April 26, 1996, however, new legislation entitled Making Appropriations for Fiscal Year 1996 to Make a Further Downpayment Toward a Balanced Budget and for Other Purposes (Public Law 104–134) was enacted.

Section 516 of Public Law 104–134 amended section 1865 of the Act in a number of ways. The legislation removed the requirement that accreditation organizations provide reasonable assurance that entities accredited by them would meet Medicare conditions or requirements. In revised section 1865(b)(1) of the Act, organizations are now required to demonstrate that their accredited entities would meet or exceed all of the applicable Medicare conditions. Section 1865(b)(4) includes suppliers (e.g., ASCs) under the provider entities that we may consider for deemed status. We are required to publish an initial notice in the Federal Register 60 days after the receipt of a written request for deemed status by a national accreditation body. After review of the national accreditation body's application we are required to publish a notice of our findings within 210 days after we receive an organization's deeming application.

We received applications from JCAHO and AAAHC before the April 26, 1996 enactment of Public Law 104–134. Therefore, the timeframes imposed by the new legislation are not applicable to the processing of these two organizations' applications. However, AAAHC wrote to us on May 23, 1996 requesting that we process its application under the new timeframes. We view this letter as triggering the schedule set forth in the new law, and we published the initial notice within 60 days of the May 23, 1996 letter from AAAHC. In order to comply with the requirement that we publish an approval notice of our findings within 210 days after we receive an organization's deeming application, we must publish the approval notice by December 19, 1996.

C. Ambulatory Surgical Center Conditions for Coverage and Requirements

The regulations specifying the Medicare conditions for coverage for ASCs are located in 42 CFR part 416. These conditions implement section 1832(a)(2)(F)(I) of the Act, which provides for Medicare Part B coverage of facility services furnished in connection with surgical procedures specified by us under section 1833(I)(1) of the Act.

II. Provisions of the Proposed Notice

The initial notice proposed to recognize the accreditation programs of JCAHO and AAAHC, two national accrediting organizations, but only to the extent that they accredited ASCs.

Under revised section 1865(b)(2) of the Act and our regulations at § 488.8 (''Federal review of accreditation organizations''), our review and evaluation of a national accreditation organization was conducted in accordance with, but was not necessarily limited to, the following factors:

- The equivalency of an accreditation organization's requirements for an entity

to our comparable requirements for the entity.

- The organization's survey process to determine the following:
- The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
- The comparability of its process to that of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
- The organization's procedures for monitoring providers or suppliers found by the organization to be out of compliance with program requirements. These monitoring procedures are used only when the organization identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(2).
- The ability of the organization to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- The ability of the organization to provide us with electronic data in ASCII comparable code and reports necessary for effective validation and assessment of the organization's survey process.
- The adequacy of staff and other resources.
- The organization's ability to provide adequate funding for performing required surveys.
- The organization's policies with respect to whether surveys are announced or unannounced.
- The accreditation organization's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans.)

We met separately with representatives from each organization. In evaluating the accreditation standards and survey processes of JCAHO and AAAHC to determine if they demonstrated that their accredited facilities met Medicare conditions, we did a standard by standard comparison of the applicable conditions or requirements to determine which of them met or exceeded Medicare requirements. The representatives responded to our concerns by proposing to change their standards for their member ASCs seeking Medicare certification. We subsequently received, from each organization, revised scoring guidelines with amended standards for their member ASCs requesting Medicare certification.

A. Differences Between the Joint Commission of the Accreditation of Healthcare Organizations and Medicare Conditions and Survey Requirements

We compared the standards contained in the JCAHO 1994 (and subsequent 1996) Accreditation Manual for Ambulatory Health Care and its survey procedures to the Medicare ASC conditions and survey procedures. In seven areas, JCAHO has made the following revisions:

- *Exclusivity requirement*—JCAHO has included a statement on ASC surgical exclusivity as an integral part of its application package.
- *Use of Medicare approved laboratory and radiological facilities*—An accredited ASC seeking to use its accreditation for Medicare certification will be required, as an integral part of its application, to attest that, if it is not certified to perform its own laboratory services, it will obtain the services from a laboratory with a certification under part 493 (''Laboratory Requirements''). The ASC must also attest that it has procedures for obtaining radiologic services from a Medicare-approved facility to meet the needs of its patients. The ASC agrees to undergo JCAHO verification of these attestations before a Joint Commission determination that the ASC qualifies for deemed status recognition.
- *Separate recovery and waiting areas*—JCAHO in its revised 1996 Accreditation Manual for Ambulatory Health Care under the environmental care standard scoring guideline (EC.4.2) has included the Medicare requirement of separate recovery and waiting areas and will require compliance from its accredited ASCs seeking Medicare certification based on their accreditation.
- *Emergency Equipment*—In its 1996 manual revision, JCAHO has amended its environmental care standard scoring guideline (EC.4.2) and enumerated the emergency equipment required by 42 CFR § 416.44(c).
- *Patient care responsibilities for all nursing services personnel*—JCAHO has included, in its 1996 leadership standard scoring guidelines (LD.2.1 through LD.2.6), patient care responsibilities for nursing service personnel and requires compliance with this Medicare requirement for ASCs requesting Medicare certification based on their accreditation.
- *Administration of drugs, drug prescriptions, and the administration of blood products*—JCAHO has included in its ''Management of Information'' standard scoring guidelines (IM.7 through IM.7.2) and ''Care of Patients'' standard scoring guideline (TX.5.3) revised procedures for obtaining blood and blood components.
- *Unannounced surveys and frequency of surveys*—JCAHO has agreed that it will conduct unannounced surveys of ASCs requesting to use their JCAHO accreditation for Medicare certification purposes.

JCAHO resurveys its ASC every 3 years. Our original requirement was to survey ASCs every year. In practice, our resurveys has been averaging almost 3 years. Therefore, we accept JCAHO's 3-year resurvey cycle as comparable to ours.

B. Differences Between the Accreditation Association for Ambulatory Health Care and Medicare Conditions and Survey Requirements

We compared the standards contained in the 1994 through 1995 (and subsequent 1996 through 1997) AAAHC Accreditation Handbook for Ambulatory Health Care and its survey procedures to the Medicare ASC conditions and survey procedures. In nine areas, AAAHC has made the following changes:

- *Exclusivity requirement*—AAAHC has supplemented its surgical services standard to include the Medicare exclusivity requirement for its accredited ASCs that want to apply AAAHC accreditation for Medicare certification purposes.
- *Separate recordkeeping and staffing requirement*—AAAHC has supplemented its Chapter 10, ''Surgical Services'' section, to include requirements on exclusivity (that is, separate space, the nonmixing of functions, and separate recordkeeping and staffing).
- *Separate recovery and waiting areas*—AAAHC has included this requirement in its supplement to Chapter 8, ''Facilities and Environment,'' separate recovery and waiting areas for ASCs interested in Medicare certification based on AAAHC accreditation.
- *Life Safety Code of the National Fire Protection Association*—AAAHC supplementary standard to Chapter 8, ''Facilities and Environment,'' requires an ASC requesting Medicare certification, based on accreditation, to comply with the provisions of the National Fire Protection Association Life Safety Code. More specifically, the Life Safety Code is incorporated by reference into the AAAHC standard.
- *Requirements relating to pharmaceutical services*—AAAHC states in its supplement to Chapter 15, ''Pharmaceutical Services,'' that adverse

drug reactions will be reported to the responsible physician and will be documented in the written record. Blood and blood products will only be administered by physicians and registered nurses. Further, orders given orally for drugs and biologicals will be followed by a written order, signed by the prescribing physician.

• *Requirement relating to laboratory services*—AAAHC did not have this requirement but has included it in the supplement to Chapter 16, ''Pathology and Medical Laboratory Services.'' Specifically, as ASC that performs laboratory services must meet the requirements of part 493 of our regulations; if an ASC does not provide its own laboratory services, it must have procedures for obtaining routine and emergency laboratory services from a certified laboratory in accordance with part 493 of our regulations. AAAHC further adds that this revised standard will be applicable to all organizations surveyed by AAAHC regardless of Medicare ASC status.

• *Radiologic services*—AAAHC states in its supplement to Chapter 17, ''Diagnostic Imaging Services,'' that ASCs desiring Medicare certification based on their accreditation must have arrangements with a Medicare approved providers/suppliers of radiology services to meet the needs of patients.

• *Hospitalization*—AAAHC has included the Medicare requirement in its supplement to Chapter 10, ''Surgical Services,'' for ASCs seeking Medicare certification based on AAAHC accreditation to transfer to a hospital a patient requiring emergency medical care beyond the ASC's capabilities. If further requires that the hospital be a local, Medicare-participating hospital, or a local, nonparticipating hospital that meets the requirements for payment for emergency services under Federal regulations.

• *Unannounced surveys and resurvey frequency*—AAAHC handbook section, ''Accreditation Policies and Procedures,'' has stated that it will conduct unannounced surveys for ASCs seeking Medicare certification based on AAAHC accreditation.

AAAHC resurveys ASCs every 3 years. Our original requirement was to survey ASCs every year. In practice, our resurveys have been averaging almost 3 years. Therefore AAAHC's 3-year resurvey cycle meets Medicare requirements.

C. Proposed Stipulations Relating to Accreditation by the Joint Commission on the Accreditation of Health Care Organizations and the Accreditation Association for Ambulatory Health Care

According to our regulations at § 488.8 (''Federal review of accreditation organizations''), to ensure continuing comparability, an accreditation organization grant deeming authority is subject to continuing Federal oversight, which includes comparability reviews and validation reviews. Section 488.8 lists reapplication procedures, which may be no later than every 6 years. We recognize as meeting Medicare's ASC conditions those ASCs accredited under JCAHO's and AAAHC's accreditation programs with the following restrictions included in § 488.8(d):

• We reserve the right to withdraw deemed status from all JCAHO-accredited or AAAHC-accredited ASCs should either organization revise its standards or accreditation policies and procedures in a manner in which it fails to demonstrate that its ASCs continue to meet Medicare conditions.

• We also reserve the right to withdraw deemed status from all JCAHO-accredited or AAAHC-accredited ASCs if we should change ASC conditions in a manner in which, after a time allowance specified in § 488.8(d), JCAHO or AAAHC standards or accreditation policies would not demonstrate that the revised Medicare ASC conditions are met.

• We reserve the right to withdraw deemed status from all JCAHO or AAAHC accredited ASCs if a validation review or a public complaint review or a public complaint review reveals widespread, systematic, and unresolvable problems with the JCAHO or AAAHC accreditation process with respect to these ASC programs. These problems would provide evidence that JCAHO or AAAHC cease to demonstrate that they meet Medicare conditions.

We believe that the JCAHO and AAAHC accreditation standards and survey processes, subject to the stipulations described, demonstrate that Medicare conditions or requirements have been met or exceeded. We therefore deem ASCs accredited by JCAHO and AAAHC to be in compliance with the Medicare conditions for ASCs in accordance with the authority provided in section 1865 of the Act. The provisions of this notice are effective beginning on December 19, 1996 through December 19, 2002.

D. Analysis and Responses to Public Comments

We receive 86 comments to our July 23, 1996 notice. Of these, 63 were from ASCs or medical centers, 11 from M.D.s, 1 from a dentist, 10 from professional medical associations an 1 from a State government. Seventy-eight (78) commenters favored deeming for JCAHO and AAAHC, 6 approved deeming with reservations and 1 opposed it. A summary of these comments and our responses are discussed as follows:

• *Comment:* Seventy-eight (78) commenters, most of whom are ASCs, expressed strong support for our approval of the JCAHO's and AAAHC's applications for deemed status. Commenters stated that the two organizations are leaders in the development of outpatient oriented health care delivery and have developed standards of care and survey process that accrue the highest possible quality health care in the ambulatory setting.

• *Response:* We acknowledge the support shown and have developed an approval notice consistent with the provisions contained in our initial notice.

• *Comment:* One commenter suggested that since AAAHC's application for deeming was filed prior to the enactment of the new deeming legislation (Public Law 104–134), AAAHC's application should be considered filed the date Public Law 104–134 was enacted (April 26, 1996).

Response: As we stated in the initial notice, we do not believe the timeframe set forth in the new deeming legislation is applicable to deeming applications filed prior to its enactment. We viewed the letter that AAAHC wrote to us on May 23, 1996, requesting that we process its application under the new timeframes, as triggering the new timeframes. In order to comply with the requirements in revised section 1865(b)(3)(A) of the Act, that we publish an initial notice identifying the national accreditation body making the request not later than 60 days after the date of receipt of the request, we placed our initial notice on public display July 19, 1996, and it appeared in the July 23, 1996 issue of the Federal Register. Likewise, in order to comply with the requirement that we publish an approval notice of our findings within 210 days after we received an approved notice by December 19, 1996.

Comment: One commenter stated that AAAHC's ASC ''accreditees'' are not ''members'' of AAAHC.

Response: We accept this comment and will refrain from referring to AAAHC accredited ASCs as members of AAAHC.

Comment: Five commenters stated that if a national accreditation organization has its deeming authority

withdrawn by HCFA, this change should not affect ASCs already granted deemed status based on the organization's accreditation. In the same vein, three other commenters expressed concern about possible consequences to an ASC if the ASC's accreditation organization lost its deeming authority. One commenter argued that HCFA would not revoke Medicare certification of an ASC certified by a State surveyor if HCFA changed the conditions for coverage, or if the State surveying agency changed its survey procedures. The commenter stated that HCFA should conduct a facility by facility review to determine which facilities continue to satisfy Medicare conditions.

Response: Our procedures have been well established in regulations and we must follow them in this notice. In accordance with 42 CFR 488.8 (f)(7), should we rescind an accreditation organization's deeming authority, we will publish a notice in the Federal Register detailing the reasons for such action. Accreditation organizations are required to notify all accredited ASCs within 10 days of our withdrawal of their deeming authority.

Under 42 CFR 488.8(f)(8) an affected ASC retains its deemed status for 60 days after notification and it can be extended an additional 60 days if we determine that the ASC submitted an application within the initial 60-days timeframe to another approved accreditation organization or to us so that compliance with Medicare conditions can be determined. An ASC's failure to do so will jeopardize its participation in the Medicare program.

Comment: One commenter requested that HCFA address the issue of an ASC applying to a deemed accreditation organization for Medicare certification based on its accreditation when the ASC is exempted by its State from licensure requirements. The commenter gave the example of an entity qualifying as a physician's office which is exempt from licensure under State law. In this case, the commenter concluded the accreditation organization would request that the ASC procedure either a license or evidence of exemption from licensure.

Response: Section 416.26(a)(2) requires that facilities seeking Medicare certification as ASCs based on their accreditation by either JCAHO or AAAHC comply with State licensure requirements where applicable. Therefore, in the example cited, the commenter is correct in stating that the accreditation organization would request a license or evidence of exemption if the State permits a physician's office to operate as an ASC.

Comment: One commenter questioned if deemed status will apply to physicians' offices that meet the standards set by AAAHC for ASCs but do not otherwise qualify as ASCs as defined by State laws.

Response: As previously stated, if State law requires a license for a facility to operate in that State as an ASC, such requirement must be met before an entity such as a physician's office accredited by the JCAHO or AAAHC under its ASC accreditation program can be granted deemed status for Medicare certification as an ASC.

Comment: Two commenters asked how deemed status affects ASCs that were Medicare certified through State survey and accredited by either JCAHO or AAAHC prior to HCFA's approval of deemed status for these accreditation organizations. One of the commenters also asked if there is a deadline by which a currently certified ASC should notify HCFA that it is accredited by a deemed organization.

Response: After this approval notice is published in the Federal Register, ASCs accredited by either JCAHO or AAAHC, and already Medicare certified, are considered deemed for Medicare certification. When this status change is executed 42 CFR 488.7(a) discharges the State agencies from ongoing responsibility for conducting periodic surveys in deemed ASCs unless the ASC is selected for a sample validation survey or there is a substantial allegation of noncompliance. If the ASC is selected for a sample validation survey, the ASC will be notified by the State agency before the survey is conducted. In accordance with 42 CFR 488.7, State surveyors will determine if the ASC is out of compliance with a condition of coverage. If the ASC is found to be out of compliance, the ASC will no longer be deemed to meet the Medicare conditions and will be subject to full review by the State agency. Likewise, if there is a substantial allegation of noncompliance and the State agency conducts a compliance survey and finds a condition for coverage out of compliance, the ASC will be subject to full review by the State agency.

Comment: Another commenter asked that we explain the procedure that new ASCs would follow to become Medicare certified after we grant deem status to JCAHO and AAAHC.

Response: First, Medicare certification based on accreditation is strictly voluntary. ASCs seeking Medicare certification, have the option of determining whether they would prefer certification based on (1) a State agency survey or (2) accreditation by one of the deemed organizations. If the ASC chooses the first option, it would apply directly to the State survey agency in its area with which we have a survey agreement. After the survey is completed the State agency would forward its recommendation for Medicare certification to the appropriate regional office for processing. Our regional office would notify both the ASC and the State agency of the ASC's eligibility to participate in the Medicare program.

If the ASC elects the second option, the accreditation organization would send a notice to our applicable regional office indicating the ASC's accreditation status and whether the ASC is deemed or not deemed for Medicare certification. The accrediting organization should also send a courtesy copy of such notification to the appropriate State agency. One receipt of such notification, the regional office will advise both the ASC and appropriate State agency of the ASC's Medicare certification status.

Comment: One commenter believed it should remain the sole entity within the State responsible for determining facilities' Medicare certification for outpatient surgery since it believed surgical procedures could eventually be attempted in settings inappropriate for surgery. The commenter stated that all such facilities should be licensed by the State department of public health.

Response: We have no reason to believe that granting deeming authority to either JCAHO or AAAHC will result in outpatient surgery being performed in inappropriate settings. Based on our review of each accreditation organization's standards and survey policies and procedures, we have determined that they both demonstrate the ASCs accredited by them would meet or exceed HCFA conditions. Furthermore, in this notice we reserve the right to revoke deemed status for all JCAHO-accredited or AAAHC-accredited ASCs should either organization revise its standards or accreditation policies and procedures in a manner which fails to demonstrate that its ASCs continue to meet Medicare conditions; or if a validation review or a public complaint review reveals widespread, systematic, and unresolved problems with either organization's accreditation process for ASCs; or if we determine that either organization has failed to sufficiently revise its standards to the extend necessary to demonstrate that revised Medicare conditions are met and enforced. Moreover, each State has the option to establish more stringent licensure requirements or

monitoring procedures to safeguard the quality of surgery performed in an ASC.

Comment: One commenter believes that both JCAHO's and AAAHC's anesthesia requirements are not equivalent to Medicare's anesthesia conditions since neither organization currently requires physician supervision of non-physician administration of anesthesia and since JCAHO's standards contain no provision as to the identity or supervision of the actual anesthesia provider.

Response: We believe that the commenter may be referring to these organizations' anesthesia standards as stated prior to each organization's most recent handbook editions. JCAHO's 1996 Comprehensive Accreditation Manual for Ambulatory Care Section 2 Leadership (LD), standard LD 1.9–2.6 and AAAHC's 1996–1997 Accreditation Handbook for Ambulatory Health Care (Chapter 9) supplement their previous requirements in order to meet Medicare's anesthesia conditions. We have examined both organizations' supplemental anesthesia standards and are satisfied that both organizations demonstrate they meet our requirements for physician supervision of non-physician administration of anesthesia and identification of the anesthesia provider under 42 CFR 416.42(b) Standard: Administration of Anesthesia.

Comment: One commenter advocated eliminating HCFA's requirement that physicians supervise certified registered nurse anesthetists. The commenter stated that HCFA seemed receptive to this recommendation when considering revisions of its hospital conditions of participation.

Response: We cannot accept this comment. The issue raised is not the subject of this notice, which is limited to the approval of ASC deeming authority for JCAHO and AAAHC.

Comment: One commenter expressed concern about the dominating presence of physicians on each of the governing bodies for JCAHO and AAAHC. The commenter believed that these organizations should have representatives on their governing bodies that reflect broad community interest.

Response: Revised section 1865(b)(1) of the Act requires us to determine whether accreditation by a national accreditation organization demonstrates that Medicare conditions are met. We have determined that accreditation by JCAHO and AAAHC demonstrate that Medicare conditions for ASCs are met. Because there are no statutory or regulatory requirements for broad community representation on the governing or advisory boards or committees of private accreditation organizations, we are not in a position to require either JCAHO or AAAHC to include any specific groups on its boards or committees. Our primary concern is the content and application of the accreditation standards and procedures.

Comment: One commenter stated that HCFA should be aware that the private creation of patient care standards is fraught with peril by virtue of the thrust of the federal antitrust laws. The comment read: ''Simply stated, it cannot be routinely expected that private standard-setting bodies will make legitimate patient safety considerations paramount when confronted with the threat of antitrust legislation, a threat which HCFA does not face.''

Response: HCFA, in its process of granting deemed authority, is not fostering the creation of private patient care standards. We have our own conditions for coverage and the organizations requesting deemed authority must have their standards meet these conditions. Therefore, since outside groups are not acting together to create private care standards, we do not anticipate antitrust implications.

Comment: One commenter proposes that we modify our regulations to allow AAAHC to perform ''unannounced inspections'' rather than ''unannounced surveys'' to assess an ASC's compliance with Medicare conditions. The commenter suggests that unannounced inspections for compliance be conducted in conjunction with regularly scheduled tri-annual full surveys. The commenter contends that ''the time and cost (disruption) associated with a full survey is quite high.'' The commenter argues that inspections would be less disruptive and require fewer staff resources.

Response: We believe the commenter has assumed that mandated use of unannounced surveys for ASCs seeking Medicare certification based on their AAAHC accreditation would necessitate two separate survey processes for such ASCs, i.e., an announced survey to accredit an ASC plus an unannounced survey to determine if the ASC meets our Medicare conditions. We have no intention of imposing such survey requirements on either AAAHC or ASCs. Instead, the required use of unannounced surveys simply means that AAAHC would conduct full triennial surveys on ASCS seeking deemed status without advising them in advance that such a survey is forthcoming on a specific date.

Comment: One commenter asked for a definition of an ''unannounced'' survey. Specifically, the commenter wanted to know if JCAHO would still send a notice of intent to survey prior to conducting the survey.

Response: As a matter of policy, we interpret unannounced surveys to mean the accreditation organization will not send a notice of intent to survey an ASC prior to conducting the survey for those ASCs that want their accreditation to count for Medicare certification. We understand that unannounced surveys may result in some minor survey problems; therefore, under section 2700 (''The Survey Process'') of our State Operations Manual, facilities may be given advanced notice (no more than two working days) if the following two criteria are met:

- The facility is inaccessible via conventional travel means and making special or extraordinary travel arrangements are necessary; and
- There is a high probability that the staff essential to the survey process will be absent or the facility will be closed unless the survey is announced.

Both accrediting organizations have agreed to the unannounced survey process for those ASCs that wish to be deemed to meet Medicare conditions for coverage based on their accreditation. Hence, the ASCs that are deemed to meet Medicare conditions for coverage based on accreditation will not be sent a notice of intent to survey, unless both of the above criteria are met.

Comment: One commenter said it is unclear from our initial notice whether we have made an attempt to assess the ability of JCAHO and AAAHC to monitor Life Safety Code application. The commenter was not aware of any ongoing capability to survey and assess the compliance with Life Safety Code requirements.

Response: In our initial notice, we discussed specific areas in which our Medicare conditions for ASCs exceeded accreditation standards for both JCAHO and AAAHC as they existed prior to discussions with both organizations and before their submittal of amendments or supplements to their standards, survey procedures are scoring guidelines were submitted to comply with Medicare ASC conditions. On examination, we found no disparity between our Life Safety Code condition and JCAHO's standard. However, as stated in our initial notice, examination revealed that AAHC had not previously mandated compliance with the provisions of the National Fire Protection Association Life Safety Code as we require for ASCs. Instead, AAAHC had heretofore required compliance with applicable local or State safety codes to ensure patient and facility safety in the event of fire. We advised in our initial notice

that AAAHC had developed a supplementary standard to Chapter 8, ''Facilities and Environment'', that requires an ASC requesting Medicare certification to comply with the provisions of the National Fire Protection Association Life Safety Code. Furthermore, AAAHC has incorporated the Life Safety Code by reference into the AAAHC standard. Therefore, we have no reason to believe these two organizations lack the ability to monitor Life Safety Code application.

Comment: One commenter asked how State agencies would monitor plans of corrections for deficiencies or violations cited by JCAHO or AAAHC as proposed on page 61 FR 38209 of our initial notice. The commenter also asked how State agencies would obtain such violations in a timely manner; how State surveys would be trained to survey against the deemed organization's standards; and how this monitoring activity would be funded.

Response: Thank you for indicating a discrepancy in our discussion on page 61 FR 38209 about monitoring an ASC's plan of correction. The discussion pertains to the use of an accreditation organization's scoring guidelines to assess an ASC's level of compliance with its standards. In that discussion, we incorrectly stated that the State agency would monitor an ASC's plan of correction if the ASC received from the organization a score of 3, 4, or 5, which corresponds to our determination of noncompliance. We should have instead stated that in such cases the accreditation organization, not the State agency, would monitor the ASC's correction plan.

Comment: One commenter expressed concern about the ability of JCAHO and AAAHC to investigate individual complaints about a specific provider it accredits.

Response: Our evaluation of the accreditation programs for both JCAHO and AAAHC did not detect any indications that either of these organizations would be incapable of investigating individual complaints about any ASC either organization accredits.

III. Paperwork Reduction Act

The public reporting and recordkeeping burden reflected in this notice is referenced in the currently approved regulation entitled ''Granting and Withdrawal of Deeming Authority to National Accreditation Organizations (HSQ–159–F).'' The paperwork burden referenced in HSQ–159–F is currently approved by the Office of Management and Budget (OMB), under OMB approval number 0938–0690, with an expiration date of 8/31/99.

IV. Regulatory Impact Statement

In fiscal year 1993, there were 1,657 certified ASCs participating in the Medicare/Medicaid programs. We conducted 141 initial, 549 recertification (both at a cost of $537,312), and 18 complaint surveys. In fiscal year 1994, there were 1,855 certified ASCs. This was an increase of 198 facilities. We conducted 213 initial, 492 recertification (both at a cost of $555,068), and 24 complaint surveys. In fiscal year 1995, there were 2,105 ASCs. This was an increase of 250 Medicare/Medicaid certified ASCs. We conducted 211 initial, 288 recertification (both at a cost of $714,069), and 24 complaint surveys. In fiscal year 1996, there were 2,219 ASCs. This was an increase of 114 Medicare/Medicaid certified ASCs. We conducted 180 initial, 115 recertification (both at a cost of $848,125) and one complaint survey. As the data above indicate, the number of ASCs and the cost for conducting ASC surveys are increasing; however, the number of surveys conducted is decreasing. We contacted several regional offices during fiscal year 1996 to determine the number of pending ASC initial surveys, which number approximately 200 to 300. These pending initial surveys are not uniformly dispersed among the regional offices, so there would be a significant impact on some regional offices.

While the fiscal year 1997 appropriation for survey activities has been substantially increased (by seven percent) for the first time in four years, the increase is insufficient to meet the survey demand. The numbers of participating providers and suppliers continue to increase. As indicated above, there was a 25 percent increase in ASCs within 4 years (fiscal years 1993 through 1996). In an effort to guarantee the continued health, safety, and services of beneficiaries in facilities already certified, as well as provide relief in this time of tight fiscal restraints, we are approving deeming for ASCs accredited by the JCAHO and AAAHC as meeting Medicare requirements. Thus we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost effective manner.

In accordance with the provision of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb) Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 6, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: December 13, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–32194 Filed 12–18–96; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1997:

Name: National Advisory Committee on Rural Health.

Dates and Time: February 3–5, 1997.

Place: The Westin (Formerly known as The Vista Hotel), 1400 M Street, N.W., Washington, D.C. 20005, Phone: (202) 429–1700, FAX: (202) 785–0786.

The meeting is open to the public.

Agenda: The plenary session on Monday, February 3, will convene at 8:30 a.m. The meeting will be devoted to developing the Committee's agenda for the coming year. There will be discussion of linkages between the activities of the Advisory Committee and rural research centers supported by the Office of Rural Health Policy. There will be a general review of the Advisory Committee's activities in light of departmental and congressional priorities for the coming year.

On Monday afternoon and Tuesday, February 4, the Committee will meet in Work Group sessions to deliberate and refine objectives relating to J–1 Visas and Antitrust issues initiated at the last meeting.

The meeting will convene at 8:30 a.m. on Wednesday, February 5. Adjournment is anticipated by 12:30 p.m.

Anyone requiring information regarding the subject Committee should contact Dena S. Puskin, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson or Lisa Shelton, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Agenda Items are subject to change as priorities dictate.

Dated: December 16, 1996.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 96–32270 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–15–P

Indian Health Service

Statement of Mission, Organization, Functions and Delegations of Authority

Part G Indian Health Service

Part G, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, as amended at 52 FR 47053–67, December 11, 1987, and most recently amended at 60 FR 56606, November 9, 1995, is amended to reflect a reorganization of the Indian Health Service (IHS) Headquarters. This notice revises the organizational structure and realigns the administrative and programmatic functions of the IHS Headquarters. The streamlined IHS Headquarters organization is focused on leadership, advocacy, and support of the American Indian and Alaska Native (AI/AN) health care delivery programs operated by tribal governments, Urban Indian organizations, and directly by the IHS and follows recommendations contained in the Indian Health Design Team Final Report, November 1995. This new IHS Headquarters organizational structure is both flexible and prepared for further downsizing to meet the transfer of health programs and management responsibilities to tribal governments in support of Indian Self-Determination policies. The changes are as follows:

Delete the functional statements for the IHS Headquarters in their entirety and replace with the following:

Chapter GA Office of the Director

Section GA–00, Indian Health Service—Mission

The IHS provides a comprehensive health services delivery system for American Indians and Alaska Natives (AI/AN) with opportunity for maximum tribal involvement in developing and managing programs to meet their health needs. The goal of the IHS is to raise the health level of the AI/AN people to the highest possible level.

To carry out its mission and to attain its goal, the IHS:

(1) Assists Indian tribes in developing their health programs through activities including health management training, technical assistance, and human resource development; (2) facilitates and assists Indian tribes in coordinating health planning, in obtaining and utilizing health resources available through Federal, State, and local programs, in operating comprehensive health programs, and in health program evaluation; (3) provides comprehensive health care services, including hospital and ambulatory medical care, preventive and rehabilitative services, and development of community sanitation facilities, and (4) serves as the principal Federal advocate for Indians in the health field to assure comprehensive health services for AI/AN.

Section GA–10, Indian Health Service—Organization

The IHS is an Operating Division within the Department of Health and Human Services and is under the leadership and direction of a Director who is directly responsible to the Secretary of Health and Human Services. The IHS consists of the following major components:

- Office of the Director (GA),
- Office of Management Support (GAA),
- Office of Public Health (GAB), and
- IHS Area Offices (GF).

Section GA–20, Functions

Office of the Director (GA). Provides overall direction and leadership for the IHS by:

(1) Establishing goals and objectives for the IHS consistent with the mission of the IHS; (2) providing leadership during the development of health care policy; (3) providing leadership to ensure the delivery of quality comprehensive health services; (4) coordinating the IHS activities and resources internally and externally with the activities and available resources of other governmental and nongovernmental programs, promoting optimum utilization of all available health resources; (5) advocating for the health needs and concerns of AI/AN and promoting the IHS programs at the local, State, national, and international levels; (6) developing and demonstrating alternative methods and techniques of health services management and delivery with maximum participation by Indian tribes and Indian organizations; (7) supporting the development of individual and tribal capacities to participate in Indian health programs through means and modalities that they deem appropriate to their needs and circumstances; (8) affording Indian people an opportunity to enter a career in the IHS by applying Indian preference; (9) disseminating information to IHS consumers and the general public regarding the activities of the IHS and the health status of AI/AN people and communities; and (10) ensuring full application of the principles of Equal Employment Opportunity laws and the Civil Rights Act in managing the human resources of the IHS.

Urban Indian Health Programs Staff. (1) Advises the Director, IHS, on the activities and issues related to the IHS' implementation of Title V of the Indian Health Care Improvement Act, as amended; (2) develops and recommends policies, administrative procedures and guidelines for IHS services and activities for urban Indian health programs and organizations; (3) assures that urban Indian health programs and organizations are informed of pertinent health policy and that consultation with urban Indian health programs and organizations occurs during the development of IHS policy; (4) supports urban Indian health programs and organizations in managing health programs and coordinates support available from other public and private agencies and organizations; (5) advises the Director, IHS, on agency compliance to urban Indian health program policies, administrative procedures and guidelines; (6) maintains relevant information on urban Indian health programs and organizations; and (7) coordinates meetings and other communications with urban Indian health program representatives.

To provide for the full participation of Indian tribes in the programs and services provided by the Federal Government, and to ensure that the responsibilities of the United States are not waived, modified, or diminished in any way with respect to Indian tribes and individual Indians, by any grant, contract, compact, or funding agreement awarded by the IHS under the Indian Self-Determination and Education Assistance Act, as amended, the:

- *Office of Tribal Self-Governance (GA–1).* (1) Develops and oversees the implementation of Tribal self-governance legislation and authorities in the IHS, under Title III of the Indian Self-Determination and Education Assistance Act, as amended; (2) develops and recommends policies, administrative procedures, and guidelines for self-governance tribal activities, with maximum input from IHS staff and workgroups, tribes and tribal organizations, and the Tribal Self-Governance Advisory Committee; (3) advises the Director on Agency compliance with self-governance policies, administrative procedures and guidelines and coordinates activities for resolution of problems with appropriate IHS and HHS staff; (4) provides technical assistance and support in the development of the Tribal Self-Governance Demonstration Project; (5) participates in the reviews, and recommends approval, of proposals

from tribes for self-governance planning and negotiation grants; (6) oversees the negotiation of self-governance compacts and annual funding agreements with participating tribal governments; (7) in conjunction with IHS Area and Headquarters components, identifies the amount of Area office and Headquarters managed funds necessary to implement the annual funding agreements and prepares annual budgets for available tribal shares; (8) coordinates semi-annual reconciliation of funding agreements with IHS Headquarters components, Area offices, and participating tribes; (9) is the principal IHS office for developing, releasing, and presenting information on behalf of the Director, IHS, related to the IHS tribal self-governance activities to tribes, tribal organizations, HHS officials, IHS officials, and officials from other Federal agencies, State and local governmental agencies, and other agencies and organizations; (10) arranges national self-governance meetings to promote the participation by all AI/AN tribes in IHS self-governance activities and program direction; and (11) coordinates meetings for self-governance tribal delegations visiting IHS Headquqarters.

And, the

Office of Tribal Programs (GA–2). (1) Advises the Director, IHS, on the activities and issues related to IHS' implementation of self-determination under Title I of the Indian Self-Determination and Education Assistance Act, as amended; (2) develops and recommends policies, administrative procedures, and guidelines for a range of IHS services and activities for Title I tribes and direct service tribes, and advises the Director of the effect they have on health programs; (3) assures that Indian tribes and Indian organizations are informed, regarding pertinent health policy and program management issues, and that consultation and participation by tribes and Indian organization occurs during the development of IHS policy; (4) administers the Tribal Management Grant Program to assist tribes in developing and strengthening their capabilities in managing health programs; (5) supports Title I tribes in managing health programs and coordinates support available from other public and private agencies and organizations; (6) advises the Director, IHS, on Agency compliance to IHS self-determination program policies, administrative procedures, and guidelines; (7) coordinates implementation of special Indian legislation and authorities; (8) maintains relevant information on Indian tribes and programs, and IHS tribal self-determination policies; (9) coordinates meetings and other communications with non-self governance tribal delegations; and (10) is the principal IHS office for developing, releasing, and presenting information on behalf of the IHS Director related to the IHS tribal self-determination activities to tribes, tribal organizations, HHS officials, IHS officials, and officials form other Federal agencies, State and local governmental agencies, and other agencies and organizations.

Equal Employment Opportunity and Civil Rights Staff (GA–3). (1) Administers the IHS equal employment opportunity, civil rights, and affirmative action programs, in accordance with applicable laws, regulations, and HHS policies; (2) plans and oversees the implementation of IHS affirmative employment and special emphasis programs; (3) reviews data on the IHS employee personnel actions and advises IHS managers of discriminatory trends; (4) ensures immediate action on complaints of alleged sexual harassment of discrimination on the basis of sexual orientation; (5) decides on accepting, for investigation, or dismissing discrimination complaints and evaluates accepted complaints for procedural sufficiency and investigates, adjudicates,and resolves such complaints; and (6) develops EEO education and training programs for IHS programs, supervisors, counselors, and employees.

Office of Management Support (GAA.) (1) Provides advice and support to the Director and IHS managers on administrative and management regulations, policies, and procedures; (2) provides IHS-wide leadership, guidance, and support in the management of financial, human, personal property, supply, and information resources; (3) formulates, administers, and supports IHS-wide policies, delegations of authority, and organizations and functions development; (4) provides leadership, direction, and coordination of activities for continuous improvement of management accountability and administrative systems and for effective and efficient program support services IHS-wide; (5) administers a program for assuring the integrity of IHS employees in performance of their official duties and responsibilities that conforms with applicable laws, regulations, and guidance from within the Department and from other Federal oversight agencies, and directs the process for personnel security and suitability in the IHS; (6) ensures the accountability and integrity of acquisition and grants management, personal property utilization, and disposition of IHS resources; (7) assures that the IHS management services, policies, procedures, and practices support IHS Indian Self-Determination policies; (8) administers the control and quality of IHS reports, correspondence, and publications charged to Headquarters' officials for internal or external dissemination, including regular and special reports required by the Department and the Congress; (9) advises the Director on statutory and regulatory issues related to the IHS and coordination resolution of IHS legal issues with the Office of the General Counsel (OGC), IHS staff, and other Federal agencies; (10) provides leadership and advocacy of the IHS mission and goals with the Department, Administration, Congress, and other external authorities; (11) assures that IHS appeal systems meet legal standards; (12) assists in the assurance of Indian access to State, local, and private health programs; (13) manages IHS compliance with ethics requirements including the Federal Managers Financial Integrity Act; and (14) assures that access to IHS records meet statutory requirements.

Executive Secretariat (GAA–1). (1) Reviews, analyzes, and coordinates correspondence received by the IHS Office of the Director (OD); (2) assigns and controls required correspondence follow-up action by appropriate functional areas at IHS Headquarters and Areas; (3) assigns, control, and tracks reports required by the Congress; (4) ensures the quality of correspondence, reports, and publications from IHS Headquarters and Area offices that require signature by IHS OD for internal and external distribution; (5) conducts training to promote conformance by IHS Headquarters and Area staff on the *IHS Executive Correspondence Guidelines,* other good correspondence practices, and/or the requirements of higher echelon organizations; (6) maintains an automated document tracking system to assist in timely processing of internal and external correspondence; (7) maintains official records for OD correspondence and conducts topic research of files, as needed; (8) writes, develops, prepares, and coordinates documents for IHS OD signature; (9) coordinates the review of policy issues that surface in prepared responses or initiatives and resolves differences; and (10) ensures accurate flow of correspondence and related information to tribes, tribal organizations, heads of Federal Government departments and

agencies, congressional staff offices, and members of Congress.

Management Policy Support Staff (GAA–2). (1) Provides analysis, advisory, and assistance services to IHS managers and staff for the development, clearance, and filing of IHS directives and delegations of authority; (2) serves as principal advisor and source for technical assistance for establishment or modification of organizational infrastructures, functions, and Standard Administrative code configurations; (3) administers a program for assuring IHS' compliance with management control requirements in the Federal Managers' Financial Integrity Act; (4) coordinates the development, clearance, and transmittal of IHS responses and followup to reports issued by the Office of Inspector General (OIG), the General Accounting Office (GAO), and other Federal internal and external authorities; and (5) provides assistance and support to special assigned task groups, and conducts special program or management integrity reviews as required.

Division of Administrative Support (GAA1). (1) Plans, develops and directs program support and general services programs; (2) develops and disseminates policy and procedural guidelines for uniform administrative services and practices; (3) provides guidance and support to IHS Headquarters and field in the development, planning, and implementation of administrative functions; (4) maintains liaison with Department and General Services Administration (GSA) on logistics issues affecting the IHS; (5) monitors, evaluates, and reports on administrative programs and services; (6) provides advice and technical assistance on design and layout, inventories, and print order tracking for IHS publications; and (7) manages a variety of special projects.

Division of Financial Management (GAA2). (1) Develops and prepares the budget for the Office of Management and Budget (OMB) submission and the President's budget for the Indian Health Service and Facilities Appropriation; (2) participates with Department officials in budget briefings for the OMB and Congress; (3) distributes, coordinates, and monitors resource allocations; and (4) in collaboration with the Headquarters officials and the tribes, develops and implements budget, fiscal, and accounting procedures and conducts reviews and analyses to ensure compliance in budget activities.

Division of Acquisition and Grants Management (GAA3). (1) Develops, recommends, and oversees the implementation of policies and procedures and delegations of authority for the acquisition and grants management activities in the IHS, including self-governance compacts, consistent with applicable regulations, directives, and guidance from higher echelon in the Department and Federal government oversight agencies; (2) executes and administers contracts for IHS Headquarters, grant awards IHS-wide, and assists in acquisition and grants operations at field components as required; (3) evaluates compliance with acquisition and grants management related directives at IHS Headquarters and Area offices and oversees actions required to correct identified weaknesses; (4) provides cost advisory and audit resolution services in accordance with applicable statutes and regulations; (5) advises the Director, Office of Management Support, of proposed legislation, regulations and directives that affect contracts and financial assistance programs in the IHS; (6) manages the IHS acquisition and grant information systems and conducts analysis of data for reports and/or responses to inquiries from internal and external authorities; (7) conducts training and provides advice and technical consultation for contracts and grants policies and procedures to IHS Headquarters and field components; (8) coordinates the IHS Small, Disadvantaged, and Women-Owned Business programs and oversees compliance with the Buy Indian Act; (9) is the IHS contact point for contract protests, and to the Department and the GAO regarding contract-related issues; (10) administers the agency agreements program in the IHS; and (11) coordinates the collection of disallowed costs cited in reports of contractor and grantee audits.

Division of Human Resources (GAA4). (1) Advises the Director, IHS, on personnel management issues, programs and policies for Civil Service and Commissioned Corps personnel programs; (2) assures implementation of the Indian Preference policy in all personnel practices; (3) develops personnel management policies, programs, and reports in accordance with applicable laws, regulations, and policies; (4) provides personnel management and services throughout IHS, to include, but not limited to, manpower planning and utilization, staffing, recruitment, compensation and classification, human resource development, pay administration, labor, and employee relations; (5) provides advice, consultation, and assistance to IHS management and tribal officials on tribal health program personnel policy issues; (6) provides technical support, guidance, and assistance on all personnel programs to IHS Headquarters operations and other organizations as necessary; (7) provides liaison for IHS commissioned corps activities with the Department Division of Commissioned Personnel; and (8) represents IHS in all personnel management matters.

Division of Information Technology Support (GAA5). (1) Advises the Director, IHS, on all aspects of information management; (2) directs the development and implementation of policies, procedures, and standards for information management activities and services in the IHS; (3) directs the design, development/purchase, implementation, and support of information systems and services used in the IHS; (4) provides information technology services and support to IHS, tribal, and urban Indian health programs; and (5) represents the IHS to, and enters into information technology agreements with, Federal, tribal, State, and other organizations.

Division of Regulatory and Legal Affairs (GAA6). (1) Manages the IHS' overall regulations program and responsibilities, including determining the need for and developing plans for changes in regulations, developing or assuring the development of needed regulations, and maintaining the various regulatory planning processes; (2) provides all IHS liaison with the Office of the Federal Register on matters relating to the submission and clearance of documents for publication in the Federal Register; (3) assures proper agency clearance and processing of Federal Register documents; (4) informs management and program officials of regulatory activities of other Federal agencies; (5) manages the IHS review of non-IHS regulatory documents that impact the delivery of health services to Indians; (6) advises the Director and serves as liaison with the Office of the General Counsel (OGC) on such matters as litigation, regulations, and related policy issues; (7) determines need for and obtains legal clearance of IHS directives and other issuances; (8) coordinates legal issues with the OGC, IHS, HHS components, and other Federal agencies, including the identification and formulation of legal questions, and advising on the implementation of OGC opinions; (9) assures the IHS' appeals processes meet legal standards; (10) advises on the participates in Indian Self-Determination and Education Assistance Act appeals and hearings; (11) provides guidance and assistance on State and Federal health reform efforts, including access and civil rights

aspects and State Medicaid waiver applications; (12) advises on the administration of the contract health services (CHS) appeals system and is a participant with the Office of Public Health in the Director's CHS appeal decisions; and (13) manages the retrieval and transmittal of information in response to requests received under the Freedom of Information Act (FOIA) or the Privacy Act, and ensures the security of IHS documents used in such responses that contain sensitive and/or confidential information.

Division of Health Professions Support (GAA7). (1) Develops the IHS program to recruit, select, assign, and retain health care professionals, in accordance with policies and guidance provided by the Division of Human Resources; (2) assesses IHS professional staffing needs; (3) provides research and analysis functioned for Chief Medical Officers, Clinical Directors, and senior clinicians; (4) manages and supports health professions education programs and activities; and (5) develops and administers Indian Health Professions programs authorized by the Indian Health Care Improvement Act (IHCIA), as amended.

Office of Public Health (GAB). (1) Advises and supports the Director, IHS, on policy, budget formulation, and resources allocation regarding the operation and management of IHS direct, tribal and urban public health programs, quality assurance, and self-determination; (2) provides agency-wide leadership and consultation to IHS direct, tribal, and urban public health programs on IHS goals, objectives, policies, standards, and priorities; (3) represents the IHS within the HHS and external organizations for purposes of liaison, professional collaboration, cooperative ventures, and advocacy; (4) manages and provides national leadership and consultation for IHS and Area Offices on strategic and tactical planning, program evaluation and assessment, public health and medical services, research agendas, and special public health initiatives for the agency; (5) manages the design, development, and assessment, for facilities implementation of resource requirements and resources allocation methodology models for the agency; (6) carries out IHS responsibilities as required by the United States Federal Response Plan under Emergency Support Function No. 8; (7) assures agency compliance with the Code of Federal Regulations 45, Part 46, Protection of Human Subjects; and (8) administers the functions related to clinical services, managed care, hospitals and ambulatory care centers, community and environmental health, and facilities and environmental engineering.

Division of Clinical and Preventive Services (GAB1). (1) Serves as the primary source of technical and policy advice for IHS, and Area Offices and IHS direct, tribal, and urban public health programs on the full scope of clinical health care programs, including their quality assurance and preventive aspects, and tort claims; (2) provides leadership in articulating the clinical needs of the AI/AN population and competing health care needs; (3) advocates the resource needs of specialized health care delivery providers of clinical services disciplines; (4) provides consultation and technical support to IHS direct, tribal, and urban health programs including, but not limited to, alcohol and substance abuse, dental services, diabetes and other chronic disease prevention, emergency medical services training and material support, mental health, nutrition services training and education, services for children with special needs, and sensory disabilities services; and (5) administers the program functions that include, but are not limited to, alcohol and substance abuse, chronic disease such as diabetes and cancer, clinical engineering, dental services, emergency medical services, health records, maternal and child health, mental health and social services, pharmacy services, nursing services, and nutrition and dietetics.

Division of Managed Care (GAB2). (1) Serves as the primary source of technical and policy advice for IHS, and Area Offices and IHS direct, tribal, and urban public health programs on the full scope of clinical health programs, including their quality assurance and preventive aspects, managed care services, third party collections and reimbursements, health care facility accreditation, risk management and quality assurance; (2) administers and implements guidelines for the IHS contract health services (CHS) program including funds management, alternate resources, the Catastrophic Health Emergency Fund (CHEF), claims adjudication, and manages the national IHS payment policy with a fiscal intermediary; (3) provides leadership at a national and State level for Medicare and Medicaid and the private insurance sector; (4) serves as liaison with the Health Care Financing Administration for rate setting; (5) performs analytical studies to address managed care issues; (6) serves as the focal point regarding Medicaid and Medicare managed care activities, including the review, evaluation, and monitoring of sections 1115 and 1915(b) Medicaid waiver proposals and other state and federal health care reform activities; and (7) assures training on negotiation of provider agreements for Medicaid and private insurance network provider participation.

Division of Community and Environmental Health (GAB3). (1) Serves as the primary source of technical and policy advice for IHS Headquarters and Area Offices on the full scope of preventive, community, and environmental health programs and health data issues; (2) provides leadership in identifying and articulating preventive, community, and environmental health needs of AI/AN populations and supports efforts to build tribal capacity; (3) advocates for preventive, community, and environmental health care providers; (4) provides and directs public health surveillance, intervention and evaluation programs and the information systems to support them; (5) maintains, analyzes, makes accessible, and publishes results from national program databases; (6) performs statistical and epidemiological consultation for the IHS in response to special conditions and communicable disease outbreaks of public health significance; and (7) performs functions related to public health programs such as environmental health, injury prevention, institutional environmental health, chronic disease prevention, infectious disease control, public health nursing, public health education, HeadStart, dental public health, community health representatives, and nutrition.

Division of Facilities and Environmental Engineering (GAB4). (1) Serves as the primary source of technical and policy advice for IHS Headquarters and Area Offices, and IHS direct, tribal, and urban public health programs on the full scope of health care and sanitation facilities construction and management, environmental engineering, and realty services management; (2) develops objectives, priorities, standards, and methodologies for the conduct and evaluation of environmental and facilities engineering activities; (3) maintains needs based workload methodology for equitable resource distribution; and (4) provides leadership, consultation, and staff development to assure functional and well maintained health care facilities, and the availability of water, sewer, and solid waste facilities.

Section GA–30, Indian Health Service—Order of Succession

During the absence or disability of the Director, IHS, or in the event of a vacancy in that office, the following IHS Headquarters officials, in the order listed below, shall act as Director, IHS. In the event of a planned extended period of absence the IHS Director may specify a different order of succession. The order of succession will be:

(1) Deputy Director
(2) Director of Headquarters Operations
(3) Director of Field Operations
(4) Director, Office of Management Support
(5) Director, Office of Public Health
(6) Chief Medical Officer

Section GA–40, Indian Health Service—Delegations of Authority

All delegations of authority and redelegations of authority made to IHS officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization shall continue in effect pending further redelegation.

Chapter GF IHS Area Offices

Section GF.00, IHS Area Offices—Mission

The IHS Area Offices carry out the mission of the IHS by providing a system of health care unique to the Area population.

Section GF.10, IHS Area Offices—Organization

An Area Office is a bureau-level organization under the direction of an Area Director, who reports to the Director, IHS. Area Office Directors supervise clinical directors, who administer programs of direct care to the Area population. The following are the Area Offices of the IHS:

- Aberdeen Area Office (GFA)
- Alaska Area Office (GFB)
- Albuquerque Area Office (GFC)
- Bemidji Area Office (GFE)
- Billings Area Office (GFF)
- California Area Office (GFG)
- Nashville Area Office (GFH)
- Navajo Area Office (GFJ)
- Oklahoma City Area Office (GFK)
- Phoenix Area Office (GFL)
- Portland Area Office (GFM)
- Tucson Area Office (GFN)

Section GF.20, IHS Area Offices—Functions

The specific functions of the IHS Area Offices vary, however, each Area Office includes functions organized to support major categories of administrative management and clinical activities, such as:

Administration and Management—Financial management, administrative and office services, contract/grant administration, procurement, personnel management, facilities management, management information systems, contract health care services, and equal employment opportunity;

Program Planning, Analysis and Evaluation Programs—Program planning, statistical analysis, legislative initiatives, research and evaluation, health records, management information systems, and patient registration/third party collection;

Tribal Activity Programs—Provision of Public Law 93–638, Indian Self-Determination and Educational Assistance Act, health services delivery, community health representative services, urban health, alcoholism and substance abuse, and health education;

Health Programs—Primary care, clinical activities, mental health, nursing services, dental services, health promotion and disease prevention, professional recruitment and community services, and the Joint Commission on Accreditation of Healthcare Organizations;

Environmental Health/Sanitation Facilities Construction Programs—Environmental health and engineering/sanitation facilities construction programs for IHS Area Office, and

Information Resources Management Programs—Automated data processing (ADP), ADP planning and operations, management information systems, office automation systems, voice and data telecommunications management.

Section GF.30, IHS Area Offices—Order of Succession

The order of succession for Area Directors at the IHS Area Offices are determined by Area and continue in effect until changed.

Section GF.40, IHS Area Offices—Delegations of Authority

All delegations and redelegations of authority made to officials in the IHS Area Offices that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further redelegation.

This reorganization shall be effective on March 1, 1997.

Dated: December 2, 1996.

Michael H. Trujillo,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 96–32127 Filed 12–18–96; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–2880–N–13]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 18, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451–7th Street, SW., Room 4255, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202)–708–0846, for copies of the proposed forms and other available documents. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

This Notice also lists the following information:

Title of Proposal: Annual Lead-Based Paint (LBP) Activity Native Report.

OMB Control Number: 2577–0090.

Description of the need for the information and proposed use: HUD needs the information to assure statutory and regulatory compliance with The Lead-Based Paint Poisoning Prevention Act (LBPPPA), as amended (42 U.S.C. 4821–4846) which requires public and Indian housing authorities (HAs) to randomly sample their pre-1978 developments for the presence of LBP. Congress directed HUD to establish and adequate management information system for measuring and reporting on HAs' performance on LBP activities. HUD has revised the tracking system for collecting lead-based paint data. The system will collect less, but different data. The total number of reporting elements per project on the Form HUD–52850 was reduced from 20 to 12 as well as eliminating a certification checklist with 12 elements. These revisions have been made to more accurately reflect HUD's reporting needs to the Congress as well as reducing the hours required for HAs to complete the form.

Agency form numbers, if applicable: HUD–52850.

Members of affected public: State or Local Governments Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 3100 respondents, annually, one hour per response, 3,100 hours for a total reporting burden.

Status of the proposed information collection: Revision.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 13, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Annual
Lead-Based Paint (LBP) Activity Report

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0090 (Exp. 5/31/98)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0090), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

Do not send this form to the above address.

The Lead-Based Paint Poisoning Prevention Act, (42 U.S.C. 4821-4846) requires Housing Agencies to randomly sample their pre-1978 developments for the presence of Lead-Based Paint. Congress directed HUD to establish an adequate management information system for measuring and reporting HAs use of funds designated for lead paint testing and abatement. The information will be used by HUD to ensure statutory and regulatory compliance with the Act, to respond to Congressional inquiries and to monitor HAs' LBP activities. Responses to the collection of information are mandatory. The information requested does not lend itself to confidentiality.

Name of Housing Authority	Housing Authority Code

(Enter data for up to ten seperate developments below - For additional developments, if needed, use the form on the back)

Reporting Period From (mm/dd/yyyy) / / To / /

Development Code with Suffix					
Total number of family units in Development					
EBLs					
(1) Number of children identified with an EBL					
(2) Number of units with EBLs					
(3) Average number of days to perform testing					
(4) Number of times EBL resulted in abatement or relocation					
Testing					
(5) Number of units actually tested					
(6) Number of tested units with LBP hazards					
(7) Total amount of all funds expended for testing					
(8) Total amount of MOD funds expended for testing					
Abatement					
(9) Number of units planned to be abated					
(10) Number of units actually abated					
(11) Total amount of all funds expended for abatement					
(12) Total amount of MOD funds expended for abatement					

Development Code with Suffix					
Total number of family units in Development					
EBLs					
(1) Number of children identified with an EBL					
(2) Number of units with EBLs					
(3) Average number of days to perform testing					
(4) Number of times EBL resulted in abatement or relocation					
Testing					
(5) Number of units actually tested					
(6) Number of tested units with LBP hazards					
(7) Total amount of all funds expended for testing					
(8) Total amount of MOD funds expended for testing					
Abatement					
(9) Number of units planned to be abated					
(10) Number of units actually abated					
(11) Total amount of all funds expended for abatement					
(12) Total amount of MOD funds expended for abatement					

DRAFT

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Executive Director of PHA (Signature and Date)

X

Note: If the Housing Authority has performed any LBP activities and incurred any cost related to acquisition under the development program, provide the above information on a separate activity report form. **Previous edition is obsolete**

form **HUD-52850** (09/27/96)
ref. Handbook 7487.1

Development Code with Suffix					
Total number of family units in Development					
EBLs					
(1) Number of children identified with an EBL					
(2) Number of units with EBLs					
(3) Average number of days to perform testing					
(4) Number of times EBL resulted in abatement or relocation					
Testing					
(5) Number of units actually tested					
(6) Number of tested units with LBP hazards					
(7) Total amount of all funds expended for testing					
(8) Total amount of MOD funds expended for testing					
Abatement					
(9) Number of units planned to be abated					
(10) Number of units actually abated					
(11) Total amount of all funds expended for abatement					
(12) Total amount of MOD funds expended for abatement					

Instructions For Completing The Annual LBP Activity Report

The following requested data should be provided on an **annual basis** based on the HA's Fiscal Year. Reports shall be sent to the local HUD Field Office and are due 30 days after the end of the HA's Fiscal Year.

The following information is to be submitted on **each development** engaged in LBP activities during this reporting period.

Header: Enter the Development Code and Suffix (where applicable) for each development engaged in LBP activities during this reporting period.

Total Family Units in Development: Enter the total number of family units within each development engaged in LBP activities during this reporting period.

EBLs:

1. Enter the number of children identified by the health community as having an elevated blood lead (EBL) level. If a parent informs the HA that their child has an EBL, the HA should confirm this with the child's physician, nurse, or health care facility.
2. Enter the number of HA units associated with resident children identified as having an EBL.
3. Enter the average number of days to test a unit.
4. Enter the number of times an EBL resulted in relocation of the family or abatement of the unit.

Testing:

5. Enter the number of pre-1978 family units that were actually tested for LBP hazards during this reporting period.
6. Enter the number of units which were tested during this reporting period which were found to contain LBP hazards. This number represents either:

   (a) the total number of units randomly sampled and found to contain LBP hazards represents the total number of units in the development and therefore all units in the development require abatement (i.e., there are 100 units in the development, of which 51 were tested, and 51 of those tested contain a LBP hazard; therefore, all 100 units in the development are considered to contain LBP hazards). Therefore, the number to be recorded on line 12 should be 100 units; or

   (b) the total number of units randomly sampled is 51 units out of 100; however, 100 units are eventually sampled (tested); of the 100 tested, only 40 are found to contain LBP hazards. Therefore, the number to be recorded on line 12 should be 40 units.
7. Enter the total amount of funds expended for LBP random sampling during this reporting period.
8. Enter the total amount of MOD (CIAP and/or CGP) funds expended for LBP random sampling this reporting period. This amount may be less than or equal to the amount on line 7.

Abatement:

9. Enter the number of units planned to be abated during this reporting period.
10. Enter the number of units actually abated during this reporting period.
11. Enter the total amount of funds expended for abatement this reporting period.
12. Enter to total amount of MOD funds expended during this reporting period. This amount may be less than or equal to the amount on line 11.

DRAFT

Note: If the Housing Authority has performed any LBP activities and incurred any cost related to acquisition under the development program, provide the above information on a separate activity report form. **Previous edition is obsolete**

form **HUD-52850** (09/27/96)
ref. Handbook 7487.1

[FR Doc. 96–32225 Filed 12–18–96; 8:45 am]
BILLING CODE 4210–33–C

[Docket No. FR–4086–N–89]

Notice of Proposed Information Collection for Public Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 18, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Procedures for Obtaining Certificates of Insurance for Development and Modernization Projects.

OMB Control Number: 2577–0046.

Description of the Need for the Information and Proposed Use: HUD requires Housing Agencies (HAs) to obtain certificates of insurance from contractors and subcontractors involved in construction work under either the development of a new public housing project or the modernization of an existing project. The certificates of insurance provide evidence that workers' compensation and general liability, automobile liability insurance, is in force before any construction work is started. HAs use the certificates of insurance to determine that the required insurance is in force before any construction work is started.

Members of Affected Public: State or Local Government. Estimation of the Total Number of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: 3,426 respondents, 12 responses per respondent, .5 hour average per response, 20,556 total reporting burden hours. Status of the Proposed Information Collection: Extension Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, amended.

Dated: December 13, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–32228 Filed 12–18–96; 8:45 am]

BILLING CODE 4210–33–M

[Docket No. FR–4086–N–87]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment due date: January 21, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 12, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Owner/Tenant Certification for Multifamily Housing Programs.

Office: Housing.

OMB Approval Number: 2502–0204.

Description of the Need for the Information and its Proposed Use: The information is needed to determine tenant eligibility, to compute tenant annual rents for those tenants occupying HUD subsidized housing units, and to collect information on citizenship/alien status to effectively monitor program utilization and need.

Form Number: HUD–50059 and HUD–50059d/f/g.

Respondents: Individuals or Household, Business or Other For-Profit, Not-For-Profit Institutions, and the Federal Government.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	2,171,256		1		.92		1,997,556

Total Estimated Burden Hours: 1,997,556.

Status: Extension, without changes.

Contact: Barbara D. Hunter, (202) 708–3944, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: December 12, 1996.

[FR Doc. 96–32226 Filed 12–18–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–88]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: January 21, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 12, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Management Reviews of Multifamily Projects.

Office: Housing.

OMB Approval Number: 2502–0178.

Description of the Need for the Information and its Proposed Use: Form HUD–9834 will be used when conducting on-site reviews of project operations to evaluate the quality of project management, determine the causes of project problems, devise corrective actions to safeguard the Department's financial interest, and ensure decent, safe, and sanitary housing for tenants.

Form Number: HUD–9834.

Respondents: Business or Other For-Profit and Not-For-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Management Review Questionnaire	1,120		1		4		4,480

Total Estimated Burden Hours: 4,480.

Status: Reinstatement, without changes.

Contact: Barbara Hunter, HUD, (202) 708–3944; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 96–32227 Filed 12–18–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4042–N–06]

Office of the Assistant Secretary for Community Planning and Development; Notice of Technical Corrections to the FY 1996 Notice of Funding Availability (NOFA) for Continuum of Care Homeless Assistance; Supportive Housing Program (SHP); Shelter Plus Care (S+C); Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals (SRO)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: FY 1996 Notice of Funding Availability (NOFA); notice of technical corrections.

SUMMARY: On March 15, 1996 (61 FR 10866), HUD published a notice announcing the availability of fiscal year (FY) 1996 funding for three of its programs which assist communities in combatting homelessness (NOFA for Continuum of Care Homeless Assistance). The three programs are: (1) Supportive Housing; (2) Shelter Plus Care; and (3) Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals. The application deadline for this March 15, 1996 NOFA was July 3, 1996. The purpose of this notice is to make certain technical corrections to the competition conducted under the March 15, 1996 NOFA, as more fully explained in the Supplementary Information section of this notice.

EFFECTIVE DATE: December 19, 1996.

FOR FURTHER INFORMATION CONTACT: The Community Connections information center at 1–800–998–9999 (voice) or 1–800–483–2209 (TTY), or by internet at gopher://amcom.aspensys.com:75/11/funding.

SUPPLEMENTARY INFORMATION: On March 15, 1996 (61 FR 10866), HUD published a notice announcing the availability of fiscal year (FY) 1996 funding for three of its programs which assist communities in combatting homelessness (NOFA for Continuum of Care Homeless Assistance).[1] The three programs are: (1) Supportive Housing; (2) Shelter Plus Care; and (3) Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals. The application deadline for the March 15, 1996 NOFA was July 3, 1996. The purpose of this notice is to make certain technical corrections to the competition conducted under the March 15, 1996 NOFA.

The March 15, 1996 NOFA gives HUD the authority to select eligible projects, when sufficient funds become available, if those projects would have been funded were it not for procedural errors. HUD has determined that corrections in the processing of some applications need to be made in three areas of the FY 1996 Continuum of Care Homeless Assistance competition: (1) In data entry; (2) in review, such as project misnumbering; and (3) in the computer system used for application scoring.

HUD is making use of approximately $10 million of appropriated FY 1997 funds to make these corrections to the Continuum of Care Homeless Assistance competition as authorized by the March 15, 1996 NOFA.

Dated: December 13, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–32175 Filed 12–18–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Road Maintenance Funding Distribution Methodology

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In response to recommendations from the Joint Tribal/BIA/DOI Reorganization Task Force, the Road Maintenance program was transferred from the Other Recurring Programs account to the Tribal Priority Allocations account in FY 1995. This notice is of a proposed methodology and formula for distributing Bureau of Indian Affairs (BIA) road maintenance funds to tribal bases within the Tribal Priority Allocations accounting system.

DATES: Comments must be received on or before February 3, 1997.

ADDRESSES: Send written comments to the Chief, Division of Transportation, Bureau of Indian Affairs, 1849 ''C'' Street, N.W., Mail Stop 4058 MIB, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Transportation, Bureau of Indian Affairs at (202) 208–4359.

SUPPLEMENTARY INFORMATION: The FY 1995 Department of the Interior and Related Agencies Appropriations Act (*Public Law 103–332*) transferred the Road Maintenance funds from the Other Recurring Programs account to the Tribal Priority Allocations (TPA) account within the Bureau's Budget. The House and Senate Appropriations Committees directed that the transfer of these program funds into each tribal base for setting priorities and funding levels follow specific procedures, as recommended by the Joint Tribal/BIA/DOI Reorganization Task Force. These procedures are described in House Report 103–551, Senate Report 103–294, and Conference Report 103–740.

The Conference Report specifically stated, ''With regard to the road maintenance funds which have been transferred to tribal priority allocations, the managers expect these funds to be distributed as in the past during fiscal year 1995, while the Bureau prepares a Federal Register notice with the proposal for allocating the funds to tribal bases. The notice should also address how priorities for the use of these funds, in accordance with Federal Highway Trust Fund requirements, will be maintained after distribution to the tribes. The managers agree that no change in the distribution of these funds will occur until these issues are resolved satisfactorily, and expect the Bureau to work closely with the tribes to reach such a resolution.''

Based on this directive, the Bureau formed a team to develop the tribal consultation process and preparation of this Federal Register notice. Comments on the proposed methodology and formula will facilitate the development and implementation of a policy and process acceptable to the tribes and Bureau for determining base funding for each tribe eligible for road maintenance funds. Accordingly, interested persons may submit written comments regarding

[1] The March 15, 1996 NOFA was amended by notice published on May 22, 1996 (61 FR 25684) which advised the public of the amount of funding available for the Continuum of Care Homeless Assistance competition for fiscal year 1996. (The March 15, 1996 NOFA was published before the Congress appropriated funds and therefore the amount in the March 15, 1996 NOFA was an estimate.) The March 15, 1996 NOFA also was amended by notice published on June 3, 1996 (61 FR 27932), which further revised the amount of funding available to include unobligated funds from previous competitions. The March 15, 1996 NOFA was amended by notice published on June 27, 1996 (61 FR 33533) which extended the application deadline to July 3, 1996.

this proposed methodology and formula to the identified location in the **ADDRESSEE** section.

The primary author of this document is Steve Wilkie, Maintenance Engineer, BIA Division of Transportation.

Road Maintenance Funding Distribution Methodology

Table of Contents

Section 1 What is the current maintenance funding distribution formula?

The formula that has been used for distribution of Road Maintenance funds to the BIA Area Offices prioritizes submittal requests from the Areas on BIAM Form 5810. The line items identified in the BIAM Form 5810 are as listed below:

A=Management Supervision (Area, Agency, Tribe, Central Office)
B=Snow and Ice Removal (Latest 5 year average)
C=Other Emergency (Latest 5 year average)
D=Bridges (National Bridge Inspection Recommendations)
E=Airstrips
F=Paved Miles
G=Gravel Miles
H=Improved Earth Miles
I=Unimproved Earth Miles
J=Other Maintenance
K=Ferry
L=Heavy Equipment
M=Funds available after top priorities
Z=Total available funds
M=Z—(A+B+C+D+E+K)
M=(P)F+(Q)G+(R)H+(S)I+(T)J+(U)L
P, Q, R, S, T & U=Percentages of total request by areas, such that P>Q>R>S>T>U.

Actual percentage figures are dependent on the total available funds. The percentage figures for the current distribution formula are:

A—One hundred percent of requested supervision is allowed per the latest Office of Inspector General (OIG) audit recommendations to follow tribal priorities through consultations; use of cost effective techniques by using yearly planning efforts; perform activities based on actual road conditions; and document expenditures.

B, C, D—One hundred percent funded to assure provision of a transportation network for the welfare and safety of the users during emergencies.

E—One hundred percent funded to provide emergency access for doctors and air ambulances.

K—One hundred percent funded to insure continuity of an important transportation link.

P, Q, R, & S—These percentages reflect the relative safety issues involved with various types of roads and the maintenance priorities identified in the 58 BIAM.

This method of distribution is currently used to distribute funds to the area level. Many Areas are using historic distribution methods based on the old banded (Indian Priority System) program.

Section 2 What factors are considered in the proposed formula development?

The development of a distribution formula was required by Congress. One of the primary objectives considered by the Process Action Team (PAT) was to develop an equitable formula for distribution of road maintenance funds, and to develop a formula that distributes the money without major changes to the current funding level to the BIA Area Offices. The factors considered in establishing a methodology for distribution are the population served, the miles in the BIA Roads system, and the land area this system serves. The BIA system miles are weighted to reflect the surface-type priorities of the 58 BIAM.

Section 3 What is the proposed maintenance funding distribution formula?

The formula for distribution of Road Maintenance funding to individual tribal bases is as follows:

F=(P+A+M)(W)

F=TPA Funding available for the individual tribal base

P=The individual tribal percentage of enrolled population of the total Indian enrolled population multiplied by 30.5 percent.

A=The individual tribal percentage of trust land acreage of the total trust land acreage multiplied by 30.5 percent.

M=The individual tribal percentage of weighted road miles of BIA system of the total weighted BIA road system miles multiplied by 30.5 percent. To comply with the priority of maintenance as defined in this section the individual miles were based on the following total. The total calculated for each tribe was calculated by using 40% of the paved miles of BIA system, plus 30% of gravel miles of the system, plus 20% of improved earth miles, plus 10% of the unimproved earth miles.

W=The amount of money available to Area Offices for distribution, after reduction for the following items and percentages:

Central Office Program and Budget Formulation (0.5%)
Area Office Program and Formulation (3.3%)
Operation of Lake Roosevelt Ferry ($433,000)

Snow and Ice Control (8.5%)—This reserve is based on the most recent national three-year average costs for snow and ice removal.

Section 4 How do tribes establish priorities for use of these funds, in accordance with Highway Trust Fund requirements, to maintain roads?

Federal law requires that road projects constructed with Federal-aid highway funds (the Highway Trust Fund) be maintained. Tribal governments may perform maintenance on these roads under Pub. L. 93–638. Any government failing to maintain roads constructed with Federal-aid highway funds may be ineligible for future Highway Trust Fund construction projects under 23 U.S.C. 116.

Dated: December 4, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–32200 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–W7–P

Bureau of Land Management

[HE–952–9911–01–24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1032–0113

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request extension of approval for collecting information from those persons with a Helium Distribution Contract. BLM collects this information to assure distributor accountability and to certify compliance with the regulations at 30 CFR Part 602. BLM uses this information to report annual sales, transfers and purchases of helium. BLM expects to collect this information one time.

DATES: Comments on the proposed information collection must be received by February 18, 1997. Comments received after this date may not be

considered in preparing the information collection package.

ADDRESSES: Mail or hand deliver comments to either of the following addresses: (1) Bureau of Land Management, Helium Operations, 801 S. Fillmore, Suite 500, Amarillo, Texas 79101–3545, or (2) Bureau of Land Management, Regulatory Affairs Group, 1849 C St., N.W., Mail Stop 401 LS, Washington, D. C. 20240. The address for hand delivery is: Administrative Record, Room 401, 1620 L St., N.W., Washington, D. C. You may also file comments by way of the Internet at: WOComment@wo.blm.gov.

Comments will be available for public review during regular business hours at the Fillmore address (7:30 am to 4:30 pm), Monday through Friday, and at the L Street address (7:45 am to 4:15 pm).

FOR FURTHER INFORMATION CONTACT: Connie H. Neely, Helium Sales Officer, (806) 324–2636.

SUPPLEMENTARY INFORMATION: The regulations at 5 CFR 1320.12(a) require the Bureau of Land Management (BLM) to provide a 60-day notice in the Federal Register concerning a collection of information contained in published current rules to solicit comments on (a) whether the proposed collection of information is necessary to perform properly the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other form of information technology.

The regulations at 30 CFR Part 602, Chapter VI, Subchapter A, Article III, require collecting the information contained in the following forms:

(1) Form 6–1575–A, Stocks, Receipts and Distribution, which requires helium distributors contractors to provide information about their opening inventory of helium (ending balance from previous reporting period may be carried forward), sales to Federal agencies and other distributors, their receipts from BLM and other distributor contracts and their ending balance of helium for the annual reporting period. Sales data include the name, location and quantity of helium; and

(2) Form 6–1580–A, Certificates of Resale of BLM Helium, which requires helium distributor contractors to certify the resale of helium.

Seventy-five respondents fill out these forms. The estimated time for reading the instructions, collecting the information, and filling out the forms is 0.5 hour per respondent, for a total of 37.5 burden hours.

Any interested person may request and obtain copies of the relevant regulations and the forms by contacting either of the above mentioned BLM offices or the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request to the Office of Management and Budget for approval of the extension of this information collection. All comments will become part of the public record.

BLM expects to collect this information one time. Recent revisions to the helium statute have changed the method by which helium will be distributed and will make these forms obsolete.

Dated: December 16, 1996.

Annetta Cheek,

Leader, Regulatory Affairs Group.

[FR Doc. 96–32206 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–84–P

[ID–024–1200–00]

Closing of Certain Public Lands in Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of potential emergency closures of public lands in Cassia and Twin Falls Counties, Idaho.

SUMMARY: Notice is hereby given that certain public lands in Idaho, within Cassia and Twin Falls Counties, shall be subject to emergency closure to prevent erosion and rutting of the roads traveled by motor vehicles during wet or snowy conditions. The roads will be subject to closure during wet or snowy conditions from December 1–May 31 each year. If conditions of the entire road are dry enough to withstand motorized travel without causing erosion and rutting in the road, the routes will remain open during this period. The status of these roads (open/closed) is to be determined by the Authorized Officer and will be posted at the entrance to public lands. Road status can also be obtained from the BLM—Burley Field Office by calling (208) 678–5514. The legal land descriptions for the road closures are as follows:

The Indian Springs Road (BLM road #4214), from the Foothill Road to the U.S. Forest Service boundary, a distance of approximately 4.5 miles. The road is located at T. 12 S., R. 18 E., section 4 in Twin Falls County.

The Cherry Springs Road (BLM road #4213), from the Rock Creek Road southwest to its intersection with the Indian Springs Road, just north of the U.S. Forest Service boundary. This is a distance of approximately 6 miles. The road is located at T. 12 S., R. 18 E. section 2 in Twin Falls County.

The North Cottonwood Road (BLM road #4221) has two entrances, one on the east side and one on the west. The east entrance of North Cottonwood Creek Road starts at the Foothill Road and goes to the junction of the North Cottonwood Creek Road, approximately 6 miles. The west entrance to North Cottonwood Road starts at the Foothill Road and goes to the U.S. Forest Service boundary, a distance of approximately 5 miles, and back to the Foothill Road, a loop of approximately 11 miles total. The legal description is T. 12 S., R. 17 E., section 11 (for the west entrance), and T. 12 S., R 18 E., section 06 (for the east entrance), in Twin Falls County.

The Curtis Spring Road (BLM road #42163), begins at the Foothill Road and goes for approximately 3.5 miles. The legal description is T. 12 S., R. 17 E., section 02, in Twin Falls County.

The Squaw Joe Road (BLM road #4220), south of the Nat-Soo-Pah Warm Springs, to the U.S. Forest Service boundary, approximately 3.5 miles. The legal description is T. 12 S., R. 17 E., section 02, in Twin Falls County.

The West Fork of Dry Creek Road (BLM road #1610), from the Tugaw Ranch southwest to the U.S. Forest Service boundary, a distance of approximately 6 miles. The legal description is T. 12 S., R. 19 E., section 01, in Cassia County.

The East Fork of Dry Creek, off Foothill Road (BLM road #1609), southeast to the U.S. Forest Service boundary, a distance of approximately 7 miles. The legal description is T. 12 S., R. 19 E., section 01, in Cassia County.

No person may use, drive, move, transport, let stand, park, or have charge or control over any type of motorized vehicle on closed routes.

Exceptions to this order are granted to the following:

Law enforcement patrol and emergency services and administratively approved access for actions such as monitoring, research studies, grazing activity, and access to private lands.

Employees of valid right-of-way holders in the course of duties associated with the right-of-way.

Holders of valid lease(s) and/or permit(s) and their employees in the course of duties associated with the lease and/or permit.

Other actions would be considered on a case-by-case basis.

EFFECTIVE DATE: These roads will be subject to closure immediately and shall remain subject to closure each year from

December 1–May 31 or until rescinded by the Authorized Officer.

FOR FURTHER INFORMATION, CONTACT: Tom Dyer, Snake River Resource Area Manager, 200 South 15 East, Burley, ID 83318. Telephone (208) 677–6641. A map showing vehicle routes of travel is available from the Burley BLM Office.

SUPPLEMENTARY INFORMATION: Authority for this closure and restriction order may be found in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: December 9, 1996.

Gary Bliss,

Acting Upper Snake River Districts Manager.

[FR Doc. 96–32167 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–GG–P

[UT–930–07–1320–00]

Utah: Release of Coal Exploration License Data, UTU–48608

ACTION: Notice of preliminary determination to allow public access to data from coal exploration license UTU–48608.

SUMMARY: BLM regulations at 43 CFR 2.22 and 3410.4(b) provide that data obtained under an exploration license will be kept confidential until the lands have been leased or BLM determines that public access to the data would not damage the competitive position of the licensee, whichever comes first. Coal Exploration License UTU–48068 was issued to Royal Land Company on August 4, 1981. Exploration under this license included drilling 15 holes in the vicinity of North Horn Mountain, Emery County, Utah. The lands covered by this license were offered for lease on May 29, 1982, and no bids were received. Based on the lack of interest in the unleased Federal coal covered by this license since the drilling was completed and the fact that no bids were received when the lands were offered for lease in 1982, BLM has determined that it is in the public interest to release the data obtained under Exploration License UTU–48608. BLM has further made a preliminary finding that the competitive interest of the licensee or any participants would not be harmed by the release of this data. The licensee, any participants, or any successor thereto, objecting to this determination, must respond by January 24, 1997, to document any assertion that public release of these data would damage any present competitive position they hold. Such documentation must include:

1. A statement describing the data to whose disclosure you object.

2. A copy of any participation agreement or other evidence verifying your participation in UTU-48606 and any interest you may have in the data.

3. A demonstration of the specific competitive harm that disclosure of the data would cause to your competitive position.

DATES: Objections, if any, to be filed by January 24, 1997.

FOR FURTHER INFORMATION CONTACT: Douglas M. Koza, Deputy State Director, Natural Resources, U.S. Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

Dated: December 13, 1996.

Douglas M. Koza,

Deputy State Director, Natural Resources.

[FR Doc. 96–32182 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–DQ–P

[ES–020–05–1430–01; MSES 36112]

Planning and Environmental Analysis, Yalobusha County, Mississippi

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: At this time the Bureau of Land Management, Eastern States, Jackson District, announces that a planning analysis and environmental assessment will be completed for the following described land.

Choctaw Meridian, Yalobusha County, Mississippi

T. 24 N., R. 6 E.,
Sec. 14, NE¼ SW¼.

This planning and environmental analysis is being prepared to determine the suitability of the above tract of land for disposal under authority of the Color-of-Title Act of December 22, 1928 (amended by 67 Stat. 227; 43 U.S.C. 1068, 1068a).

DATES: The Bureau of Land Management is asking the public for comments on issues which relate to the preparation of the planning analysis with respect to the above described land. Anyone wishing to comment has until January 21, 1997 to send remarks to the address given below.

FOR FURTHER INFORMATION CONTACT: Clay Moore, Bureau of Land Management, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206, telephone number 601–977–5400.

SUPPLEMENTARY INFORMATION: This planning analysis and environmental assessment will be prepared by an interdisciplinary team of specialists. Records concerning preparation of the document will be available at the Jackson District Office.

Bruce E. Dawson,

District Manager.

[FR Doc. 96–31987 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–GJ–M

[OR–958–0777–54; GP6–0237; OR–19644 (WASH)]

Public Land Order No. 7229; Partial Revocation of the Secretarial Order Dated August 5, 1926; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 3,250 acres of National Park lands withdrawn for the Bureau of Land Management's Powersite Classification No. 151. The lands are no longer needed for this purpose, and the revocation is needed to permit disposal of 29.83 acres of land through a National Park Service exchange. The remaining 3,220.17 acres are within the boundary of the Olympic National Park and have been and will remain closed to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: December 19, 1996.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated August 5, 1926, which established Powersite Classification No. 151, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

T. 23 N., R. 5 W.,
Secs. 3 and 4, Tract 37, and all unsurveyed lands that lie within ¼ mile of the North Fork of the Skokomish River.
T. 24 N., R. 5 W.,
Secs. 5, 6, 7, 8, 18, 19, and 28 to 33, inclusive, all unsurveyed lands that lie within ¼ mile of the North Fork of the Skokomish River.
T. 24 N., R. 6 W.,
Secs. 12, 13, 23, 24, 25, 26, and 36, all unsurveyed lands that lie within ¼ mile of the North Fork of the Skokomish River.

The areas described aggregate approximately 3,250 acres in Mason County.

2. The following described land is hereby made available for exchange in accordance with Public Law 102–436:

T. 23 N., R. 5 W.,

Secs. 3 and 4, Tract 37.

The area described contains 29.83 acres in Mason County.

3. The remaining lands are within the boundary of the Olympic National Park and will remain closed to surface entry, mining, and mineral leasing.

Dated: December 6, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–32201 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–33–P

[NV–930–1430–07; N–60630]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Non-Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The following described public land in Henderson, Clark County, Nevada has been examined and found suitable for classification for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of P.L. 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719):

Mount Diablo Meridian, Nevada

T. 21 S., R. 63 E.,
Sec. 28, SW¼SW¼, S½NW¼SW¼;
Sec. 29, S½SE¼,
Containing 140 acres, more or less.

This parcel of land, situated in Henderson, and known as the Henderson Landfill, is being offered as a non-competitive FLPMA sale to the City of Henderson.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil and gas mineral deposits.

3. Those rights for water pipeline purposes which have been granted to the Bureau of Reclamation by Permit No. N–1521 under the Act of December 5, 1924 (043STAT0672).

and will be subject to:

1. An agreed upon closure plan between the City of Henderson and the Nevada Division of Environmental Protection.

2. An easement, if requested, for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Henderson.

Upon publication of this notice in the Federal Register, the above described land will continue to be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

Publication of this notice in the Federal Register previously occurred on March 20, 1996, (55 FR 11427] and allowed for the required 45 day comment period. Publication of this notice will not initiate an additional comment period. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws.

Dated: December 6, 1996

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 96–32166 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–HC–M

[NM–030–1430–00; NMNM 96508]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Sierra County, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Correction.

SUMMARY: In notice document 96–30800 beginning on page 64360 in the issue of Wednesday, December 4, 1996, make the following correction: Under the **SUMMARY** heading, the legal description should be changed to read:

T. 14S., R. 5W., NMPM
Section 22, NE¼NE¼SE¼NE¼.
Containing 2.5 acres, more or less.

Dated: December 11, 1996.

Linda S.C. Rundell,

District Manager.

[FR Doc. 96–32216 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–VC–M

[ID–035–1110–00]

Notice of Intent To Amend the Medicine Lodge Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Medicine Lodge Resource Management Plan, and to prepare an environmental assessment for this amendment.

SUMMARY: The BLM has received a request from the Fremont and Jefferson County Commissioners to amend their Rights-of-Way (IDI–22460, IDI–22461) on the Elgin-Hamer Road. The amendments would amend the seasonal closure from December 1 through March 31, and allow the road to remain open with other mitigation measures to protect wintering elk. Amendment to the Rights-of-Way require an amendment to the Medicine Lodge Resource Management Plan (RMP) to amend the seasonal limitations. An environmental assessment will be prepared to analyze these amendments.

DATES: Comments on the proposed amendments and issues or concerns to be addressed in the environmental assessment will be accepted through January 31, 1997.

FOR FURTHER INFORMATION CONTACT: Jeff Gardetto, Bureau of Land Management, 1405 Hollipark Drive, Idaho Falls, ID 83401. (208) 524–7545.

SUPPLEMENTARY INFORMATION: In 1988, Rights-of-Way were issued to Fremont County (IDI–22460) and Jefferson County (IDI–22461) for use along the Egin-Hamer road. The ten mile gravel road connects the communities of Egin and Hammer in southeastern Idaho (T7N., R. 38E., Boise Meridian). In 1983 concerns about effects of vehicle travel on wintering elk populations prompted an amendment to the Medicine Lodge Resource Management Plan (completed in 1988) closing the area to vehicle use from December 1 through March 31 of each year. This seasonal closure was incorporated as stipulations to the Rights-of-Way issued to the counties. Monitoring studies of the elk population have indicated that elk do not use the area to the extent or at the times addressed in the original environmental analysis of the grants (Egin-Hamer Plan Amendment and Final Environmental Impact Statement, 1987). Based on this

monitoring information, the Counties have requested amending the Rights-of-Way, with mitigating criteria, to allow for year-round use of the road with the stipulations that: (1) The Counties will close the road within twelve hours of notification by the Idaho Department of Fish and Game that elk are using the area; (2) There will be no winter plowing of the county's Taylor Well or Red Well roads; (3) The counties will continue to enforce the existing December 1 through March 31 vehicle closure on all routes emanating from the Egin-Hamer road.

The Rights-of-Way are within the Sands Habitat Management Plan area, the St. Anthony Sand Dunes Special Recreation Management Area, and the Ninemile Knoll Area of Critical Environmental Concern.

Dated: December 11, 1996.

Joe Kraayenbrink,

Area Manager, Medicine Lodge Resource Area.

[FR Doc. 96–32205 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–GG–M

[ID–957–1040–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. December 12, 1996.

The plat representing the dependent resurvey of portions of the subdivision of section 9, and the survey of lot 5 in section 9, T. 18 N., R. 21 E., Boise Meridian, Idaho, Group No. 965, was accepted December 12, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: December 12, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–32202 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–GG–M

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described land are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 46 N., R. 73 W., accepted November 22, 1996
T. 40 N., R. 116 W., accepted November 22, 1996
T. 54 N., R. 71 W., accepted December 4, 1996
T. 54 N., R. 72 W., accepted December 4, 1996
T. 55 N., R. 71 W., accepted December 4, 1996
T. 55 N., R. 72 W., accepted December 4, 1996

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until the disposition of protest(s) and or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from this date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne Wyoming 82003.

Dated: December 9, 1996.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 96–32164 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–22–M

[CO–930–1430–01; COC–12610]

Proposed Withdrawal and Transfer of Jurisdiction; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service requests the withdrawal and transfer of Administrative Jurisdiction of 1,720 acres of public lands to the Fish and Wildlife Service for management as part of the Arapaho National Wildlife Refuge. The withdrawal will be for a period of 50 years. This notice closes these lands to settlement, sale, location or entry under the general land laws, including the mining laws for up to two years.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before March 19, 1997.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On December 6, 1996, the Secretary of the Interior approved an application to withdraw and transfer Administrative Jurisdiction of public lands to the Fish and Wildlife Service for a period of 50 years. This application affects the following described lands:

6th Principal Meridian

T. 7 N., R 79 W.,
  Sec. 19, SE¼NE¼.
T. 7 N., R. 80 W.,
  Sec. 10, NE¼NE¼;
  Sec. 11, N½NW¼;
  Sec. 13, SW¼SW¼ and W½SE¼;
  Sec. 14, NW¼NW¼;
  Sec. 15, NE¼NE¼.
T. 8 N., R. 79 W.,
  Sec. 8, S½;
  Sec. 9, S½;
  Sec. 17, All.
T. 8 N., R. 80 W.,
  Sec. 12, S½NE¼.

The areas described aggregate approximately 1,720 acres of public lands in Jackson County.

The purpose of this action is to withdraw and transfer Administrative Jurisdiction of public lands to Fish and Wildlife Service to be managed as a part of the Arapaho Wildlife Refuge. After this action is completed, 1743.8 acres of acquired lands will be transferred to the Bureau of Land Management for management as public lands.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed action, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and

conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the Federal Register, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal and transfer is approved prior to that date. During this period the Bureau of Land Management and Fish and Wildlife Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 96–32215 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–JB–P

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Proposed Central and Western Gulf Sales 166 and 168

AGENCY: Minerals Management Service.

ACTION: Notice of availability of the final environmental impact statement regarding proposed Central and Western Gulf of Mexico sales 166 and 168.

The Minerals Management Service has prepared a final Environmental Impact Statement (EIS) relating to proposed 1997 Outer Continental Shelf oil and gas lease sales in the Central and Western Gulf of Mexico. The proposed Central Gulf Sale 166 will offer for lease approximately 27 million unleased acres, and the Western Gulf Sale 168 will offer approximately 28 million unleased acres. Single copies of the EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Unit (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394.

Copies of the draft EIS will also be available for review by the public in the following libraries:

Texas

Alma M. Carpenter Public Library, 330 South Ann, Sourlake;
Aransas Pass Public Library, 110 North Lamont Street, Aransas Pass;
Austin Public Library, 402 West Ninth Street, Austin;
Bay City Public Library, 1900 Fifth Street, Bay City;
Brazoria County Library, 410 Brazoport Boulevard, Freeport;
Calhoun County Library, 301 South Ann, Port Lavaca;
Chambers County Library System, 202 Cummings Street, Anahuac;
Comfort Public Library, Seventh & High Streets, Comfort;
Corpus Christi Central Library, 805 Comanche Street, Corpus Christi;
Dallas Public Library, 1513 Young Street, Dallas;
Houston Public Library, 500 McKinney Street, Houston;
Jackson County Library, 411 North Wells Street, Edna;
Lamar University, Gray Library, Virginia Avenue, Beaumont;
LaRatama Library, 505 Mesquite Street, Corpus Christi;
Liberty Municipal Library, 1710 Sam Houston Avenue, Liberty;
Orange Public Library, 220 North Fifth Street, Orange;
Port Arthur Public Library, 3601 Cultural Center Drive, Port Arthur;
Port Isabel Public library, 213 Yturria Street, Port Isabel;
Reber Memorial Library 193 North Fourth, Raymondville;
Refugio County Public Library, 815 South Commerce Street, Refugio;
Rice University, Fondren Library, 6100 South Main Street, Houston;
R. J. Kleberg Public Library, Fourth and Henrietta, Kingsville;
Rockwall County Library, 108 South Fannin Street, Rockwall;
Rosenberg Library, 2310 Sealy Street, Galveston;
Sam Houston Regional Library & Research Center, FM 1011 Governors Road, Liberty;
Texas A & M University, Corpus Christi Library, 6300 Ocean Drive, Corpus Christi;
Texas A & M University, Evans Library, Spence and Lubbock Streets, College Station;
Texas Southmost College Library, 1825 May Street, Brownsville;
Texas State Library, 1200 Brazos Street, Austin;
University of Houston Library, 4800 Calhoun Boulevard, Houston;
University of Texas at Brownsville, Oliveria Memorial Library, 80 Fort Brown, Brownsville;
University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin;
University of Texas, LBJ School of Public Affairs Library, 2313 Red River Street, Austin;
University of Texas Library, 21st and Speedway Streets, Austin;
Victoria Public Library, 320 North Main, Victoria.

Louisiana

Calcasieu Parish Library, 327 Broad Street, Lake Charles;
Cameron Parish Library, Marshall Street, Cameron;
Grand Isle Branch Library, Highway 1, Grand Isle;
Government Documents Library, Loyola University, 6363 St. Charles Avenue, New Orleans;
Iberville Parish Library, 24605 J. Gerald Berret Boulevard, Plaquemine;
Jefferson Parish Lobby Branch Library, 3410 North Causeway Boulevard, Metairie;
Jefferson Parish West Bank Outreach Branch Library, 2751 Manhattan Boulevard, Harvey;
Lafayette Public Library, 301 W. Congress Street, Lafayette;
Lafitte Branch Library, Route 1, Box 2, Lafitte;
Lafourche Parish Library, 303 West 5th Street, Thibodaux;
Louisiana State University Library, 760 Riverside Road, Baton Rouge;
Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston;
LUMCON, Library, Star Route 541, Chauvin;
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles;
New Orleans Public Library, 219 Loyola Avenue, New Orleans;
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux;
Plaquemines Parish Library, 203 Highway 11, South, Buras;
St. Bernard Parish Library, 1125 East St. Bernard Highway, Chalmette;
St. Charles Parish Library, 105 Lakewood Drive, Luling;
St. John The Baptist Parish Library, 1334 West Airline Highway, Laplace;
St. Mary Parish Library, 206 Iberia Street, Franklin;
St. Tammany Parish Library, Covington Branch, 310 West 21st Street, Covington;
St. Tammany Parish Library, Slidell Branch, 555 Robert Boulevard, Slidell;
Terrebonne Parish Library, 424 Roussell Street, Houma;
Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans;
University of New Orleans Library, Lakeshore Drive, New Orleans;
University of Southwestern LA, Dupre Library, 302 East St. Mary Boulevard, Lafayette;
Vermilion Parish Library, Abbeville Branch, 200 North Street, Abbeville.

Mississippi

Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs;
Hancock County Library System, 312 Highway 90, Bay Saint Louis;
Harrison County Library, 14th and 21st Avenues, Gulfport;
Jackson George Regional Library System, 3214 Pascagoula Street, Pascagoula.

Alabama

Dauphin Island Sea Lab, MESC Library, Bienville Boulevard, Dauphin Island;
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores;
Mobile Public Library, 701 Government Street, Mobile;
Montgomery Public Library, 445 South Lawrence Street, Montgomery;
Thomas B. Norton Public Library, 221 West 19th Avenue, Gulf Shores;
University of South Alabama, University Boulevard, Mobile.

Florida

Bay County Public Library, 25 West Government Street, Panama City;
Florida A & M University, Coleman Memorial Library, M. L. King Boulevard, Tallahassee;
Florida Northwest Regional Library, 25 West Government Street, Panama City;
Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee;
Fort Walton Beach Public Library, 105 Miracle Strip Parkway, Fort Walton Beach;
Leon County Public Library, 200 West Park Avenue, Tallahassee;
University of Florida Library, University Avenue, Gainesville;
University of Florida, Holland Law Center Library, SW 25th and 2nd Ave, Gainesville;
West Florida Regional Library, 200 West Gregory Street, Pensacola.

Dated: December 11, 1996.

Robert E. Brown,

Associate Director for Offshore Minerals Management.

[FR Doc. 96–32136 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

Cape Cod National Seashore, South Wellfleet, Massachusetts, Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, January 31, 1997.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will convene at Park Headquarters, Marconi Station, at 1:00 p.m., January 31, 1997 for the regular business meeting which will be held for the following reasons:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (11/22/96)
3. Reports of Officers
4. Superintendent's Report
   Maintenance of Landscape at Fort Hill—Mowing and Burning
   Draft General Management Plan
   Report on Seashore/Pathways Trails Project—Charlie Tracy, NPS, and Kathy Sferra Cape Cod Commission
   News from Washington
5. Old Business—Report from Use & Occupancy Subcommittee
6. New Business—Review administrative structure NPS Advisory Commission Handbook/Charter
7. Agenda for next meeting
8. Date for next meeting
9. Public comment
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: December 12, 1996.

Maria Burks,

Superintendent.

[FR Doc. 96–32138 Filed 12–18–96; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *Amro Realty Corp. et al.,* Civil Action No. 87–CV–1418 lodged on December 10, 1996 with the United States District Court for the Northern District of New York.

The United States currently has claims pending against three defendants, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9607, seeking to recover approximately $35 million in past and future costs associated with the American Thermostat Superfund Site, located in Green County, New York. Pursuant to the proposed settlement, three potentially responsible parties at the Site have agreed to pay $965,597.71 and agreed to a judgment lien on the Site property worth approximately $400,000 to $500,000 to partially pay for estimated Site costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Amro,* DOJ Ref. Number 90–11–3–242.

The proposed consent decree may be examined at EPA Region 2, (contact Cynthia Psoras, 212–637–3169) and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–32203 Filed 12–18–96; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy and 28 C.F.R. § 50.7, notice is hereby given that on November 29, 1996, a partial consent decree in *United States* v. *Hercules Incorporated et al.,* Civil Action No. 95–1044–R was lodged with the United States District Court for the Western District of Virginia.

This partial consent decree settles claims brought against Carver Massie Carver, Inc (''CMC'') and Hansford R. Massie III (jointly, the ''CMC defendants'') pursuant to the Clean Air Act (the ''Act''), 42 U.S.C. § § 7401 *et seq.*, and the National Emission Standard for Hazardous Air Pollutants for asbestos (''asbestos NESHAP''), in connection with allegations that asbestos was improperly handled during

the demolition of a building owned by Hercules Incorporated in Covington, Virginia. Under the terms of the consent decree, the CMC defendants agree not to participate in any construction, repair, demolition, or renovation activities involving structures containing asbestos. A previous consent decree, entered by the Court on January 19, 1996, settled the United States' claims against defendant Hercules Incorporated.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Hercules Incorporated et. al.*, Civil Action No. 95–1044–R, Ref. No. 90–5–2–1–1897. The proposed consent decree may be examined at the office of the United States Attorney, Western District of Virginia, Thomas B. Mason Building, 105 Franklin Road, S.W., Roanoke, Virginia 24011. Copies of the consent decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. When requesting a copy by mail, please enclose a check in the amount of $4.00 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–32162 Filed 12–18–96; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a proposed modification to the consent decree in *United States* v. *Princeton Enterprises, Inc., et al.*, Civil Action No. 90–76–C, was lodged on December 5, 1996, with the United States District Court for the Northern District of West Virginia. The original consent decree in this action required Riffle Equipment Company, Kenneth Riffle, and Myron Jackson to collect and bury certain asbestos-containing materials at the former Adamston Flat Glass Plant in Clarksburg, West Virginia. After the original consent decree was lodged and entered by this court, the City of Clarksburg removed the bulk of the asbestos-containing material from the Plant property. Therefore, the proposed modification of the consent decree removes that portion of the consent decree that required the defendants to bury the asbestos-containing materials on the Plant property. All other requirements of the consent decree would remain in effect.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed modification of the consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Princeton Enterprises, Inc., et al.*, DOJ Ref. #90–5–2–1–1462.

The proposed modification of the consent decree may be examined at the office of the United States Attorney, 111 Main Street, Suite 200, Wheeling, West Virginia; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $1.05 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–32160 Filed 12–18–96; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States* v. *Ruetgers-Nease Corporation,* Civ. Act. No. 4CV–96–2128 (M.D. Pa.) was lodged on December 6, 1996.

The proposed decree resolves the claims of the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. §§ 9606 and 9607, for past response costs and certain response actions at the Centre County Kepone Superfund Site in Centre County, Pennsylvania. The decree obligates the Settling Defendant to reimburse $293,985.10 of the United States' past response costs and to perform the remedial action the U.S. Environmental Protection Agency has selected for the first operable unit at the site. The Decree also resolves certain claims of the Commonwealth of Pennsylvania and requires defendant to reimburse $89,572.45 in past response costs to the Commonwealth.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Ruetgers-Nease Corporation,* DOJ Ref. # 90–11–3–1436.

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $26.75 (25 cents per page reproduction costs), payable to the Consent Decree Library. Attachments to the proposed consent decree can be obtained for additional amount.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–32337 Filed 12–18–96; 8:45 am]

BILLING CODE 4410–15–M

Notice of Lodging of consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, notice is hereby given that a proposed consent decree in *United States* v. *Western Crude Reserves, Inc., et al,* Civil Action No. 95–52, was lodged on October 24, 1994 with the United States District Court for Eastern District of Kentucky, Lexington Division. Under the consent decree the United States is settling claims against two defendants, Western Crude Reserves, Inc. and Reserve Energy, Ltd., based on claims for civil penalties and injunctive relief relating to alleged violations of the Safe Drinking Water Act (''SDWA'') and the implementing

Underground Injection Control (''UIC'') regulations, 40 CFR § 144.28 *et seq.* The United States alleged that Reserve Energy, Ltd. and Western Crude Reserves, Inc. once owned and operated respectively, 113 underground injection wells in the Irvine, Garrett and South Fork units in the Irvin-Furnace field in Powell and Estill Counties, Kentucky, Reserve Energy, Ltd. is a limited partnership. Western Crude Reserves, Inc. is the corporate general partner of Reserve Energy. In 1993, Reserve Energy transferred the wells to defendant Kish Resources PLC. Under the proposed settlement, Western Crude Reserves, Inc. and Reserve Energy, Ltd. will provide $75,000 in financial assurance for plugging abandoned injection wells, and the field will be transferred to a nonparty, Trinity Group, LLC. (''Trinity''), for the purpose of bringing the wells into regulatory compliance pursuant to a schedule set forth in an Administrative Order on Consent (''AOC'') entered between Trinity and EPA. Under the AOC, Trinity will provide $50,000 in financial assurance and will plug or case and cement the injection wells over the course of three years. Under this settlement, EPA will obtain the injunctive relief it seeks to bring the field into compliance, plus a total of $125,000 in financial assurance, in case Trinity does not fulfill its obligations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Western Crude Reserves, Inc. et al.,* DOJ Ref. #90–5–1–1–5067.

The proposed consent decree may be examined at the office of the United States Attorney, 1441 Main Street, Suite 500 Columbia, South Carolina (803) 929–3000; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–32163 Filed 12–18–96; 8:45 am]

BILLING CODE 4410–15–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Cable Television Laboratories, Inc.

Notice is hereby given that, on August 13, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically the following company has joined CableLabs: Lake Hughes Cable, Ventura, CA.

No other changes have been made in either the membership or planned activity of CableLabs. Membership remains open and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593). The last notification with respect to membership changes was filed with the Department on April 23, 1996. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on July 23, 1996 (61 FR 38216). A correction to this notice was published in the Federal Register on August 20, 1996 (61 FR 43077).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–32159 Filed 12–18–96; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Infotest International

Notice is hereby given that, on October 9, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), InfoTEST International (''InfoTEST'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members of InfoTEST are: Imation Corp., Oakdale, MN.

Organizations that are no longer InfoTEST Members are: AT&T Corp., Washington, D.C.; Brookhaven National Laboratory, Upton, NY; Center for the New West, Denver, CO; Concurrent Technologies Corporation, Johnstown, PA; Hitachi Telecom (USA), Inc., Norcross, GA; Polaroid Corporation, Cambridge, MA; National Institute of Standards and Technology, Gaithersburg, MD; National Park Service, Denver, CO; North Carolina Healthcare Information and Communications Alliance, Research Triangle Park, NC; Pacific Bell, San Ramon, CA; University of Michigan, Ann Arbor, MI; University of Southern California, Los Angeles, CA; U.S. Fish and Wildlife Service, Denver, CO; U.S. Geological Survey, and the Department of the Interior, Reston, VA.

No other changes have been made in the membership, nature or objectives of the consortium. Membership in InfoTEST remains open, and the consortium intends to file additional written notifications disclosing all changes in Membership.

On December 7, 1993, InfoTEST filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on May 18, 1994 (60 FR 25960).

The last notification was filed with the Department of Justice on April 22, 1996. A notice was published in the Federal Register on June 3, 1996 (61 FR 27936).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–32158 Filed 12–18–96; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on November 29, 1996 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993,

15 U.S.C. § 4301 *et seq.* (''the Act''), the National Center for Manufacturing Sciences, Inc. (''NCMS'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Rapid Response Manufacturing project, formed predominately of NCMS membership, is pursuing a joint research and development venture focusing on generic enabling technologies in the general area of computer integrated manufacturing.

Changes to this venture area as follows: Eastman Kodak Company, Rochester, NY has been added as a participant in the project. Cimflex Teknowledge Corporation has changed its name to Teknowledge Corporation and ICAD, Inc. has changed its name to Concentra Corporation. The MacNeal-Schwendler Corporation, Reston, VA, acquired Aries Technology, Inc. and subsequently became a participant in the project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On July 21, 1992, NCMS filed its original notification of the Rapid Response Manufacturing project pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on November 19, 1992 (57 FR 54610). The last notification was filed on November 1, 1996. The Department of Justice published a notice in the Federal Register on December 4, 1996 (61 FR 64370).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–32161 Filed 12–18–96; 8:45 am]

BILLING CODE 4410–11–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 12, 1996.

TIME AND DATE: 2:30 p.m., Thursday, December 12, 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. *Secretary of Labor* v. *Ambrosia Coal and Construction Co., et al.,* Docket Nos. PENN 93–233 and 94–15.

No earlier announcement of the scheduling of this meeting was possible.

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. 96–32343 Filed 12–17–96; 8:45 am]

BILLING CODE 6735–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

The National Credit Union Administration Board determined that its business requires the addition of the following item, which is closed to public observation, to the previously announced closed meeting (Federal Register, page 66337, Tuesday, December 17, 1996) scheduled for 11:00 a.m., Thursday, December 19, 1996.

4. Personnel Action(s). Closed pursuant exemptions (2) and (6).

The Board voted unanimously that agency business requires that this item be considered with less than the usual seven days notice, that it be closed to the public, and that no earlier announcement of this change was possible.

The previously announced items are:

1. Approval of Minutes of Previous Closed Meeting.

2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

3. Administrative Action under Part 745, NCUA's Rules and Regulations. Closed pursuant to exemption (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 96–32408 Filed 12–17–96; 2:52 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

United States Antarctic Program (USAP) Blue Ribbon Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: United States Antarctic (USAP) Program Blue Ribbon Panel (#1531)

Date and Time: 1997. January 4, 8 am-3 pm;

Place: NSF, International Antarctic Center, Christchurch, New Zealand

Type of Meeting: Open

Contact Person: Guy G. Guthridge, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1031

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Examine a full range of infrastructure, management, and scientific options for the United States Antarctic Program so that the Foundation will be able to maintain the high quality of the research and implement U.S. policy in Antarctica under realistic budget scenarios.

Agenda: Review notes from 29 Dec-3 Jan visit to USAP facilities and begin report drafting.

Dated: December 13, 1996

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–32172 Filed 12–18–96; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SKILL STANDARDS BOARD

Request for Comments on a Proposal To Establish a Voluntary National Skill Standards System

BACKGROUND: This notice requests public comment on the National Skill Standards Board's (NSSB) Proposal to Establish a Voluntary National Skill Standards System. The National Skill Standards Act of 1994 (Pub. L. 103–227, Title V, Section 504(a)) requires the Board to ''identify broad clusters of major occupations that involve 1 or more than 1 industry in the United States and that share characteristics that are appropriate for the development of common skill standards. * * * Prior to identifying broad clusters of major occupations * * * the National Board shall engage in extensive public consultation, including solicitation of public comment on proposed clusters through publication in the Federal Register.'' For the purposes of the National Skill Standards Act, the ''sectors of the economy'' described in

the proposal constitute the ''clusters'' required by the Act.

To solicit the views of all potential stakeholders in a voluntary national skill standards system, the NSSB has conducted six public hearings and a two-day National Skill Standards Forum on September 16 and 17, 1996. In addition, the NSSB or its staff have held numerous smaller meetings with stakeholder representatives. Stakeholder representatives have also made presentations at public meetings of the National Skill Standards Board.

DEADLINE FOR PUBLIC COMMENTS: Comments on the proposal must be postmarked no later than January 21, 1997. Comments must be in written form, and two copies must be provided, addressed to NSSB Proposal Coordinator, National Skill Standards Board, 1441 L St., NW, Suite 9000, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Marjorie Haas, National Skill Standards Board, 1441 L St., NW, Suite 9000, Washington, DC 20005, (202) 254-8628.

PROPOSAL

National Skill Standards Board Proposal To Establish a Voluntary National Skill Standards System

The 1994 National Skill Standards Act charged the National Skill Standards Board with ''stimulating the development and adoption of a voluntary national system of skill standards.'' Skill standards specify the knowledge and competence required to successfully perform in a given occupation or field. By enhancing the skills of the workforce, skill standards will increase the productivity, economic growth, and competitiveness of America and American businesses. Skill standards will benefit all stakeholders:

- Businesses can use skill standards to maximize efficiency in recruiting, hiring, deploying, training, and promoting employees. Firms can also use skill standards to pursue the goal of becoming a high performance work organization.
- Unions can use the standards to ensure that workers have a greater voice at the workplace, and benefit from enhanced career and job opportunities.
- Workers can use the standards to advance their careers, protect themselves against dislocation, and enhance their ability to reenter the workforce.
- Students and jobseekers can use the standards to understand and acquire the skills needed to attain high wage jobs and successful careers.
- Educators and trainers preparing people for work can use the standards to better meet business requirements, and to improve the school-to-work transition for individuals.

The Board itself will not set skill standards, but rather establish the guidelines used to endorse standards created by groups called ''voluntary partnerships'' in the 1994 law. The law requires that voluntary partnerships include employer, union, worker, community, and education and training representatives. The standards endorsed by the NSSB will cover workers in entry-level through first line supervisory positions.

Grouping Jobs for the Purpose of Creating Skill Standards

The law required the Board to ''identify broad clusters of major occupations'' for the purpose of setting standards, for several compelling reasons.

- First, it would be extraordinarily confusing and inefficient if employers, unions, workers, and educators had to navigate a ''system'' in which different standards covered the same industry or occupation.
- Second, it's unwise to set standards that are so narrow that workers lack the versatility to adapt to changes within their firms, or cannot perform alternative tasks when the need arises
- Third, one of the goals of skill standards is to facilitate the acquisition of skills not just for a single job or occupation, but for a career. For this purpose it is necessary to group jobs in such a way that individuals clearly understand what skills and knowledge they need to obtain better jobs within a broad field.

The law also requires that the voluntary partnerships establish standards within the occupational categories designated by the Board.

To meet these goals, the NSSB has divided the economy into 16 sectors. The sectors are designed to accurately reflect employment patterns, and to make sense to the employers, unions, workers, students, and educators who will use the system. The 16 sectors combine the industry categories that are most familiar to employers with the concept of an occupation, which is how most individuals think of their jobs.

Most of the sectors align closely with traditional industry categories used by trade associations and in national classification systems. Because some functions are common to many industries, 3 of the 16 sectors of the economy (business and administrative services; property management and building maintenance services; and research, development and technical services) cover multiple industries.

The 16 Economic Sectors

- Agricultural Production and Natural Resource Management
- Mining and Extraction Operations
- Construction Operations
- Manufacturing, Installation and Repair
- Energy and Utilities Operations
- Transportation Operations
- Communications
- Wholesale/Retail Sales
- Hospitality and Tourism Services
- Financial Services
- Health and Social Services
- Education and Training Services
- Public Administration, Legal, and Protective Services
- Business and Administrative Services
- Property Management and Building Maintenance Services
- Research, Development and Technical Services

The Board will begin its work with three of these sectors: Manufacturing, Installation and Repair; Wholesale/Retail Sales; and Business and Administrative Services (together these three sectors employ roughly half of all front-line workers). The NSSB will collaborate closely with the voluntary partnerships, learn from their experience in these three sectors, and use the lessons learned to improve the national skill standards system.

Skill Standards Framework

The following Skill Standards Framework will be used to create a system of voluntary national skill standards.

Skill Standards

The Skill Standards Framework for setting standards covers three types of knowledge and skill, ranging from the broad to the specific: core, concentrations, an specialities. By ''standard'' we mean a performance standard, that is, what one needs to know and be able to do and how well one needs to be able to do it.

- Core knowledge and skills are those common to, and essential for, the entire sector. For example, in manufacturing the core might include understanding what quality control is and possessing the ability to implement or apply various means of ensuring quality.
- Concentration knowledge and skills cover a broad area within the sector. Such knowledge and skills would be more targeted than the core level, but less specific than the specialty level described below. For example, in manufacturing this might cover a broad function, such as product assembly.
- Specialty knowledge and skills are the most detailed component in the skill

standards framework, targeting particular jobs or perhaps the needs of specialized firms. An example might be the knowledge and skills necessary for a specific occupation in steel production.

The standards for the core, the concentrations and the specialities will each be described in terms of the (1) academic skills and knowledge, (2) occupational skills and knowledge, and (3) employability skills and knowledge required to carry out the critical work functions for each of these three levels of the skills standards framework.

By *Critical work functions* we mean major chunks of the work that must be performed and which, taken together, constitute the critical or principal responsibilities of the individuals involved. For a chef, making sauces or planning the meals might be critical work functions; for a metal worker, the critical work functions might include statistical process control of product quality and setting up computer-controlled milling machines to perform specified operations. We do not mean by critical work functions a list of all the tasks required to perform the critical work functions.

Academic skills and knowledge mean the skills and knowledge associated with the academic disciplines, including but not limited to English language arts (speaking, reading and writing), mathematics, physics, biology, chemistry, etc.

Occupational skills and knowledge mean the technical skills and knowledge particular to a specified trade or occupation or group of trades or occupations. For example, a technician who repairs and maintains small engines must understand how engines work, how to diagnose problems and fix them, and how to find and order the necessary parts.

Employability skills and knowledge mean the skill and knowledge needed to function effectively in almost all kinds of high performance work environments, but which is of neither kind described above. We have in mind such things as the ability to work effectively with others, to understand systems and how they function, to take responsibility for one's own work, to solve problems as they arise, and other skills of the kind described in the U.S. Department of Labor's Secretary's Commission on Achieving Necessary Skills (SCANS) report.

In carrying out its statutory responsibility to establish economic sectors, the Board defines the area within which voluntary partnerships establish the core standards (which are common to the entire sector). But the voluntary partnership itself will designate concentration and specialty levels. A voluntary partnership might designate as few as zero, or as many as six, concentrations, but there will be no limit on the number of specialties. In deciding whether or not to endorse the work of the voluntary partnerships, the Board will use criteria described in a later section.

The framework might be pictured as a tree, with the core corresponding to the trunk, the concentrations corresponding to the branches, and the specialties corresponding to the leaves (see figure).

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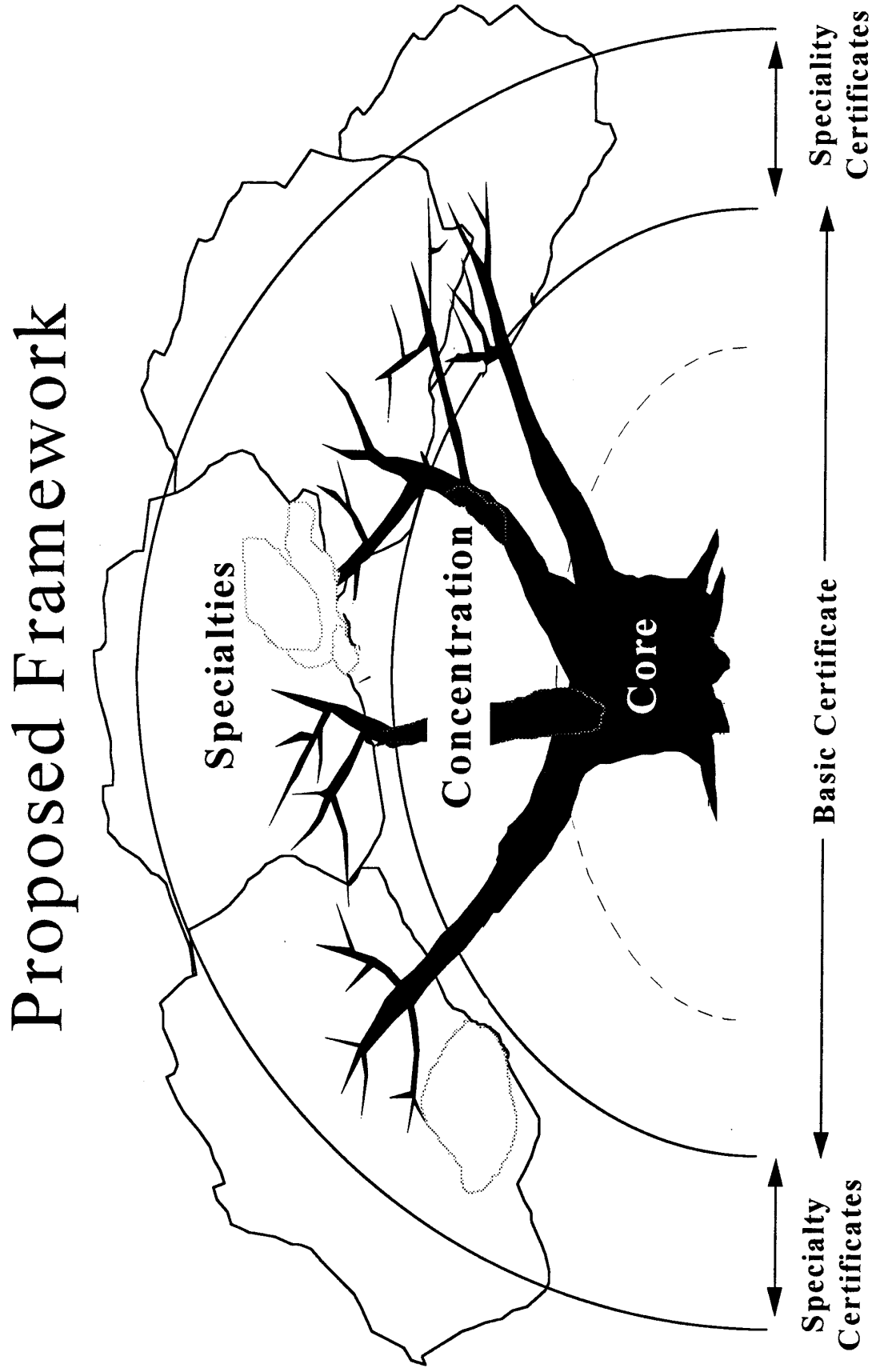

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Certificates Offered

Although there is the potential for three levels of knowledge and skills, there will be only two types of certificates: a basic certificate will encompass either the core alone (if there are no concentrations) or the core plus one concentration level, and a specialty certificate will cover the specialty level of knowledge and skills. A voluntary partnership could establish basic certificates for up to six concentrations.

The voluntary partnership will establish the standards for the basic certificate(s), which will then be endorsed by the NSSB if it meets the criteria described below. Outside groups (which might include trade associations, accredited educational institutions and training providers, and recognized third-party assessment groups) will recommend the standards for specialty certificates. These groups will present standards for prospective specialty certificates to the voluntary partnerships for review and endorsement, in the same manner that the voluntary partnerships will present standards for basic certificates to the NSSB for review and endorsement.

In their review of prospective specialty certificates, the voluntary partnerships will use the same criteria that the NSSB will use to review the work of the voluntary partnerships themselves (these criteria are described below). The voluntary partnerships also will ensure that the standards for prospective specialty certificates build directly on the standards for the basic certificate(s). Specialty certificates could cover overlapping—or even identical—jobs or functions. By allowing competition among those who develop standards at the detailed specialty level, the skill standards system can adapt to changes in technology, work organization, and customer preferences.

The Board will require each voluntary partnership to develop a plan to meet the needs of experienced workers. The plan will include in its skill standards system an opportunity to acquire and demonstrate through assessment the skill and knowledge required for the basic certificate.

Voluntary partnerships may begin the analytical process of developing standards at the broad core level(s), or by reviewing the narrower specialties if these already exist in the sector. However, the NSSB will only endorse the work of voluntary partnerships that submit basic certificates to the Board before the voluntary partnership endorses specialty certificates.

Criteria for the Skill Standards

In order to qualify for Board endorsement, the skill standards system recommended by the voluntary partnerships (or the outside groups in the case of the specialties) will have to meet the following criteria (in addition to other criteria specified in the National Skill Standards Act):

- Follow a common nomenclature identified by the Board;
- Describe in clear terms the critical work functions specific to the core, concentrations, and specialties;
- Describe the academic, employability, and occupational knowledge and skills necessary to perform the critical work functions for the core, concentrations, and specialties;
- Adhere to statutory requirements and Board policy on assessment;
- Be consistent with civil rights law;
- Meet or exceed the highest applicable standards used in the United States, including registered apprenticeship standards;
- Be benchmarked to the best international standards;
- Be forward looking; and
- Include a plan for the updating and continuous improvement of standards and certificates.

These criteria will pertain to all three levels of standards, as well as the two types of certificates. However, as noted earlier, the voluntary partnerships—not the NSSB—would review the specialty certificates for adherence to the NSSB's policies.

Some of these criteria are required by the National Skill Standards Act, including consistency with civil rights law; meeting or exceeding the highest applicable U.S. standards; and procedures to periodically revise and update the system.

Signed at Washington, DC this 13th day of December, 1996.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 96–32224 Filed 12–18–96; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Reports: Implementation of Section 208 Energy Reorganization Act of 1974; Final Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: This final policy statement presents the revised criteria the Commission will use in submitting the annual abnormal occurrence (AO) reports to Congress and the public in a timely manner as stated in Section 208 of the Energy Reorganization Act of 1974, as amended. The AO policy statement has been revised to provide more specific criteria for determining those incidents and events that the Commission considers significant from the standpoint of public health and safety for reporting to Congress, and to make the AO policy consistent with recent changes to NRC regulations. The revised AO criteria contain more discrete reporting thresholds making them easier to use and ensuring more consistent application of the intended AO reporting policy set forth by the Commission.

EFFECTIVE DATE: December 19, 1996.

ADDRESSES: The proposed policy statement published in the Federal Register (January 9, 1996; 61 FR 661), and the comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harriet Karagiannis, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–6377, internet: hxk@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93–438, 42 U.S.C. 5848), as amended, required the Commission to submit to Congress each quarter a report listing for that period any AOs at or associated with any facility which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or pursuant to this Act. In a letter to the Senate Subcommittee on Oversight of Government Management, dated October 1, 1993, the NRC recommended to Congress a change in the AO report publication frequency from quarterly to yearly. As a result, Senate 790, ''Reports Elimination Act,'' Public Law 104–66, was signed by President Clinton on December 21, 1995, changing the AO report to a yearly publication.

For the purposes of Section 208 of the Energy Reorganization Act of 1974, as amended, an AO is an unscheduled incident or event which the Commission has determined to be

significant from the standpoint of public health and safety. Each such report shall contain:

(1) The date and place of each occurrence;
(2) The nature and probable consequence of each occurrence;
(3) The cause or causes of each; and
(4) Any action taken to prevent recurrence.

The Commission also shall provide as wide dissemination to the public of the information specified in clauses (1) and (2) of this section as reasonably possible within 15 days of its receiving information of each AO and shall provide as wide dissemination to the public as reasonably possible the information specified in clauses (3) and (4) as soon as such information becomes available.

In July 1975, in the exercise of the authority conferred upon the Commission by Congress to determine which unscheduled incidents or events are significant from the standpoint of public health and safety and are reportable to Congress as AOs, the Commission developed interim criteria for evaluating licensee incidents or events. On the basis of these interim criteria and as required by Section 208 of the Energy Reorganization Act of 1974, as amended, the Commission began issuing quarterly reports to Congress on AOs. These reports,[1] ''Report to Congress on Abnormal Occurrences,'' have been issued in NUREG 75/090 and NUREG–0090–1 through 5 for the period from January 1975 through September 1976. On the basis of its experience in the preparation and issuance of AO reports, the Commission issued a general statement of policy that described the manner in which it would, as part of the routine conduct of its business, carry out its responsibilities under Section 208 of the Energy Reorganization Act of 1974, as amended, for identifying AOs and making the requisite information concerning each occurrence available to Congress and the public in a timely manner. This general statement of policy was published in the Federal Register on February 24, 1977 (42 FR 10950) and provided criteria and examples of types of events that the Commission would use in determining whether a particular event is reportable to Congress as an AO. The Commission has since refined this statement of policy on a number of occasions to reflect changes in regulation and policy. On the basis of these criteria, and as required by Section 208 of the Energy Reorganization Act of 1974, as amended, the Commission has issued quarterly reports to Congress on AOs since March 1977. These reports, ''Report to Congress on Abnormal Occurrences,'' have been issued in NUREG–0090–6 through 10 and NUREG–0090, Volumes 1 through 18.

Based on its experience in the preparation and issuance of AO reports, the Commission has decided that its responsibilities under Section 208 of the Energy Reorganization Act of 1974, as amended, can be carried out more appropriately if the existing AO criteria are revised to reflect changes in the Commission's policy and changes to the regulations.

The NRC staff proposed to the Commission the final revision of the AO criteria in 1995. The Commission approved publication in the Federal Register of the AO criteria (January 9, 1996, 61 FR 661), for a 90-day public comment period. The NRC staff evaluated public comments and developed the final AO policy statement. The Commission is issuing this final general statement of policy that describes the manner in which the Commission will, as part of the routine conduct of its business, carry out its responsibilities under Section 208 of the Energy Reorganization Act of 1974, as amended, for identifying AOs and making the requisite information concerning each occurrence available to Congress and the public in a timely manner. Included in this policy statement are criteria that the Commission will use in determining whether a particular event is a reportable AO within the meaning of Section 208 of the Energy Reorganization Act of 1974, as amended. It is expected that as additional experience is gained, changes in the criteria may be required.

Abnormal Occurrence Reporting

The general statement of policy has been developed to comply with the legislative intent of Section 208 of the Energy Reorganization Act of 1974, as amended, to keep Congress and the public informed of unscheduled incidents or events which the Commission considers significant from the standpoint of public health and safety. The policy reflects a range of health and safety concerns and is applicable to incidents and events involving a single occupational worker as well as those having an overall impact on the general public.

The policy statement contains criteria that include the reporting thresholds for determining those incidents and events that are reportable by NRC for the purposes of Section 208 of the Energy Reorganization Act of 1974, as amended. The Commission has established the reporting thresholds at a level that will ensure that all events that should be considered for reporting to Congress will be identified. At the same time, the thresholds are generally above the normal level of reporting to NRC to exclude those events that involve some variance from regulatory limits, but are not significant from the standpoint of public health and safety.

Licensee Reports

This final general statement of policy will not change the reporting requirements imposed on NRC licensees by Commission regulations, license conditions, or technical specifications (TS). NRC licensees will continue to submit required reports on a wide spectrum of events, including events such as instrument malfunctions and deviations from normal operating procedures that are not significant from the standpoint of the public health and safety, but do provide data useful to the Commission in monitoring operating trends of licensed facilities and in comparing the actual performance of these facilities with the potential performance for which the facilities were designed and/or licensed. Information pertaining to all events reported to the NRC will continue to be made available and placed in the public document rooms for public perusal. In addition, the NRC publishes annual reports on events (NUREG–1272 series). Information can also be obtained by writing to the U.S. Nuclear Regulatory Commission, Public Document Room, 2120 L Street, NW. (Lower Level) Washington, DC 20555–0001. In addition, the Commission will continue to issue news announcements on events that seem to be newsworthy whether or not they are reported as AOs.

II. Summary of Public Comments and the NRC's Response

The NRC decided to revise the AO criteria to reflect changes in NRC regulations and policy. Before arriving to the revised AO criteria, the NRC staff evaluated several AO approaches and consulted with experts in the reactor and nuclear material areas, including the Advisory Committee on the Medical Uses of Isotopes (ACMUI), and held workshops with Agreement States to obtain their comments. This effort was to ensure that only events that have the potential for significant health and

[1] Copies of NUREGS may be purchased from the Superintendent of Documents, U.S. Government Printing Office, (P.O. BOX 37082), Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. 20037

safety consequences are reported to Congress. After an evaluation several of the early written comments provided by the States were incorporated in SECY–94–275, ''Revised Abnormal Occurrence Criteria'' that provided the Commission a draft of the revised AO criteria as requested in an SRM of May 19, 1994. A Federal Register Notice (FRN) (January 9, 1996; 61 FR 661) on ''Abnormal Occurrence Reports: Implementation of Section 208 Energy Reorganization Act of 1974; Proposed Policy Statement'' was published for a 90-day public comment period, that included the proposed AO criteria. No additional comments were received from Agreement States or ACMUI on the proposed AO policy statement as published in the FRN.

The NRC received five letters of comment on the revised AO policy statement published in the FRN from the following organizations: Virginia Power; the Clean Water Fund of North Carolina; the American College of Nuclear Physicians, California Chapter; the Government Relations Office of the American College of Nuclear Physicians/Society of Nuclear Medicine; and the Nuclear Energy Institute. These comments may be examined at the U.S. Nuclear Regulatory Commission, Public Document Room, 2120 L Street, NW. (Lower Level) Washington, DC 20555–0001. Each letter contained more than one comment, and these comments are categorized into three groups: (1) modify and/or discontinue the AO reporting process; (2) revise the dose threshold for reporting AO events to Congress on unintended exposures to an adult and a minor or an embryo/fetus; and (3) reevaluate the AO criteria applicable to medical licensees. Public comments on the proposed policy statement and NRC's response are presented below followed by a section on the summary of Agreement State comments and NRC's response.

A. Modify and/or Discontinue the AO Reporting Process

Comment: Because people who receive the quarterly AO reports do not even read them, and the few that do believe the reports have little true value, the NRC should request legislation to discontinue the AO reporting process.

Response: The value of the AO report to Congress was recently examined in the legislation reducing the publication frequency of the report from quarterly to annually as recommended by the NRC in a letter of October 1, 1993, to the Senate Subcommittee on Oversight of Government Management. As a result, Senate 790, ''Reports Elimination and Sunset Act,'' Public Law 104–66, was signed by the President on December 21, 1995, changing the AO report to a yearly publication. Because the report was not eliminated in the ''Federal Reports Elimination and Sunset Act,'' the NRC concludes that the AO report remains valuable to Congress.

Comment: Discontinue the appendix of the AO report on ''Other Events of Interest'' because (a) there is no legal justification for the development of this appendix; (b) the NRC does not have a fair mechanism for ascertaining public perception; and (c) events may be perceived as AOs and give the appearance of safety significance when no such finding was assigned to them.

Response: Based on NRC's experience, some events have attracted wide Congressional and public interest. Examples are events that resulted in petitions to the Commission by public interest groups, events that may have resulted in power reductions or shutdowns for safety-related reasons, and events involving widespread media coverage. Some of these events have also resulted in significant regulatory effort, such as an NRC Incident Investigation Team response. Although these events are not required by law to be listed in AO reports, the Commission, as a matter of discretionary policy, directed the NRC staff to include them to keep Congress and the public fully informed.

The NRC has not developed specific criteria for the appendix of the AO report on ''Other Events of Interest.'' This allows discretion on the part of the NRC in the selection of the events to ensure exclusion of unimportant events. To avoid confusion, the ''Other Events of Interest'' listing will have a full description of the basis for inclusion of each event in the report and a clear indication that these events are not AOs.

B. Revise the Dose Threshold for Reporting AO Events to Congress on Unintended Exposures to an Adult and a Minor or an Embryo/Fetus

Comment: a. Because the revised unintended AO dose threshold values for the whole body and any individual organ or tissue except the lens of the eye are generally consistent with the ''Planned special exposures'' (PSEs) of 10 CFR Part 20 (five times the annual regulatory limits), for consistency the dose threshold for the lens of the eye should be revised to 750 millisievert (mSv) (75 rem), instead of the proposed AO threshold of 500 mSv (50 rem).

b. 10 CFR 20.1201(a)(1)(ii) specifies the annual occupational limit for the sum of deep-dose equivalent and the committed-dose equivalent to any individual organ or tissue except the lens of the eye. Thus, the bone marrow and the gonads should be in the category of any individual organ or tissue except the lens of the eye, to be consistent with 10 CFR Part 20, using the revised AO dose threshold for other organs of 2500 mSv (250 rem).

Response: The NRC did not intend to be consistent with the dose thresholds as listed in 10 CFR Part 20, ''Planned special exposures,'' which impose doses five times the annual regulatory limits during the individual's lifetime. Based on NRC's experience, unlike a PSE, an AO unintended exposure event is based on radiation consequences from that single event and not the radiation consequences over the individual's lifetime. The NRC agrees, however, that the AO dose threshold to the lens of the eye, the bone marrow, and the gonads should be increased. To be consistent with the AO threshold used for medical misadministrations, the threshold to the lens of the eye is raised to 1 Sv (100 rem) instead of the proposed 500 mSv (50 rem). The 1 Sv (100 rem) dose threshold is still below the dose for known deterministic effects in the lens of the eye such as cataracts. [NCRP Commentary No.7]

Also, the dose threshold for the bone marrow and gonads will be revised to 1 Sv (100 rem) instead of the 2500 mSv (250 rem) recommended in the comment. The revised dose is still at the threshold for temporary bone marrow depression but below the dose threshold for permanent sterility from a single dose to the gonads or serious consequences due to bone marrow depression. For AO purposes, the bone marrow and the gonads are separated from the rest of the organs (unlike 10 CFR Part 20), due to the deterministic effects to these organs at the revised AO dose thresholds.

Comment: The annual total effective dose equivalent (TEDE) for AO reporting for members of the public should be reduced to less than 4.50 mSv (0.450 rem) instead of the proposed TEDE of 250 mSv (25 rem).

Response: According to the National Council on Radiation Protection and Measurements, the estimated average effective dose equivalent rate to a person in the United States from natural radiation and man-made sources is approximately 360 mrem per year.[2] This dose value is about the same as the commenter's suggested dose threshold for reporting AOs involving members of the public to Congress. Reporting to

[2] Ionizing Radiation Exposure of the Population of the United States, NCRP Report No. 93, National Council on Radiation Protection and Measurements, September 1987.

Congress each exposure of a member of the public due to NRC-licensed activities at the level of the average dose received annually from natural and man-made sources of radiation in the United States is inappropriate. The NRC selected the revised AO dose on the basis of the potential for radiation adverse health effects to an individual, independent of the individual's status as a radiation worker in an occupational environment or as a member of the public. This threshold is below the level of dose for which the potential for morbidity is considered significant for individuals with an increased organ and tissue sensitivity to radiation.

Comment: The annual TEDE to any minor or embryo/fetus should be reduced to less than 3.50 mSv (0.350 rem) instead of the proposed TEDE of 50 mSv (5 rem).

Response: The NRC understands the sensitivity of an unintended exposure to a minor or an embryo/fetus and recognizes that the radiation health effects are age dependent because organs and tissues in minors, fetuses, and embryos are more radiosensitive than a typical adult. Therefore, a dose threshold of 50 mSv (5 rem) was established for any minor or embryo/fetus, which is lower than the adult AO threshold of 250 mSv (25 rem).

In addition, the commenter's suggested threshold of 3.50 mSv (0.350 rem) is at or below the average dose that a person (including minors) in the United States receives annually from natural radiation and man-made sources as stated in the response to an earlier comment. The threshold established by NRC is below the minimum threshold doses for permanent deterministic effects in selective organs for a minor or an embryo/fetus.

Comment: The criteria related to a nursing child, fetus, or embryo as a result of an exposure to a nursing mother or pregnant woman should be deleted from the criteria until the proposed rule addressing these exposures is resolved through the advice of the Advisory Committee on Medical Uses of Isotopes (ACMUI) and a separate public comment period.

Response: The NRC recognizes the lack of a specific regulation to address exposures as a result of an unintended administration of radioactive material to a patient that is pregnant or nursing. Based on NRC's experience, some of these events have the potential for significant health and safety consequences to a minor or an embryo/fetus and should be reported to Congress.

C. Reevaluate the AO Criteria Applicable to Medical Licensees

Comment: The proposed medical AO criteria are worse than the current criteria because they will continue to inappropriately designate non-significant events as AOs.

Response: The revised medical AO criteria should result in fewer AOs than have been reported previously to Congress. These revisions were made in response to NRC staff recognition of the previous low dose thresholds that resulted in reporting events that did not have significant radiation consequences. In addition, the new criteria also respond to previous public criticism and to changes in other NRC regulations relating to radiation protection.

Comment: The AO criteria applicable to medical licensees should be excluded from the AO policy statement because the NRC does not have sufficient competence in medicine and pharmacy to determine public safety significance of medical events.

Response: Because the NRC regulates byproduct material including the medical use of this material, criteria for medical events have been developed and must be included in the AO policy statement to comply with Section 208 of the Energy Reorganization Act of 1974, as amended. The revised criteria are based on widely accepted standards for radiation protection and were reviewed by the ACMUI. Therefore, the NRC believes that events exceeding the criteria are sufficiently important to inform Congress and the public.

Comment: Congress may obtain information on significant medical events from the FDA instead of the NRC.

Response: Section 208 of the Energy Reorganization Act of 1974, as amended, requires reporting to Congress licensee events that the NRC determines to be significant from the standpoint of public health and safety. An enactment of law would be necessary to change this requirement and appoint another agency such as the FDA to undertake the AO responsibility.

Comment: ACMUI should review the medical AO criteria.

Response: The revised criteria were presented to ACMUI and comments received were incorporated before publishing them in the Federal Register (January 9, 1996; 61 FR 661). Only minor changes have been made to the criteria since ACMUI's review.

Comment: Add a third condition to the medical AO criteria to read: ''and (c) is a radiation exposure that has resulted in unintended permanent functional damage to an organ or a physiological system as determined by a physician'' to eliminate reporting events to Congress that do not have any medical significance.

Response: The NRC believes that the dose thresholds of the revised criteria have sufficient margin included to limit the reporting of insignificant events. In addition, the NRC considers it important to report events that have the *potential* to result in adverse public health and safety. The inclusion of the recommended criterion would preclude reporting of these events. Therefore, the NRC does not intend to include the proposed language.

Comment: Insignificant medical events have been included in the past AO reports to Congress.

Response: The NRC understands the commenters' concerns with the implementation of the medical AO policy before the revision. Because of the low dose thresholds established in the previous criteria, medical events that have not had the potential to result in significant radiation consequences to patients were determined to be AOs and were reported to Congress. As a result, the Commission is revising the AO criteria dose thresholds for medical events to exclude insignificant events.

III. Summary of Agreement State Comments and NRC's Response

Seven Agreement States submitted comments to the NRC before development of the Commission paper, SECY–94–275, ''Revised Abnormal Occurrence Criteria.'' These States were Arkansas, Georgia, Kentucky, New York, Texas, Tennessee, and Washington. After evaluating the comments, several were incorporated in the Commission paper. A summary of the Agreement State comments applicable to the AO criteria listed in the proposed policy statement as published in the FRN, and NRC's response are presented below:

A. Modify, Reevaluate and/or Discontinue Items of the AO Reporting Process

Comment: Four States commented on the specific guidelines of a prior revision of the proposed appendix of the AO report on ''Other Events of Interest'' or wanted ''Other Events of Interest'' deleted.

Response: It should be noted that the section on ''Other Events of Interest'' contained in this final AO policy statement has been revised since the time that Agreement States provided comments, and therefore comments on the specific guidelines of the section do not apply. In reference to the elimination of ''Other Events of Interest,'' see NRC's response to the

second public comment under Category A.

Comment: One State suggested that the AO criteria should apply to exposures from non-Atomic Energy Act (AEA) material.

Response: Section 208 of the Energy Reorganization Act of 1974, as amended, provides that the Commission shall submit to Congress each year a report listing for that period any AOs at or associated with any facility which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or pursuant to this Act. Therefore, the AO criteria will not apply to events involving the use of non-AEA material since this material is not regulated by the NRC.

Comment: One State commented that the AO policy statement imposes additional requirements on licensees.

Response: The AO policy statement will not change the reporting requirements imposed on NRC licensees by Commission regulations, license conditions, or technical specifications. The NRC licensees will continue to submit required event reports. The AO criteria will only be used by the NRC during internal review and evaluation for reporting significant events to Congress.

Comment: One State commented that criterion I.A.3 is arbitrary.

Response: The NRC disagrees. Because individual sensitivity to radiation varies, the basis of criterion I.A.3 is to capture those events that have resulted in unintended, permanent functional damage to an organ or a physiological system at thresholds below those listed in the AO criteria. However, the NRC believes that there will be very few of these events. In most cases permanent organ and physiological damage will occur only at doses above the proposed AO thresholds.

Comment: One State commented that criterion I.D.3 is arbitrary.

Response: The NRC disagrees. Based on NRC's experience, certain reported events, although they did not result in significant radiation consequences, had the potential for adverse impacts on public health and safety because of a serious failure of the licensees's radiation protection program and lack of management control and oversight and should be reported to Congress.

Comment: Two States commented that ''wrong patient'' should be considered in the misadministration AO criteria instead of the general AO criteria applicable to all licensees.

Response: In the SRM of May 19, 1994, on SECY–93–259, the NRC staff was directed by the Commission to establish a single-dose threshold value to identify doses to an occupational worker, a member of the public, and a wrong individual (wrong patient),[3] which are significant from a health and safety standpoint. The basis was that, for the purpose of reporting to Congress, the potential for physical harm to an individual resulting from the unintended exposure is the same whether the exposure was received in an occupational setting, as a patient who was not intended to receive a prescribed dose, or as a member of the public.

Comment: Three States suggested providing credentials for a ''physician'' as listed in criterion I.A.3.

Response: For general purposes the term ''physician'' is defined in 10 CFR Part 35.2, where ''Physician means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine.''

Although the NRC regulations do not specify the detailed credentials of a ''physician'' for incident evaluation purposes, the NRC staff has developed an NRC Inspection Manual Chapter (IMC 1360) ''Use of Physicians and Scientific Consultants in the Medical Consultant Program'' that provides guidance on the use of NRC consultants in case of an incident. In addition, the NRC staff has developed NRC Management Directive 8.10, ''NRC Medical Event Assessment Program'' to ensure timely and comprehensive review of medical events. IMC 1360 and Management Directive 8.10 are available in the NRC public document room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

B. Be Consistent With the Regulations and Reconsider the Criterion for a Minor, or an Embryo/Fetus

Comment: One State commented that the AO criteria should be consistent with 10 CFR Part 20.

Response: To the extent practical, the NRC has been consistent with 10 CFR Part 20, and at the same time has established thresholds to include only events that have the potential to result in deterministic effects due to unintended exposures.

Comment: Two States expressed concern about developing an AO dose threshold for events regarding a minor, or an embryo/fetus since the NRC has not yet developed a regulation establishing a dose threshold for reporting these events to the NRC.

Response: See response to fourth public comment under Category B.

IV. The Commission Policy—General Statement of Policy on Implementation of Section 208 of the Energy Reorganization Act of 1974, as Amended

1. *Applicability.* Implementation of Section 208 of the Energy Reorganization Act of 1974, as amended, Abnormal Occurrence Reports, involves the conduct of Commission business and does not impose requirements on licensees. Reports will cover certain unscheduled incidents or events related to the manufacture, construction, or operation of a facility or conduct of an activity subject to the requirements of Parts 20, 30 through 36, 39, 40, 50, 61, 70, 71, or 72 of Chapter I, Title 10, Code of Federal Regulations (10 CFR).

Through an exchange of information, Agreement States provide information to the NRC on incidents and events involving applicable nuclear materials that have occurred in their States. Those events reported by Agreement States that reach the threshold for reporting as an AO are also published in the ''Report to Congress on Abnormal Occurrences.''

2. *Definition of terms.* As used in this policy statement:

(a) An ''abnormal occurrence'' means an unscheduled incident or event at a facility or associated with an activity that is licensed or otherwise regulated, pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended, that the Commission determines to be significant from the standpoint of public health and safety; and

(b) an ''unintended radiation exposure'' includes any occupational exposure, exposure to the general public, or exposure as a result of a medical misadministration (as defined in § 35.2) involving the wrong individual that exceeds the reporting values established in the regulations.

All other reported medical misadministrations will be considered for reporting as an AO under the criteria for medical licensees. In addition, unintended radiation exposures include any exposure to a nursing child, fetus, or embryo as a result of an exposure (other than an occupational exposure to an undeclared pregnant woman) to a nursing mother or pregnant woman above specified values.

3. *Abnormal occurrence general statement of policy.* The Commission

[3] In the Federal Register notice dated September 20, 1995 (60 FR 48623), ''10 CFR Parts 20 and 35, Medical Administration of Radiation and Radioactive Material,'' the term ''Wrong patient'' was replaced by the term ''Wrong individual.''

will apply the following policy in determining whether an incident or event at a facility or involving an activity that is licensed or otherwise regulated by the Commission is an AO within the purview of Section 208 of the Energy Reorganization Act of 1974, as amended.

An incident or event will be considered an AO if it involves a major reduction in the degree of protection of the public health or safety. This type of incident or event would have a moderate or more severe impact on the public health or safety and could include, but need not be limited to the following:

(1) Moderate exposure to, or release of, radioactive material licensed by or otherwise regulated by the Commission;

(2) Major degradation of essential safety-related equipment; or

(3) Major deficiencies in design, construction, use of, or management controls for licensed facilities or material.

Criteria by type of event used to determine which incidents or events will be considered for reporting as AOs are set out in appendix A of this policy statement.

4. *Commission dissemination of potential AO and AO information.*

(a) The Commission will provide as wide a dissemination of information to the public as reasonably possible. Information on potential AOs (events that may meet the AO criteria) will be sent to the NRC Public Document Room and all local public document rooms as soon as possible after the staff determines that the incident is a potential AO. A Federal Register notice will be issued on each AO report with copies distributed to the NRC Public Document Room and all local public document rooms. When additional information is anticipated, the notice will state that the information can be obtained at the NRC Public Document Room and in all local public document rooms.

(b) Each year, the Commission will submit a report to Congress listing for that period any AOs at or associated with any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended. This report will contain the date, place, nature, and probable consequence of each AO, the cause or causes of each AO, and any action taken to prevent recurrence.

Appendix A—Abnormal Occurrence Criteria

Criteria by types of events used to determine which incidents or events will be considered for reporting as AOs are as follows:

I. For All Licensees

A. Human Exposure to Radiation From Licensed Material

1. Any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in an annual total effective dose equivalent (TEDE) of 250 millisievert (mSv) (25 rem) or more; or an annual sum of the deep dose equivalent (external dose) and committed dose equivalent (intake of radioactive material) to any individual organ or tissue other than the lens of the eye, bone marrow and the gonads, of 2500 mSv (250 rem) or more; or an annual dose equivalent to the lens of the eye, of 1 Sv (100 rem) or more; or an annual sum of the deep dose equivalent and committed dose equivalent to the bone marrow, and the gonads, of 1 Sv (100 rem) or more; or an annual shallow-dose equivalent to the skin or extremities of 2500 mSv (250 rem) or more.

2. Any unintended radiation exposure to any minor (an individual less than 18 years of age) resulting in an annual TEDE of 50 mSv (5 rem) or more, or to an embryo/fetus resulting in a dose equivalent of 50 mSv (5 rem) or more.

3. Any radiation exposure that has resulted in unintended permanent functional damage to an organ or a physiological system as determined by a physician.

B. Discharge or Dispersal of Radioactive Material From Its Intended Place of Confinement

1. The release of radioactive material to an unrestricted area in concentrations which, if averaged over a period of 24 hours, exceed 5000 times the values specified in Table 2 of appendix B to 10 CFR Part 20, unless the licensee has demonstrated compliance with § 20.1301 using § 20.1302 (b) (1) or 20.1302 (b) (2) (ii).

2. Radiation levels in excess of the design values for a package, or the loss of confinement of radioactive material resulting in one or more of the following: (a) A radiation dose rate of 10 mSv (1 rem) per hour or more at 1 meter (3.28 feet) from the accessible external surface of a package containing radioactive material; (b) a radiation dose rate of 50 mSv (5 rem) per hour or more on the accessible external surface of a package containing radioactive material and that meet the requirements for ''exclusive use'' as defined in 10 CFR 71.47; or (c) release of radioactive material from a package in amounts greater than the regulatory limits in 10 CFR 71.51(a)(2).

C. Theft, Diversion, or Loss of Licensed Material, or Sabotage or Security Breach [4]

1. Any lost, stolen, or abandoned sources that exceed 0.01 times the A_1 values, as listed in 10 CFR Part 71, appendix A, Table A–1, for special form (sealed/nondispersible) sources, or the smaller of the A_2 or 0.01 times the A_1 values, as listed in Table A–1, for normal form (unsealed/dispersible) sources or for sources for which the form is not known. Excluded from reporting under this criterion are those events involving sources that are lost, stolen, or abandoned under the following conditions: sources abandoned in accordance with the requirements of 10 CFR 39.77(c); sealed sources contained in labeled, rugged source housings; recovered sources with sufficient indication that doses in excess of the reporting thresholds specified in A0 criteria I.A.1 and I.A.2 did not occur during the time the source was missing; and unrecoverable sources lost under such conditions that doses in excess of the reporting thresholds specified in A0 criteria I.A.1 and I.A.2 were not known to have occurred.

2. A substantiated case of actual or attempted theft or diversion of licensed material or sabotage of a facility.

3. Any substantiated loss of special nuclear material or any substantiated inventory discrepancy that is judged to be significant relative to normally expected performance, and that is judged to be caused by theft or diversion or by substantial breakdown of the accountability system.

4. Any substantial breakdown of physical security or material control (i.e., access control containment or accountability systems) that significantly weakened the protection against theft, diversion, or sabotage.

D. Other Events (i.e., Those concerning Design, Analysis, Construction, Testing, Operation, Use, or Disposal of Licensed Facilities or Regulated Materials)

1. An accidental criticality [10 CFR 70.52(a)].

2. A major deficiency in design, construction, control, or operation

[4] Information pertaining to certain incidents may be either classified or under consideration for classification because of national security implications. Classified information will be withheld when formally reporting these incidents in accordance with Section 208 of the Energy Reorganization Act of 1974, as amended. Any classified details regarding these incidents would be available to the Congress, upon request, under appropriate security arrangements.

having significant safety implications requiring immediate remedial action.

3. A serious deficiency in management or procedural controls in major areas.

4. Series of events (where individual events are not of major importance), recurring incidents, and incidents with implications for similar facilities (generic incidents) that create a major safety concern.

II. For Commercial Nuclear Power Plant Licensees

A. Malfunction of Facility, Structures, or Equipment

1. Exceeding a safety limit of license technical specification (TS) [§ 50.36(c)].

2. Serious degradation of fuel integrity, primary coolant pressure boundary, or primary containment boundary.

3. Loss of plant capability to perform essential safety functions so that a release of radioactive materials, which could result in exceeding the dose limits of 10 CFR Part 100 or 5 times the dose limits of 10 CFR Part 50, appendix A, General Design Criterion (GDC) 19, could occur from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod system).

B. Design or Safety Analysis Deficiency, Personnel Error, or Procedural or Administrative Inadequacy

1. Discovery of a major condition not specifically considered in the safety analysis report (SAR) or TS that requires immediate remedial action.

2. Personnel error or procedural deficiencies that result in loss of plant capability to perform essential safety functions so that a release of radioactive materials, which could result in exceeding the dose limits of 10 CFR Part 100 or 5 times the dose limits of 10 CFR Part 50, appendix A, GDC 19, could occur from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod system).

III. For Fuel Cycle Licensees

1. A required plant shutdown as a result of violating a license condition or other safety limit.

2. A major condition not specifically considered in the license that requires immediate remedial action.

3. An event that seriously compromises the ability of a confinement system to perform its designated function.

IV. For Medical Licensees

A medical misadministration that:

(a) Results in a dose that is (1) equal to or greater than 1 gray (Gy) (100 rads) to a major portion of the bone marrow, to the lens of the eye, or to the gonads, or (2) equal to or greater than 10 Gy (1000 rads) to any other organ; and

(b) Represents either (1) a dose or dosage that is at least 50 percent greater than that prescribed in a written directive or (2) a prescribed dose or dosage that (i) is the wrong radiopharmaceutical,[5] or (ii) is delivered by the wrong route of administration, or (iii) is delivered to the wrong treatment site, or (iv) is delivered by the wrong treatment mode, or (v) is from a leaking source(s).

V. Guidelines for ''Other Events of Interest''

The Commission may determine that events other than AOs may be of interest to Congress and the public and be included in an appendix to the AO report as ''Other Events of Interest.'' Guidelines for events to be included in the AO report for this purpose are items that may possibly be perceived by the public to be of health or safety significance. Such items would not involve a major reduction in the level of protection provided for public health or safety; therefore, they would not be reported as abnormal occurrences. An example is an event where upon final evaluation by an NRC Incident Investigation Team, or an Agreement State equivalent response, a determination is made that the event does not meet the criteria for an abnormal occurrence.

Dated at Rockville, Maryland, this 13th day of December, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–32210 Filed 12–18–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–146]

GPU Nuclear Corporation and Saxton Nuclear Experimental Corporation, (Saxton Nuclear Experimental Facility); Notice of Receipt and Availability for Comment of Post Shutdown Decommissioning Activities Report and Notice of Public Meeting

The Nuclear Regulatory Commission (NRC) is in receipt of and is making available for public inspection and comment the Post-Shutdown Decommissioning Activities Report (PSDAR) for the Saxton Nuclear Experimental Corporation (SNEC) Facility (SNEF) located near the Borough of Saxton, in Liberty Township, Bedford County, Pennsylvania. A public meeting on the SNEF PSDAR will be held in the Saxton Fire Hall located at 8th and North Street, Saxton, Pennsylvania 16678 on January 28, 1997, at 7:00 p.m.

Reactor operations at SNEF were terminated in May 1972. The reactor is defueled, with reactor fuel removed from the site, and the reactor cooling system is drained. SNEC submitted the SNEF Decommissioning Plan (DP) dated February 16, 1996, to the NRC in accordance with NRC regulations in effect at that time. The licensee submitted the SNEF Decommissioning Environmental Report on April 17, 1996. On July 18 and November 8, 1996, the licensee submitted additional information on the DP and environmental report in response to a request for additional information from the staff. When proposed amendments to the NRC's decommissioning regulations were published in the Federal Register on July 29, 1996 (61 FR 39278), the licensee requested that the review of the DP and related documents be suspended. When the amended regulations became effective on August 28, 1996, the submitted DP, as supplemented, became the SNEF PSDAR pursuant to 10 CFR 50.82 as amended. By letter dated September 30, 1996, the licensee discussed the effect of the amended regulations on its plans for decommissioning the SNEF.

The public meeting, required by 10 CFR 50.82(a)(4)(ii), as amended, is informational and will include a presentation by the NRC staff on the decommissioning regulatory process. The licensee will give a presentation on planned decommissioning activities. A question and answer period will follow the presentations. Because of restrictions in the license for the SNEF, a license amendment is also needed before decommissioning activities can begin. This amendment to the SNEF license will be the subject of a separate notice for public comment pursuant to 10 CFR 50.91.

The SNEF PSDAR is available for public inspection at the SNEF local public document room, located at the Saxton Community Library, Front Street, Saxton, Pennsylvania 16678, and at the Commission Public Document Room, 2120 L Street, N.W., Washington, D.C. 20037. The SNEF PSDAR is filed as the SNEF DP dated February 16, 1996, the SNEF Decommissioning Environmental Report dated April 17,

[5] The wrong radiopharmaceutical as used in the AO criterion for medical misadministrations refers to any radiopharmaceutical other than the one listed in the written directive or in the clinical procedures manual.

1996, and the licensee's response, dated July 18 and November 8, 1996, to a request for additional information from the staff dated June 6, 1996.

Comments regarding the SNEC PSDAR may be submitted in writing and addressed to Mr. Alexander Adams, Jr., Senior Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, M.S. O–11–B–20, U.S. NRC, Washington, DC, 20555–0001, telephone (301) 415–1127.

Dated at Rockville, Maryland, this 13th day of December 1996.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management Office of Nuclear Reactor Regulation.

[FR Doc. 96–32212 Filed 12–18–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–206]

Southern California Edison Company, et al., (San Onofre Nuclear Generating Station, Unit No. 1); Notice of Receipt and Availability for Comment of Post Shutdown Decommissioning Activities Report

The U.S. Nuclear Regulatory Commission (NRC) is in receipt of and is making available for public inspection and comment the Post-Shutdown Decommissioning Activities Report (PSDAR) for the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1) located 4 miles southeast of San Clemente, California. A public meeting on the SONGS 1 PSDAR will be the subject of a future notice.

SONGS 1 was permanently shut down on November 30, 1992. Southern California Edison Company (SCE) plans to maintain SONGS 1 in safe storage until San Onofre Nuclear Generating Station, Units 2 and 3, permanently ceases operating, at which time the licensee plans to decommission all three units. In accordance with NRC regulations in effect at the time, SCE submitted a proper decommissioning plan (DP) for SONGS 1 to the NRC in November 1994. Amendments to the NRC's decommissioning regulations were published in the Federal Register on July 29, 1996 (61 FR 39278). When the amended regulations became effective on August 28, 1996, the submitted SONGS 1 DP became the SONGS 1 PSDAR pursuant to 10 CFR 50.82 as amended.

The SONGS 1 PSDAR is available for public inspection at the SONGS 1 local public document room, temporarily located at the Science Library, University of California, Irvine, California 92713 and at the Commission Public Document Room, 2120 L Street, NW, Washington, DC 20037. The SONGS 1 PSDAR is filed as the SONGS 1 proposed DP dated November 3, 1994.

Comments regarding the SONGS 1 PSDAR may be submitted in writing and addressed to Mr. Michael Webb, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, M.S. O–11–B–20, U.S. NRC, Washington, DC, 20555–0001, telephone (301) 415–1347.

Dated at Rockville, Maryland, this 13th day of December 1996.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–32211 Filed 12–18–96; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Commets are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Application and Claim for RUIA Benefits Unpaid at Death; OMB 3220–0055

Under Section 2(g) of the Railroad Unemployment Insurance Act (RUIA), benefits under that Act that accrued but were not paid because of the death of an employee shall be paid to the same individual(s) to whom benefits are payable under Section 6(a)(1) of the Railroad Retirement Act. The provisions relating to the payment of such benefits are prescribed in 20 CFR 325.5 and 20 CFR 335.5.

The RRB provides Form UI–63 for use in applying for the accrued sickness or unemployment benefits unpaid at the death of the employee and for securing the information needed by the RRB to identify the proper payee. Completion is voluntary. One response is requested of each respondent.

The RRB proposes minor editorial changes the UI–63 to incorporate language required by the Paperwork Reduction Act of 1995. The completion time for the UI–63 is estimated at 7 minutes. The RRB estimates that approximately 200 responses are received annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–32165 Filed 12–18–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22394; 811–1505]

ProvidentMutual Growth Fund, Inc.; Notice of Application

December 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: ProvidentMutual Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 January 6, 1997, 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, N.W., Washington, D.C. 20549. Applicant, Christiana Executive Campus, 220 Continental Drive, Newark, Delaware 19713.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, 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. Applicant is an open-end, diversified management investment company organized as a Delaware corporation. According to SEC records, on June 7, 1967, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–8A pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective on October 11, 1967, and applicant commenced its public offering of shares soon thereafter.

2. At a meeting held on August 14, 1992, applicant's board of directors unanimously approved an agreement and plan of reorganization (the ''Reorganization'') between Sentinel Group Funds, Inc. (the ''Company'') on behalf of Sentinel Common Stock Fund (''Sentinel Common'') and applicant. Pursuant to the agreement, Sentinel Common would acquire substantially all of applicant's assets in exchange for shares of common stock of Sentinel Common. In approving the Reorganization, the directors identified certain potential benefits likely to result from the Reorganization, including, (a) a significantly larger organization that also will provide access to an expanded, stronger marketing organization, (b) a combined organization that should realize certain portfolio management efficiencies if there is a more consistent inflow of new money, (c) a growing organization that will be able to realize economies of scale with regard to many of its expenses, and (d) an organization that will be better able to keep up with new shareholder service features and technologies as they become available.

3. On or about January 11, 1993, proxy materials soliciting shareholder approval of the Reorganization were mailed to applicant's shareholders of record as of December 21, 1992. In addition to solicitation by mail, certain directors, officers, and agents of applicant solicited shareholder proxies by telephone. At a special meeting held on February 24, 1993, applicant's shareholders approved the Reorganization.

4. As of February 26, 1993, applicant had 19,166,440.905 shares of common stock outstanding, $1.00 par value. The net asset value per share of applicant was $6.49 and the aggregate net asset value was $124,735,144.84.

5. On March 1, 1993, applicant transferred assets valued at $124,435,144.84 and received in exchange 19,166,440,905 shares of common stock of Sentinel Aggressive. Such shares were distributed to applicant's shareholders on that date in proportion to each shareholder's interest in the assets transferred.

6. Applicant and the Company each bore their allocable share of the appropriate expenses of the Reorganization, up to a total of $200,000 for all of the ProvidentMutual Funds. Expenses of all the Provident Mutual Funds, including applicant, in excess of $200,000 were borne by Provident Mutual Life Insurance Company of Philadelphia and/or National Life Insurance Company. These expenses included preparation of the Reorganization documents and the registration statement, filing fees, and legal and audit fees.

7. Applicant has no security holders and no remaining assets, debts, or liabilities as of the date of the application.

8. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. Applicant was dissolved under Delaware law on December 3, 1993.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–32142 Filed 12–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22393; 811–596]

ProvidentMutual Investment Shares, Inc.; Notice of Application

December 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: ProvidentMutual Investment Shares, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 January 6, 1997, 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, N.W., Washington, D.C. 20549. Applicant, Christiana Executive Campus, 220 Continental Drive, Newark, Delaware 19713.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, 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. Applicant is an open-end, diversified management investment

company organized as a Delaware corporation. According to SEC records, on May 21, 1951, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933.

2. At a meeting held on August 14, 1992, applicant's board of directors unanimously approved an agreement and plan of reorganization (the ''Reorganization'') between Sentinel Group Funds, Inc. (the ''Company'') on behalf of Sentinel Common Stock Fund (''Sentinel Common'') and applicant. Pursuant to the agreement, Sentinel Common would acquire substantially all of applicant's assets in exchange for shares of common stock of Sentinel Common. In approving the Reorganization, the directors identified certain potential benefits likely to result from the Reorganization, including, (a) a significantly larger organization that also will provide access to an expanded, stronger marketing organization, (b) a combined organization that should realize certain portfolio management efficiencies if there is a more consistent inflow of new money, (c) a growing organization that will be able to realize economies of scale with regard to many of its expenses, and (d) an organization that will be better able to keep up with new shareholder service features and technologies as they become available.

3. On or about January 11, 1993, proxy materials soliciting shareholder approval of the Reorganization were mailed to applicant's shareholders of record as of December 21, 1992. In addition to solicitation by mail, certain directors, officers, and agents of applicant solicited shareholder proxies by telephone. At a special meeting held on February 19, 1993, applicant's shareholders approved the Reorganization.

4. As of February 26, 1993, applicant had 18,940,349.667 shares of common stock outstanding, $1.00 par value. The net asset value per share of applicant was $7.91 and the aggregate net asset value was $149,874,317.09.

5. On March 1, 1993, applicant transferred assets valued at $149, 874,317.09 and received in exchange 5,258,622.881 shares of common stock of Sentinel Common. Such shares were distributed to applicant's shareholders on that date in proportion to each shareholder's interest in the assets transferred.

6. Applicant and the Company each bore their allocable share of the appropriate expenses of the Reorganization, up to a total of $200,000 for all of the ProvidentMutual Funds. Expenses of all the ProvidentMutual Funds, including applicant, in excess of $200,000 were borne by Provident Mutual Life Insurance Company of Philadelphia and/or National Life Insurance Company. These expenses included preparation of the Reorganization documents and the registration statement, filing fees, and legal and audit fees.

7. Applicant has no securityholders and no remaining assets, debts, or liabilities as of the date of the application.

8. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. Applicant was dissolved under the laws of the State of Delaware on December 3, 1993.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–32141 Filed 12–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22398; 811–3042]

ProvidentMutual Moneyfund, Inc.; Notice of Application

December 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: ProvidentMutual Moneyfund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 January 6, 1997, 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, N.W., Washington, D.C. 20549. Applicant, Christiana Executive Campus, 220 Continental Drive, Newark, Delaware 19713.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, 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. Applicant is an open-end, diversified management investment company organized as a Delaware corporation. According to SEC records, on April 9, 1980, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–8A pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective on September 8, 1980, and applicant commenced its public offering of shares soon thereafter.

2. At a meeting held on August 14, 1992, applicant's board of directors unanimously approved an agreement and plan of reorganization (the ''Reorganization'') between Sentinel Group Funds, Inc. (the ''Company'') on behalf of Sentinel Common Stock Fund (''Sentinel Common'') and applicant. Pursuant to the agreement, Sentinel Common would acquire substantially all of applicant's assets in exchange for shares of common stock of Sentinel Common. In approving the Reorganization, the directors identified certain potential benefits likely to result from the Reorganization, including, (a) a significantly larger organization that also will provide access to an expanded, stronger marketing organization, (b) a combined organization that should realize certain portfolio management efficiencies if there is a more consistent inflow of new money, (c) a growing organization that will be able to realize economies of scale with regard to many of its expenses, and (d) an organization that will be better able to keep up with new shareholder service features and technologies as they become available.

3. On or about January 11, 1993, proxy materials soliciting shareholder approval of the Reorganization were mailed to applicant's shareholders of record as of December 21, 1992. In

addition to solicitation by mail, certain directors, officers, and agents of applicant solicited shareholder proxies by telephone. At a special meeting held on February 19, 1993, applicant's shareholders approved the Reorganization.

4. As of February 26, 1993, applicant had 26,972,891.030 shares of common stock outstanding, $1.00 par value. The net asset value per share of applicant was $1.00 and the aggregate net asset value was $26,972,891.88.

5. On March 1, 1993, applicant transferred assets valued at $26,972,891.88 and received in exchange 26,972,891.03 shares of common stock of Sentinel Treasury. Such shares were distributed to applicant's shareholders on that date in proportion to each shareholder's interest in the assets transferred.

6. Applicant and the Company each bore their allocable share of the appropriate expenses of the Reorganization, up to a total of $200,000 for all of the ProvidentMutual Funds. Expenses of all the ProvidentMutual Funds, including applicant, in excess of $200,000 were borne by Provident Mutual Life Insurance Company of Philadelphia and/or National Life Insurance Company. These expenses included preparation of the Reorganization documents and the registration statement filing fees, and legal and audit fees.

7. Applicant has no securityholders and no remaining assets, debts, or liabilities as of the date of the application.

8. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. Applicant was dissolved under Delaware law on December 3, 1993.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–32147 Filed 12–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22395; 811–2926]

ProvidentMutual Tax-Free Bond Fund; Notice of Application

December 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Provident Mutual Tax-Free Bond Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 January 6, 1997, 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, N.W., Washington, D.C. 20549. Applicant, Christiana Executive Campus, 220 Continental Drive, Newark, Delaware 19713.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, 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. Applicant is an open-end, diversified management investment company incorporated under the laws of the State of Delaware. According to SEC records, on May 29, 1979, applicant registered under section 8(a) of the Act and filed 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 October 1, 1979, and applicant commenced its public offering of shares soon thereafter.

2. At a meeting held on August 14, 1992, applicant's board of directors unanimously approved an agreement and plan of reorganization (the ''Reorganization'') between Sentinel Group Funds, Inc. (the ''Company'') on behalf of Sentinel Common Stock Fund (''Sentinel Common'') and applicant. Pursuant to the agreement, Sentinel Common would acquire substantially all of applicant's assets in exchange for shares of common stock of Sentinel Common. In approving the Reorganization, the directors identified certain potential benefits likely to result from the Reorganization, including, (a) a significantly larger organization that also will provide access to an expanded, stronger marketing organization, (b) a combined organization that should realize certain portfolio management efficiencies if there is a more consistent inflow of new money, (c) a growing organization that will be able to realize economies of scale with regard to many of its expenses, and (d) an organization that will be better able to keep up with new shareholder service features and technologies as they become available.

3. On or about January 11, 1993, proxy materials soliciting shareholder approval of the Reorganization were mailed to applicant's shareholders of record as of December 21, 1992. In addition to solicitation by mail, certain directors, officers, and agents of applicant solicited shareholder proxies by telephone. At a special meeting held on February 19, 1993, applicant's sharesholders approved the Reorganization.

4. As of February 26, 1993, applicant had 3,538,081.032 shares of common stock outstanding, $1.00 par value. The net asset value per share of applicant was $9.69 and the aggregate net asset value was $34,296,226.57.

5. On March 1, 1993, applicant transferred assets valued at $34,296,226.57 and received in exchange 2,502,482.131 shares of common stock of Sentinel Tax-Free. Such shares were distributed to applicant's shareholders on that date in proportion to each shareholder's interest in the assets transferred.

6. Applicant and the Company each bore their allocable share of the appropriate expenses of the Reorganization, up to a total of $200,000 for all of the ProvidentMutual Funds. Expenses of all the ProvidentMutual Funds, including applicant, in excess of $200,000 were borne by ProvidentMutual Life Insurance Company of Philadelphia and/or National Life Insurance Company. These expenses included preparation of the Reorganization documents and the registration statement, filing fees, and legal and audit fees.

7. Applicant has no securityholders and no remaining assets, debts, or liabilities as of the date of the application.

Applicant is not a party to any litigation or administrative proceeding.

Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. Applicant was dissolved under Delaware law on December 3, 1993.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–32144 Filed 12–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22392; 811–135]

ProvidentMutual Total Return Trust; Notice of Application

December 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: ProvidentMutual Total Return Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 January 6, 1997, 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, N.W., Washington, D.C. 20549. Applicant, Christiana Executive Campus, 220 Continental Drive, Newark, Delaware 19713.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, 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. Applicant is an open-end, diversified management investment company organized as a Massachusetts business trust. According to SEC records, on November 1, 1940, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933.

2. At a meeting held on August 14, 1992, applicant's board of directors unanimously approved an agreement and plan of reorganization (the ''Reorganization'') between Sentinel Group Funds, Inc. (the ''Company'') on behalf of Sentinel Common Stock Fund (''Sentinel Common'') and applicant. Pursuant to the agreement, Sentinel Common would acquire substantially all of applicant's assets in exchange for shares of common stock of Sentinel Common. In approving the Reorganization, the directors identified certain potential benefits likely to result from the Reorganization, including, (a) a significantly larger organization that also will provide access to an expanded, stronger marketing organization, (b) a combined organization that should realize certain portfolio management efficiencies if there is a more consistent inflow of new money, (c) a growing organization that will be able to realize economies of scale with regard to many of its expenses, and (d) an organization that will be better able to keep up with new shareholder service features and technologies as they become available.

3. On or about January 11, 1993, proxy materials soliciting shareholder approval of the Reorganization were mailed to applicant's shareholders of record as of December 21, 1992. In addition to solicitation by mail, certain directors, officers, and agents of applicant solicited shareholder proxies by telephone. At a special meeting held on February 19, 1993, applicant's shareholders approved the Reorganization.

4. As of February 26, 1993 applicant had 5,813,141.962 shares of common stock outstanding, $1.00 par value. The net asset value per share of applicant was $13.01 and the aggregate net asset value was $75,634,531.86.

5. On March 1, 1993, applicant transferred assets valued at $75,634,531.86 and received in exchange 5,092,860.399 shares of common stock of Sentinel Balanced. Such shares were distributed to applicant's shareholders on that date in proportion to each shareholder's interest in the assets transferred.

6. Applicant and the Company each bore their allocable share of the appropriate expenses of the Reorganization, up to a total of $200,000 for all of the ProvidentMutual Funds. Expenses of all the ProvidentMutual Funds, including applicant, in excess of $200,000 were borne by ProvidentMutual Life Insurance Company of Philadelphia and/or National Life Insurance Company. These expenses included preparation of the Reorganization documents and the registration statement, filing fees, and legal and audit fees.

7. Applicant has no securityholders and no remaining assets, debts, or liabilities as of the date of the application.

8. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. Applicant intends to file appropriate documentation for dissolution in Massachusetts, as required by Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–32148 Filed 12–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22397; 811–4738]

ProvidentMutual U.S. Government For Income, Inc.; Notice of Application

December 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: ProvidentMutual U.S. Government For Income, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 January 6, 1997, 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, N.W., Washington, D.C. 20549. Applicant, Christiana Executive Campus, 220 Continental Drive, Newark, Delaware 19713.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, 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 Representation

1. Applicant is an open-end, diversified management investment company organized as a Maryland corporation. According to SEC records, on July 3, 1986, applicant registered under section 8(a) of the Act and filed 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 September 26, 1986, and applicant commenced its public offering of shares soon thereafter.

2. At a meeting held on August 14, 1992, applicant's board of directors unanimously approved an agreement and plan of reorganization (the ''Reorganization'') between Sentinel Group Funds, (the ''Company'') on behalf of Sentinel Common Stock Fund (''Sentinel Common'') and applicant. Pursuant to the agreement, Sentinel Common would acquire substantially all of applicant's assets in exchange for shares of common stock of Sentinel Common. In approving the Reorganization, the directors identified certain potential benefits likely to result from the Reorganization, including (a) a significantly larger organization that also will provide access to an expanded, stronger marketing organization, (b) a combined organization that should realize certain portfolio management efficiencies if there is a more consistent inflow of new money, (c) a growing organization that will be able to realize economies of scale with regard to many of its expenses, and (d) an organization that will be better able to keep up with new shareholder service features and technologies as they become available.

3. On or about January 11, 1993, proxy materials soliciting shareholder approval of the Reorganization were mailed to applicant's shareholders of record as of December 21, 1992. In addition to solicitation by mail, certain directors, officers, and agents of applicant solicited shareholder proxies by telephone. At a special meeting held on February 19, 1993, applicant's shareholders approved the Reorganization.

4. As of February 26, 1993, applicant had 5,023,847.099 shares of common stock outstanding, $0.001 par value. The net asset value per share of applicant was $12.07 and the aggregate net asset value was $60,626,914.47.

5. On March 1, 1993, applicant transferred assets valued at $60,626,914.47 and received in exchange 5,808,221.694 shares of common stock of Sentinel Government. Such shares were distributed to applicant's shareholders on that date in proportion to each shareholder's interest in the assets transferred.

6. Applicant and the Company each bore their allocable share of the appropriate expenses of the Reorganization, up to a total of $200,000 for all of the ProvidentMutual Funds. Expenses of all the ProvidentMutual Funds, including applicant, in excess of $200,000 were borne by Provident Mutual Life Insurance Company of Philadelphia and/or National Life Insurance Company. These expenses included preparation of the Reorganization documents and the registration statement, filing fees, and legal and audit fees.

7. Applicant has no securityholders and no remaining assets, debts, or liabilities as of the date of the application.

8. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. Applicant forfeited its corporate status under Maryland law on October 3, 1994.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–32145 Filed 12–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22396; 811-2685]

ProvidentMutual Value Shares, Inc.; Notice of Application

December 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: ProvidentMutual Value Shares, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 January 6, 1997, 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, Christiana Executive Campus, 220 Continental Drive, Newark, Delaware 19713.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, 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. Applicant is an open-end, diversified management investment company organized as a Maryland corporation. According to SEC records, on September 29, 1976, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–8A pursuant to section 8(b) of the Act and the Securities Act of 1933.

The registration statement was declared effective on December 10, 1976, and applicant commenced its public offering of shares soon thereafter.

2. At a meeting held on August 14, 1992, applicant's board of directors unanimously approved an agreement and plan of reorganization (the ''Reorganization'') between Sentinel Group Funds, Inc. (the ''Company'') on behalf of Sentinel Common Stock Fund (''Sentinel Common'') and applicant. Pursuant to the agreement, Sentinel Common would acquire substantially all of applicant's assets in exchange for shares of common stock of Sentinel Common. In approving the Reorganization, the directors identified certain potential benefits likely to result from the Reorganization, including, (a) a significantly larger organization that also will provide access to an expanded, stronger marketing organization, (b) a combined organization that should realize certain portfolio management efficiencies if there is a more consistent inflow of new money, (c) a growing organization that will be able to realize economies of scale with regard to many of its expenses, and (d) an organization that will be better able to keep up with new shareholder service features and technologies as they become available.

3. On or about January 11, 1993, proxy materials soliciting shareholder approval of the Reorganization were mailed to applicant's shareholders of record as of December 21, 1992. In addition to solicitation by mail, certain directors, officers, and agents of applicant solicited shareholder proxies by telephone. At a special meeting held on February 19, 1993, applicant's shareholders approved the Reorganization.

4. As of February 26, 1993, applicant had 1,494,522.184 shares of common stock outstanding, $1.00 par value. The net asset value per share of applicant was $9.84 and the aggregate net asset value was $14,710,020.05.

5. On March 1 1993, applicant transferred assets valued at $14,710,020.05 and received in exchange 516,184.566 shares of common stock of Sentinel Common. Such shares were distributed to applicant's shareholders on that date in proportion to each shareholder's interest in the assets transferred.

6. Applicant and the Company each bore their allocable share of the appropriate expenses of the Reorganization, up to a total of $200,000 for all of the ProvidentMutual Funds. Expenses of all the ProvidentMutual Funds, including applicant, in excess of $200,000 were borne by Provident Mutual Life Insurance Company of Philadelphia and/or National Life Insurance Company. These expenses included preparation of the Reorganization documents and the registration statement, filing fees, and legal and audit fees.

7. Applicant has no securityholders and no remaining assets, debts, or liabilities as of the date of the application.

8. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. Applicant forfeited its corporate status under Maryland law on October 3, 1994.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–32143 Filed 12–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22399; 811–4259]

ProvidentMutual World Fund, Inc.; Notice of Application

December 12, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: ProvidentMutual World Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 January 6, 1997, 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, N.W., Washington, D.C. 20549. Applicant, Christiana Executive Campus, 220 Continental Drive, Newark, Delaware 19713.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, 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. Applicant is an open-end, diversified management investment company organized as a Delaware corporation. According to SEC records, on March 19, 1985, applicant registered under section 8(a) of the Act and filed 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 May 31, 1985, and applicant commenced its public offering of shares soon thereafter.

2. At a meeting held on August 14, 1992, applicant's board of directors unanimously approved an agreement and plan of reorganization (the ''Reorganization'') between Sentinel Group Funds, Inc. (the ''Company'') on behalf of Sentinel Common Stock Fund (''Sentinel Common'') and applicant. Pursuant to the agreement, Sentinel Common would acquire substantially all of applicant's assets in exchange for shares of common stock of Sentinel Common. In approving the Reorganization, the directors identified certain potential benefits likely to result from the Reorganization, including, (a) a significantly larger organization that also will provide access to an expanded, stronger marketing organization, (b) a combined organization that should realize certain portfolio management efficiencies if there is a more consistent inflow of new money, (c) a growing organization that will be able to realize economies of scale with regard to many of its expenses, and (d) an organization that will be better able to keep up with new shareholder service features and technologies as they become available.

3. On or about January 11, 1993, proxy materials soliciting shareholder approval of the Reorganization were mailed to applicant's shareholders of record as of December 21, 1992. In addition to solicitation by mail, certain directors, officers, and agents of applicant solicited shareholder proxies by telephone. At a special meeting held

on February 19, 1993, applicant's shareholders approved the Reorganization.

4. As of February 26, 1993, applicant had 571,544.854 shares of common stock outstanding, $1.00 par value. The net asset value per share of applicant was $9.56 and the aggregate net asset value was $5,463,396.82.

5. On March 1, 1993, applicant transferred assets valued at $5,463,396.82 and received in exchange 571,544.854 shares of common stock of Sentinel World. Such shares were distributed to applicant's shareholders on the date in proportion to each shareholder's interest in the assets transferred.

6. Applicant and the Company each bore their allocable share of the appropriate expenses of the Reorganization, up to a total of $200,000 for all of the ProvidentMutual Funds. Expenses of all the ProvidentMutual Funds, including applicant, in excess of $200,000 were borne by Provident Mutual Life Insurance Company of Philadelphia and/or National Life Insurance Company. These expenses included preparation of the Reorganization documents and the registration statement, filing fees, and legal and audit fees.

7. Applicant has no securityholders and no remaining assets, debts, or liabilities as of the date of the application.

8. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. Applicant was dissolved under Delaware law on December 3, 1993.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–32146 Filed 12–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38046; File No. SR–CSE–96–05; Amendment No. 1]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by The Cincinnati Stock Exchange Relating to Day Trading Margin Requirements

December 13, 1966.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 5, 1996, the Cincinnati Stock Exchange (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 1 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

On August 15, 1996, the CSE submitted to the Commission a proposing to implement Rule 6.2, Day Trading Margin.[1] Amendment No. 1 supplements proposed Rule 6.2 to add specific required maintenance margin for margin accounts. In addition, Amendment No. 1 amends Rule 6.1(b) to make clear that the Exchange is only permitted to grant extensions of time under Regulation T of the Board of Governors of the Federal Reserve System[2] for those firms for which the Exchange is the designated examining authority.[3] The text of the proposed rule change, as revised by Amendment No. 1, is set forth below [new text is italicized; deleted text is bracketed]:

Rule 6.1. (a) No change.

(b) In Instances where the Exchange has been designated the appropriate examining authority, t[T]he Exchange is authorized to grant extensions of time under sections 220.4(c)(3)(ii) and 220.8(d) of Regulation T adopted by the Board of Governors of the Federal Reserve System as well as under Commission Rule 15c3–3(n).

(c) The Margin which must be maintained in margin accounts of customers shall be as follows:

(1) 25% of the current market value of all securities ''long'' in the account; plus

(2) $2.50 per share or 100% of the current market value, whichever amount is greater, of each stock ''short'' in the account selling at less than $5.00 per share; plus

(3) $5.00 per share or 30% of the current market value, whichever amount is greater, of each stock ''short'' in the account selling at $5.00 per share or above; plus

(4) 5% of the principal amount of 30% or the current market value, whichever amount is greater, of each bond ''short'' in the account.

Rule 6.2. Day Trading Margin

(a) The term ''day trading'' means the purchasing and selling of the same security on the same day. A ''day trader'' is any customer whose trading shows a pattern of day trading.

(b) Whenever day trading occurs in a customer's margin account the margin to be maintained shall be the margin on the ''long'' or ''short'' transaction, whichever occurred first, as required pursuant to Exchange Rule 6.1(c). When day trading occurs in the account of a day trader, the margin to be maintained shall be the margin on the ''long'' or ''short'' transaction, which ever occurred first, as required for initial margin by Regulation T of the Board of Governors of the Federal Reserve System, or as required pursuant to Exchange Rule 6.1(c), whichever amount is greater.

(c) No member shall permit a public customer to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No member shall permit a public customer to make a practice of selling securities which them in a cash account which are to be received against payment from another broker-dealer where such securities were purchased and are not yet paid for.

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 CSE 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 CSE 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

The purpose of the proposed rule change is to enhance the financial protections and therefore the integrity of the Exchange's markets by ensuring that customers maintain adequate margin reserves in their accounts. The proposed rule change requires day traders to maintain margins sufficient to cover their intraday ''long'' or ''short'' positions, depending upon which occurred first, for a particular day.

In amendment No. 1 the Exchange sets forth the specific maintenance requirement for margin accounts. In addition, Amendment No. 1 revises the

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[1] *See* Securities Exchange Act Release No. 37653 (September 6, 1996), 61 FR 48185 (September 12, 1996).

[2] *See* 12 CFR 220.4(c)(3)(ii); and 12 CFR 220.8(d).

[3] The Commission notes that presently there are no firms for which the CSE is the designated examining authority.

Exchange's margin rules to conform with more recent amendments to Regulation T of the Board of Governors of the Federal Reserve System.

Because the proposed rule change will enhance the financial protections and the integrity of the Exchange's markets, the Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act in general and with Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

One written comment was received with respect to the original proposed rule change. The Exchange believes that Amendment No. 1 adequately addresses the concerns expressed in that written comment.

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, 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 will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–96–05 and should be submitted by January 9, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–32233 Filed 12–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38047; File No. SR–NYSE–96–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Exchange Rule 80B (''Trading Halts Due to Extraordinary Market Volatility'')

December 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change relating to certain market-wide circuit breaker provisions as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 Exchange proposes to amend its Rule 80B (Trading Halts Due to Extraordinary Market Volatility—''circuit breakers'') to increase the trigger levels for its circuit breakers. The existing circuit breakers would be triggered if the Dow Jones Industrial Average (''DJIA'')[3] declines by 250 and 400 points, respectively, from its previous day's close. A 250 points decline would result in a one-half hour trading halt, while a 400 points decline would cause trading to halt for an additional hour. The Exchange proposes establishing new thresholds of 350 and 550 points decline in the DJIA before the respective one-half hour and one hour circuit breakers are triggered. The Exchange seeks to effect these changes on a one-year pilot basis.

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. 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

Rule 80B (Trading Halts Due to Extraordinary Market Volatility) is the Exchange's codification of the several recommendations for ''circuit breakers'' which were made in the wake of the market break of 1987. The current rule, which is due to expire April 30, 1997, provides that if the DJIA falls 250 or more points below its previous trading day's closing value, trading in all stocks on the Exchange shall halt for one-half hour. Further, the rule provides for an additional one hour trading halt if on that same day the DJIA declines by 400 points or more below its previous trading day's closing value.[4] Although the Rule was amended in July 1996 to shorten the time periods for market-wide trading halts, the levels of the circuit breakers themselves have not been adjusted since the rule was first adopted.[5] The Exchange believes that, at this time, it is appropriate to amend Rule 80B to raise the circuit breakers from 250 points to 350 points and from 400 points to 550 points.

Rule 80B was approved by the Commission in October 1988 as a one-year pilot and has been extended on a year to year basis since then, except for

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Dow Jones Industrial Average'' is a service mark of Dow Jones & Company, Inc.

[4] *See* Securities Exchange Act Release No. 37890 (Oct. 29, 1996) 61 FR 56983.

[5] *See supra* note 4. *See also,* Securities Exchange Act Release Nos. 36563 (December 7, 1995), 60 FR 64084; 36414 (Oct. 25, 1995) 60 FR 55630; 26440 (January 10, 1989) 54 FR 1830; 26368 (December 16, 1988), 53 FR 51942; and 26198 (October 19, 1988), 53 FR 41637.

in October 1996, when it was extended for only six months until April 30, 1997.[6] When circuit breakers were first adopted, the DJIA was about 2100 points. A 250 point drop would have represented approximately a 12% decline, and a 400 point drop would have represented roughly a 19% decline in the average. Rule 80B has never been invoked, as the DJIA has not declined by 250 points or more since the rule was adopted. The largest decline occurred on March 8, 1996, when the DJIA fell intra-day 217 points below its previous day's closing value. Today, with the DJIA at about 6500 points, a 250 or 400 point drop would represent a much smaller percentage decline in the average (3.8% and 6.2%, respectively).

The proposed circuit breakers of 350 and 550 points would represent around a 5.4% and 8.5% decline in the DJIA, which the Exchange considers to be significant market declines, and thus represent appropriate levels at which to halt trading. The proposed trigger values take into account the rise in market values since the Rule was first adopted, which also recognizing the fact that the original trigger values have never been reached. The Exchange believes that the new trigger values in Rule 80B should be stated in absolute numbers, rather than in terms of percentages of the DJIA, in order to facilitate understanding by all market participants as to exactly when the circuit breakers will be utilized.

The Exchange seeks to effect these changes on a one-year pilot basis. The adoption of amendments to Exchange Rule 80B would be contingent upon the adoption of amended rules or procedures substantively identical to Rule 80B by:

(1) all United States stock exchanges and the National Association of Securities Dealers with respect to the trading stocks, stock options and stock index options; and,

(2) all United States futures exchanges with respect to the trading of stock index futures and options on such futures.

The Exchange believes that an all-market trading halt requirement at appropriate levels will promote stability and investor confidence during a period of significant stress by providing market participants with a reasonable opportunity to become aware of and respond to significant price movements, thereby facilitating in an orderly manner the maintenance of an equilibrium between buying and selling interest.

[6] *See supra* note 4.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and in general, to protect investors and the public interest. The Exchange believes that amending Rule 80B on a one-year pilot basis is consistent with these objectives in that revised trigger levels take into consideration the rise in market values since the rule was first adopted, while recognizing that the original trigger levels have not been reached since they were adopted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 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 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 in 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 the File No. SR–NYSE–96–38 and should be submitted by January 9, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–32235 Filed 12–18–96; 8:45 am]

BILLING CODE 8010–01–M

(Release No. 34–38045; File No. SR–PSE–96–44)

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Amendments to Its Constitution

December 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 15, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, and on December 3, 1996 filed Amendment No. 1[3] to the proposed rule change as described in Items I and II 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 PSE proposes to amend Article VI, Sections 2, 3, and 4 of its Constitution.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. §78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Letter from Rosemary A. MacGuinness, Senior Counsel, PSE to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated, December 3, 1966 (''Amendment No. 1). Amendment No. 1 withdraws the filing except for the section amending Article VI, Application and Election to Membership, Sections 2, 3, and 4.

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 III 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*

This rule filing is being submitted in order to ensure that the constitutional provisions relating to members of the Exchange are in conformity with the recent changes made to Rule 1, Membership, of the PSE Rules. PSE Rule 1 was reorganized and amended so that its provisions would more accurately and logically reflect the Exchange's requirements and procedures.[4] The following is a description of the specific changes.

Article VI—Application and Election to Membership

Sec. 2. Application for Membership and Election. The language in this section pertaining to posting of applicant members has been deleted. The Exchange's current posting procedures are now contained in PSE Rule 1.6(b). Section 2 currently provides that an applicant's name shall be posted with all Exchange members upon approval. However, PSE Rule 1.6(b) accurately reflects the Exchange's procedures by providing that, within a reasonable period of time following receipt of an applicant's application for membership, the applicant's name shall be distributed to all members and shall be posted on the bulletin boards of the Exchange for ten (10) days. Thus, the Exchange's procedure is to post and distribute the applicant's name prior to approval and not upon approval.

Sec. 3. Effective Date. Section 3 has been entirely deleted. PSE Rule 1.6 now addresses the procedures for application for membership.

Sec. 4. Sign Constitution. Section 4, which is renumbered Section 3 as a result of the deletion of the existing Section 3, is amended to reflect that members pledge to abide by the PSE Constitution and the Rules of the Exchange by signing the Membership Application; they do not actually sign the Constitution.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement of Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The comments received with respect to the proposed rule change addressed aspects of the filing that were withdrawn by Amendment No. 1.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. 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–PSE–96–44 and should be submitted by January 9, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the PSE's proposed rule change Amending Article VI, Sections 2, 3, and 4 of its Constitution 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) of the Act.[6] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposal is consistent with the Section 6(b)(7)[8] requirements that the rules of an exchange provide for a fair procedure for the denial of membership to any person seeking membership therein. For the reasons set forth below, the Commission believes that the PSE's proposal furthers the objectives of Section 6(b)(5) of the Act.

On September 26, 1996, the Commission approved a reorganization and revision of the Exchange's rules regarding the membership process.[9] At that time, it was recognized by both the Commission and the Exchange that some of the new rules would be in conflict with Article VI of the PSE's Constitution.

Specifically, revised PSE Rule 1.8(a) conflicts with Article VI, Section 3 of the PSE Constitution. PSE Rule 1.8(a) states that approved applications must be activated by the applicant within six months, while the PSE Constitution provides that admission to membership automatically becomes effective after an approved application has been posted for 10 days. In addition, revised PSE Rule 1.6(b) conflicts with Article VI, Section 2, of the PSE Constitution. PSE Rule 1.6(b) requires the name of all applicants to be posted within a reasonable time after receipt and before being approved. This rule is in direct conflict with the PSE Constitution which requires that the name of the applicant be posted after it has been approved.

It was anticipated when PSE Rule 1 was amended that the Exchange would submit a filing to rectify these conflicts.[10]

The Commission finds good cause to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof

[4] *See* Securities Exchange Act Release No. 37736 (Sept. 26, 1996), 61 FR 51734 (Oct. 3, 1996) (approving File No. SR-PSE-96-07).

[5] 15 U.S.C. § 78f(b)(5).

[6] 15 U.S.C. § 78f(b).

[7] 15 U.S.C. § 78f(b)(5).

[8] 15 U.S.C. § 78f(b)(7).

[9] *See* Exchange Act Release No. 37736 *supra* note 4.

[10] *Id.* at notes 23–24.

in the Federal Register. All of the changes contained in the filing are to rectify conflicts between the PSE Constitution and rules, or otherwise do not raise any significant regulatory concerns. Therefore, the Commission believes that granting accelerated approval to the proposed rule change, as amended, is appropriate and consistent with Section 6 and Section 19(b)(2) of the Act.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change SR–PSE–96–44, as amended is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–32234 Filed 12–18–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2487]

Advisory Committee Charter Renewal

The Department of State has determined that it is in the public interest to renew the Charter of the Secretary of State's Advisory Committee on Private International Law (ACPIL) for a two-year period. This determination has been made in accordance with the requirements of Public Law 92–463.

The role of the Advisory Committee is to reflect views of interested persons or organizations in the United States in the deliberations and work of international organizations seeking to unify or harmonize private law between different national legal systems. Topics under consideration vary depending upon the work of various organizations, and currently include enforcement of foreign judgments, commercial finance, bank guarantees and letters of credit, intercounty adoption, protection of minors and support order enforcement, international commercial arbitration, electronic commerce, protection of illegally removed cultural property, international service of process and other matters. The Advisory Committee has maintained an active process of involvement of private sector interests, national and State legal associations, and members of the public.

Public participation is welcomed in the work of the Committee. For further information or request for background documents, contact Miss Rosalia T. Gonzales, Office of the Legal Adviser, Suite 203 South Building, 2430 E Street, NW, Washington, DC 20037–2800; phone: (202) 776–8420; fax (202) 776–8482 or by e-mail at pildb@his.com.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law, U.S. Department of State.

[FR Doc. 96–32217 Filed 12–18–96; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice 2489]

Advisory Committee on Religious Freedom Abroad Established

The Secretary of State is establishing the Advisory Committee on Religious Freedom Abroad, as part of this Administration's work to promote human rights issues. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

Religious and ethnic conflict have often been at the forefront of human rights dilemmas in recent years. The creation of an Advisory Committee on Religious Freedom Abroad represents this Administration's commitment to address these issues with new and creative means.

The Advisory Committee will seek to achieve tangible results. Its primary goals include: fostering greater dialogue between religious communities and the U.S. Government; increasing the flow of information to the U.S. Government concerning the conditions of religious minorities facing persecution around the world; and informing interested groups and individuals about the U.S. Government's efforts to address issues of religious persection and religious freedom. The Advisory Committee will provide a formal channel for regular dialogue between the USG and religious groups on issues of religious freedom, as well as for Committee members to offer recommendations to international efforts for enhancing religious freedom, eliminating religious persecution, and promoting religious reconciliation.

The Advisory Committee on Religious Freedom Abroad's twenty members represent a wide spectrum of beliefs and knowledge on human rights. The Committee's creation demonstrates the State Department's expanding outreach to the nongovernmental community and its recognition of the positive role religious communities can play in promoting human rights.

Members of the Committee have been appointed by Secretary of State Warren Christopher. Assistant Secretary of State for Democracy, Human Rights, and Labor, John Shattuck, will chair the Advisory Committee. The Committee members are: Dr. Don Argue, National Association of Evangelicals; Rev. Joan Brown Campbell, National Council of the Churches of Christ; Dr. Diana L. Eck, Harvard University; Dr. Wilma M. Ellis, Continental Board of Counsellors, Baha'is of the Americas; Rabbi Irving Greenberg, National Jewish Center for Learning and Leadership; Dr. James B. Henry, Pastor of the First Baptist Church, Orlando, Florida; Bishop Frederick Calhoun James, African Methodist Episcopal Church; The Very Rev. Leonid Kishkovsky, Orthodox Church of America; Rev. Samuel Billy Kyles, Memorial Baptist Church, Memphis, Tennessee; Dr. Deborah E. Lipstadt, Emory University; Dr. David Little, U.S. Institute of Peace; Dr. Laila Al-Marayati, Muslim Women's League; The Most Rev. Theodore E. McCarrick, Archbishop of Newark; Imam Wallace Deen Mohammed, Society of Muslim Americans; Dr. Russell Marion Nelson, The Church of Jesus Christ of Latter-Day Saints; The Most Rev. Ricardo Ramirez, Bishop of Las Cruces, New Mexico; Dr. Barnett Richard Rubin, Council on Foreign Relations; Ms. Nina Shea, Puebla Project of Freedom House; Dr. Elliot Sperling, Indiana University; His Eminence Archbishop Spyridon of America, Greek Orthodox Archdiocese of America.

The right of religious freedom is affirmed internationally by the Universal Declaration of Human Rights. It is a right that the United States would look to see exercised in every corner of the globe. The creation of the Advisory Committee is a step in that direction.

The Committee intends to hold its first meeting at the beginning of 1997, and will advertise this and all other meeting dates, times, and locations in the Federal Register at least 15 days prior to the meeting date. The Committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d), 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public.

For further information, contact Ms. Alexandra Arriaga, Executive Secretary, at (202) 647–1696 or 647–1422.

Dated: December 2, 1996.

John Shattuck,

Assistant Secretary, Bureau of Democracy, Human Rights, and Labor, Department of State.

[FR Doc. 96–32219 Filed 12–18–96; 8:45 am]

BILLING CODE 4710–09–M

[11] 15 U.S.C. 78f and 78s(b)(2).

[12] 15 U.S.C. § 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

[Public Notice No. 2486]

Ad Hoc on the ITU–2000 Working Group International Telecommunications Advisory Committee (ITAC); Meeting Notice

The Department of State announces the establishment, under its International Telecommunications Advisory Committee (ITAC), of an Ad Hoc Group to prepare for upcoming meetings of the ITU–2000 Working Group. The first four meetings will be held in accordance with the following schedule:

Thursday, January 9, 1997, 1:30–3:30 p.m., Room 1406
Thursday, January 16, 1997, 1:30–3:30 p.m., Room 1406
Thursday, January 30, 1997, 1:30–3:30 p.m., Room 1406
Thursday, February 6, 1997, 1:30–3:30 p.m., Room 1406

at the Department of State, 2201 C Street, N.W., Washington, D.C.

The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues. To assist in preparations for certain meetings of the International Telecommunication Union (ITU), the Department may establish ad hoc groups open to government and industry participants in accordance with the ITAC advisory committee charter. The ITU–2000 Working Group will consider matters relating to rights and obligations of members and to strengthening the financial base of the organization. The Working Group's first meeting was held October 24–25, and upcoming meetings will be February 17–21 and April 21–25, 1997. The agenda for the ITAC Ad Hoc meetings will include: (1) review of ITU and foreign activities on these matters; (2) establishment of U.S. objectives and positions for the Working Group; (3) development of U.S. contributions and related proposals to amend the ITU Constitution and Convention. Questions regarding the agenda or Ad Hoc activities in general may be directed to the chairman, Richard Shrum, State Department, at 202–647–0050; Fx: 647–7407; e-mail (uuencode): shrumre@ms6820wpoa.us-state.gov.

Members of the general public may also attend meetings and join in discussions, subject to the instructions of the chair. Entry to the building is controlled. If you wish to attend, please send a fax to 202–647–7407 not later than 2 days before the scheduled meeting. One of the following valid photo ID's is required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter through the C Street Main Lobby.

Dated: December 12, 1996.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 96–32220 Filed 12–18–96; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice No. 2488]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 23, 1997 at 9:30 a.m. in Conference Room 1406, Department of State Building, 2201 C Street, N.W., Washington, D.C. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled and individual building passes are required for each attendee. Persons who plan to attend should so advise the office of Dr. Ernest N. Mannino, Department of State, Office of Overseas Schools, SA–29, Room 245, Washington, D.C. 20522–2902, telephone 703–875–7800, prior to December 31, 1996. Visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 10, 1996.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 96–32218 Filed 12–18–96; 8:45 am]

BILLING CODE 4710–24–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 accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension of a currently approved information collection.

Before submitting this information collection to OMB for renewal, DOT is soliciting comments 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.

DATES: Comments on this notice must be received on or before February 18, 1997.

ADDRESSES: Submit written comments identified by the Office of Management and Budget (OMB) control number and title by mail to: U.S. Department of Transportation, Mr. Kenneth C. Edgell, DOT Drug Program Office, Room 10317, 400 7th Street, S.W., Washington, DC 20590. This information collection is available for inspection at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth C. Edgell, DOT Drug Program Office, Office of the Secretary, S–1, DEPC, Room 10317, Department of Transportation, at the address above. Telephone: (202) 366–3784.

SUPPLEMENTARY INFORMATION:

Office of the Secretary, Drug Program Office

Title: U.S. Department of Transportation (DOT) Breath Alcohol Testing Form.

OMB Control Number: 2105–0529.

Form Number: 2105–0529.

Type of Request: Extension of a currently approved collection.

Affected Entities: Transportation industries.

Abstract: Under the Omnibus Transportation Employee Testing Act of

1991, DOT is required to implement an alcohol testing program in various transportation industries. This specific requirement is elaborated in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

Breath-alcohol technicians (BAT) must fill out testing form. The form incudes the employee's name, the type of test taken, the date of the test, and the name of the employer.

Custody and control is essential to the basic purpose of the alcohol testing program. Data on each test conducted, including test results, are necessary to document tests conducted and actions taken to ensure safety in the workplace.

Estimated Total Burden on Respondents: The estimated annual burden hour is 1.

Issued in Washington, DC, on December 12, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–32245 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–62–P

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 Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on August 16, 1996 [FR 61, page 42674].

DATES: Comments must be submitted on or before January 21, 1997.

FOR FURTHER INFORMATION CONTACT: David Mednick, Environmental Specialist, K–20, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–8871.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Motor Carrier Quarterly and Annual Report Form MP–1, Motor Carriers of Passengers.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2139–0003.

Form Number: BTS Form MP–1.

Affected Public: Class I Motor Carriers of Passengers.

Abstract: This data collection form was transferred from the Interstate Commerce Commission to the Department of Transportation (DOT) on January 1, 1996, by the ICC Termination Act of 1995. The OMB Control number while under the ICC was 3120–0021. Pursuant to 14 U.S.C. 14123, DOT is required to collect annual financial reports from Class I motor carriers. DOT may also require motor carriers to file quarterly reports. In determining the matters to be covered by the reports, DOT must consider: (1) Safety needs; (2) the need to preserve confidential business information and trade secrets and prevent competitive harm; (3) private sector, academic, and public use of information in the reports; and (4) the public interest. BTS wishes to continue to provide periodic information on the health of the motor carrier of passengers industry, its impact on the economy, and the economy's impact on the industry. The current report accomplishes this with minimal data items to be completed quarterly.

Estimated Annual Burden: The total estimated annual burden is 156 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 December 13, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–32244 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

[FHWA Docket No. 97–9]

Notice of Request for Extension of Currently Approved Information Collection; Certification of Enforcement of Vehicle Size and Weight Laws

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of 44 U.S.C. 3506(c)(2)(A), the FHWA solicits comments on its intent to request the Office of Management and Budget (OMB) to extend approval of the following information collections required annually from each State, the District of Columbia, and Puerto Rico: (1) a certification that they are enforcing their size and weight laws on Federal-aid highways; (2) information to verify that the certification is accurate; and (3) information on penalties assessed for violation of their size and weight laws and requirements for oversize and overweight permits.

DATES: Comments must be submitted on or before February 18, 1997.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to FHWA Docket No. 97–9, Office of Chief Counsel, HCC–10, Room 4232, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Klimek, Office of Motor Carrier Information Analysis, at (202) 366–2212, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Room 3104, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws.

OMB Number: 2125–0034.

Background: Title 23, U.S.C., section 141 requires all States to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with

Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits, each must submit an updated plan for enforcing their size and weight limits to the FHWA at the beginning of each fiscal year. At the end of the fiscal year, they must submit their certifications and sufficient information to verify that the enforcement goals established in the plan have been met. Failure of a State to file a certification, adequately enforce its size and weight laws, and enforce weight laws on the Interstate System that are inconsistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689, 2701) requires each jurisdiction to inventory (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

Respondents: The State Highway Administrations in the 50 States, the District of Columbia, and Puerto Rico.

Estimated Total Annual Burden: 4,160 hours. This number has not changed from the last approved request.

Frequency: The reports must be submitted annually.

Authority: 23 U.S.C. 141; 44 U.S.C. 3506(c)(2)(A); 23 CFR 657; section 123, Pub. L. 95–599, 92 Stat. 2701; 49 CFR 1.48.

Issued on: December 12, 1996.

George S. Moore, Jr.,

Associate Administrator for Administration.

[FR Doc. 96–32252 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–22–P

Federal Transit Administration

Section 5309 (Section 3(j)) FTA New Starts Criteria

AGENCY: Federal Transit Administration (FTA), DOT

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) is issuing this Notice describing the criteria it will use to evaluate candidate projects for discretionary New Starts funding under Title 49 United States Code (U.S.C.) Section 5309 (formerly Section 3 of the Federal Transit Act (FT Act)). These criteria replace those which have been in force since the May 18, 1984, Statement of Policy on Major Urban Mass Transportation Capital Investments. The new criteria, together with the FTA/Federal Highway Administration (FHWA) planning regulations (23 CFR Part 450), implement the requirements of Title 49 U.S.C. Section 5309(e) (formerly Section 3(i) of the FT Act), which was modified by the Intermodal Surface Transportation Efficiency Act of 1991. This section requires a project to be (''A) based on the results of an alternatives analysis and preliminary engineering, (B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies, and (C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financial sources to construct, maintain, and operate the [project].'' This Notice sets forth the approach FTA will use to evaluate candidate projects in terms of their justification and local financial commitment. These criteria will be used to evaluate projects in order to make recommendations for funding these projects in the annual report to Congress required by 49 U.S.C. 5309(m)(3) (formerly Section 3(j) of the FT Act).

EFFECTIVE DATES: This Notice will be used to evaluate projects for discretionary new start funding recommendations for the 1999 Fiscal Year.

FOR FURTHER INFORMATION CONTACT: Richard Steinmann, Office of Policy Development, FTA, Washington, DC. 20590, (202) 366–4060.

SUPPLEMENTARY INFORMATION:

I. Background

Since the early 1970's, the Federal government has provided a large share of the Nation's capital investment in urban mass transportation, particularly for ''New Starts'' (major new fixed guideway transit systems or extensions to existing fixed guideway systems). By the mid-1970's, because of the magnitude of the New Start commitments being proposed, the Department found it useful to publish a statement of Federal policy to ensure that the available resources would be used in the most prudent and effective manner. The first such statement was issued in 1976. It introduced a process-oriented approach with the requirement that New Start projects be subjected to an analysis of alternatives, including a Transportation System Management alternative which used no-capital and low-capital measures to make the best use of the existing transportation system. The Statement also required projects to be ''cost-effective.''

This policy was supplemented in 1978 by a ''Policy on Rail Transit.'' This Statement reiterated the requirement for Alternatives Analysis, established requirements for local financial commitments to the project, established the concept of a contract providing for a multi-year commitment of Federal funds, with a maximum limit of Federal participation (the Full Funding Grant Agreement—FFGA), and required that local governments undertake supporting local land use actions. This was supplemented by a 1980 policy statement which linked the Alternatives Analysis requirement to the Environmental Impact Statement development process.

These principles were reiterated and refined in a May 19, 1984, Statement of Policy on Major Urban Mass Transportation Capital Investments. The major feature of this Policy Statement was introduction of an approach for making comparisons between competing projects. To do so, a rating system was established under which projects were evaluated in terms of a cost effectiveness index of forecast incremental cost per incremental rider for the build alternative, compared with the TSM alternative as the base. Further, index threshold values were established which projects had to pass in order to be considered for funding. In addition, the criteria to be used to judge local financial commitment were spelled out.

The principles of the 1984 policy statement were later incorporated into law with enactment by Congress of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). This act added a new Section 5309(e) (formerly Section 3(i) of the Federal Transit Act), establishing in law a set of criteria which New Starts projects must meet in order to be eligible for Federal discretionary grants. Specifically, projects had to be ''cost-effective'' and ''supported by an adequate degree of local financial commitment.'' STURAA also added a new Section 5309(m)(3) (formerly Section 3(j)), requiring an annual report to Congress laying out the Department's recommendations for discretionary funding for New Starts for the subsequent fiscal year.

To implement the requirements set forth in STURAA, on April 25, 1989 FTA (then the Urban Mass Transportation Administration) issued a Notice of Proposed Rulemaking. The Proposed Rule would have codified the requirements of the 1984 Policy Statement and proposed making the ''Cost Per New Rider'' Index and

threshold values regulatory. However, in the FY 1990 and FY 1991 Appropriations Acts, Congress directed that this rulemaking not be advanced (See the Department of Transportation and Related Agencies Appropriations Act, 1990 (Pub. L. 101–164) and Department of Transportation and Related Agencies Appropriations Act, 1991 (Pub. L. 101–516)). On February 3, 1993, this rulemaking was withdrawn.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) made substantial changes to the legislative basis for the criteria which the Department is to use with respect to candidate projects for Section 5309 (formerly Section 3) New Starts funds. Specifically, the original requirement in Section 5309(e)(2) (formerly Section 3(i)(1)) that a project be ''cost-effective'' was expanded by the requirement that the project be ''justified, based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, and operating efficiencies.'' In addition, 49 U.S.C. 5301 *et seq.* now also includes certain ''considerations'' in Section 5309(e)(3) (formerly Section 3(i)(2)) and ''guidelines'' in Section 5309(3)(4) (formerly Section 3(i)(3)) to be taken into account in determining how well the project meets the criteria set forth in Section 5309(e)(2) (formerly Section 3(i)(1)).

In addition, ISTEA modified the requirements for metropolitan and statewide transportation planning. These changes were then reflected in the modifications to the joint Federal Highway Administration (FHWA)/FTA planning regulations made on October 28, 1993. The most significant change under these regulations in the context of New Starts funding is the requirement that all major transit and highway capacity expansions be subjected to a Major Investment Study (MIS) before a specific major investment project is included in local transportation plans or Transportation Improvement Programs. While not a direct product of statutory mandate, the MIS process reflects the general policy direction of ISTEA. This change integrates the requirement for an alternatives analysis of major transit investments contained in Section 5309(e) (formerly Section 3(i)) into the ongoing transportation planning process. In addition, it requires that Major Investment Studies be conducted on a multimodal basis.

Executive Order 12893, signed by President Clinton on January 26, 1994, describes the principles which Federal agencies are to apply in determining how to invest in all forms of infrastructure, including transportation. The Order requires a systematic analysis of the costs and benefits of proposed investments, and sets out the parameters for such analysis. The Order calls for efficient management of infrastructure, including a focus on the operation and maintenance of facilities, as well as the use of pricing to manage demand. Private sector participation in investment and management of infrastructure is encouraged. Federal agencies are also to encourage State and local governments to implement planning and management approaches which support these principles. The Executive Order calls for comparison of a comprehensive set of options and consideration of quantifiable and qualitative measures of benefits for all programs.

Each year FTA submits to Congress a report on the level and allocation of funding to be made available under the New Starts program, as required by Section 5309(m)(3) (formerly Section 3(j)). In an attempt to broaden the information provided in a manner that was consistent with the revised allocation criteria of ISTEA, the FY 1994, 1995 and 1996 reports included several indices for each proposed project, where they were available. Thus, rather than relying only on a single measure with a specific threshold, FTA has relied on a combination of a variety of factors to determine project merit, consistent with ISTEA:

- For cost-effectiveness, the ''cost per new transit trip'' measure;
- A rating of the level of mobility improvement afforded by the project, based on the projected total number of hours of travel time saved per day by the project, when compared with the baseline alternative [10,000 or more hours saved was rated ''high,'' fewer than 10,000 hours saved was rated ''medium,'' and projects anticipated to increase total travel time were rated ''low''];
- For environmental benefits, the U.S. Environmental Protection Agency classification of the city for ozone [''extreme,'' ''severe,'' ''serious,'' ''moderate,'' ''marginal,'' ''sub-marginal,'' ''transitional,'' and ''attainment''] and for carbon monoxide [''serious,'' ''moderate,'' ''not classified,'' and ''attainment''], as an indication of the severity of the region's air quality problem (these classifications do not indicate the extent to which the proposed project might impact local air quality but they are relevant to whether or not the project might be exempt under Section 5309(e)(6) from justifications that would otherwise be required); and
- For operating efficiencies, the estimated reduction in systemwide operating cost per passenger, [a 5 percent or higher reduction was rated ''high,'' a smaller reduction was rated ''medium,'' while an increase in per passenger costs was rated ''low'']. In addition, FTA has given significant weight in these reports to the readiness of projects to progress and the local financial commitment to the projects in determining which projects to recommend for funding.

FTA's evaluation of the local financial commitment to a proposed project focuses on the proposed local share of project costs, the strength of the proposed capital financing plan, and the stability and reliability of sources of operating deficit funding. Local share refers to the percentage of capital costs to be met with non-discretionary funding, and includes both the local match required by Federal law and any capital ''overmatch.'' Overmatch is accounted for in the rating process because it reduces the required Federal commitment, thus leveraging limited Federal funds, and because it indicates a strong local commitment to the project.

The evaluation of each project's proposed capital financing plan takes two principal forms. First, the plan is reviewed to determine the stability and reliability of each proposed source of local match. This includes a review of inter-governmental grants, tax sources, and debt obligations. Each revenue source is reviewed for availability within the project timetable. Second, the financing plan is evaluated to determine if adequate provisions have been made to cover unanticipated cost overruns. The strength of the capital finance plan is rated high, medium, or low.

The third component of the financial rating is an assessment of the ability of the local transit agency to fund operation of the system as planned once the guideway project is built. This rating focuses on the operating revenue base and its ability to expand to meet the incremental operating costs associated with a new fixed guideway investment and any other new services and facilities.

II. Policy Discussion Paper

In order to generate comment from the public on the best approach FTA could take to implement the changes required by ISTEA in the context of the Executive Order, on September 28, 1994, FTA issued a Policy Paper entitled ''Revised Measures for Assessing Major Investments: A Discussion Draft.'' The paper was circulated to a broad

audience, including State and local governments, transit agencies, Metropolitan Planning Organizations (MPOs), consultants, and other interested parties. Comments were requested on the paper and all aspects of the issue, due November 1, 1994, although FTA continued to accept comments received through December 15, 1994. The following summarizes the discussion paper.

The paper laid out FTA's objectives for developing new criteria and procedures for appraising candidate new start projects, responsive to the ISTEA mandate. In sum, FTA believed that its appraisal procedures should seek to be comprehensive, effective, efficient, objective, and comprehensible.

The paper noted that the key issue in deciding on an appraisal approach is balancing ''comprehensiveness'' and ''simplicity.''

Three approaches were described: (1) A full Social Cost Benefit Analysis (SCBA), where an attempt is made to identify all costs and benefits and reduce them to dollar terms; (2) scoring methods in which projects are rated against a set of criteria, scores for each are assigned, weights for each are established, and composite scores calculated; and (3) a multiple measure method in which projects are evaluated against several criteria, results are displayed, but no effort is made to develop a single composite score.

The paper indicated FTA's preference to use a strategy based on the concepts of SCBA, but which uses a multiple measure method to evaluate the costs and benefits identified. In this way, the merits of each candidate project can be weighed explicitly against the full range of criteria called out in ISTEA. In addition, both market and nonmarket benefits would be weighed equally. All of the four major elements mentioned in ISTEA—mobility improvements, cost-effectiveness, operating efficiencies, and environmental benefits—would be fully considered. In addition, the approach would take into account the ''considerations'' included in Section 5309(e)(3) (formerly Section 3(i)(2)), particularly land use policies and patterns.

Based on a detailed review of a wide range of candidate measures, the paper suggested use of the following measures as a means of assessing how well candidate New Starts projects are ''justified'':

1. For ''cost-effectiveness''—the total incremental cost per incremental transit passenger-trip (or possibly, per incremental passenger-mile in certain cases), where the projected streams of capital and net operating costs and passenger-trips have been (in the case of the costs) expressed in constant dollar terms, and (in all cases) both cost and ridership have been discounted at the social discount rate, compared to the Transportation System Management (TSM) alternative.

2. For ''mobility improvements''—(1) the projected aggregate value of travel time savings per year (forecast year) anticipated from the new investment compared to the TSM alternative. This aggregate includes the travel time impacts on people using competitive modes, along with those on the trips made by transit (both new and former transit riders). It is a net figure in the sense that travel time increases should be explicitly considered and used to offset the time savings of those people who experience savings. It would be expressed in absolute and regional percentage change terms. It would be valued using a set percentage of the average wage rate in the urbanized area. (2) the absolute number of zero-car households (or alternatively, the people resident in those households) located within ½ mile of boarding points for the proposed system increment, compared to the TSM alternative.

3. For ''operating efficiencies''—(1) the forecast change in operating cost per vehicle service-hour (or service-mile), for that part of the system that will be directly affected by the proposed new investment, expressed in absolute and regional percentage change terms, compared to the TSM alternative. (2) the forecast change in passengers per vehicle service-hour (or service-mile), calculated on the same basis, also expressed in absolute and regional percentage change terms, compared to the TSM alternative. (3) the forecast change in passenger miles per vehicle service-hour (or service-mile), calculated on the same basis, also expressed in absolute and regional percentage change terms, compared to the TSM alternative.

4. For ''environmental benefits''—(1) the value of the forecast change in criteria pollutant emissions and in greenhouse gas emissions, ascribable to the proposed new investment, discounted and levelized, expressed in absolute and regional percentage change terms, compared to the TSM alternative.

The value of the emissions would be calculated based on standardized assumptions about the unit value of each emission. (2) the forecast change in the consumption of fuels of different types, ascribable to the proposed new investment, discounted and levelized, expressed in absolute and regional percentage change terms, compared to the TSM alternative.

5.For ''transit supportive existing land use policies and future patterns''—the degree to which local land use policies are likely to foster transit supportive land use, measured in terms of the kinds of policies in place, and the commitment to these policies.

The paper indicated FTA's view that this set of indicators best addresses the most significant issues related to project justification identified in the revised language of Section 5309(e) (formerly Section 3(i)). The paper noted that FTA intended to continue using the present approach to assess local financial commitment issues (as required by Section 5309(e)(2)(C) (formerly Section 3(i)(1)(c)). In addition, the paper noted that the proposed set of indicators provides for an assessment which fully considers major benefits, including those which cannot easily be quantified or monetized. Moreover, while there were some obvious interrelationships among the indices, ''double-counting'' was minimized by keeping them relatively independent.

It is important to note that the paper proposed a different approach to measuring ''cost-effectiveness'' than the ''cost-per-new-rider'' measure (really incremental cost per new transit ride) previously used by FTA. That measure included not only cost and ridership projections, but also attempted to account for mobility effects by using monetized time savings as an offset to costs. Additionally, the threshold values specified for that measure implicitly made generous allowances for the inclusion of environmental and safety issues on a comparable basis. The proposed measure defined ''costs'' more narrowly, comprising only the monetary value of construction, operations, and maintenance. This is because the mobility and environmental considerations were addressed explicitly by other proposed measures.

The paper indicated that another major difference in the proposed new cost-effectiveness measure was that it included annualized, levelized costs and ridership differences calculated over the analysis period, rather than costs and ridership differences calculated based on a single forecast year. While past practice has included estimates of costs on a year-by-year basis over the analysis period, accurate assessment of the ridership impacts could require multiple ridership forecasts (for example, the year of opening, the forecast year, and the year at the end of the analysis period). The paper also acknowledged that it may be possible to synthesize forecasts of the year of opening and year at the end of the forecast period using forecast year

results and well known factors relating typical trends in ridership for new transit investments. The paper asked for views on how much additional effort would be required to calculate estimated ridership impacts for multiple forecast years. It also asked for views on how much accuracy would be gained by such multiple forecasts, compared with reliance on synthesized forecasts based on typical trends in ridership growth.

The paper noted that FTA was considering a change in the approach for valuing travel time savings from past practice. In the past, FTA specified the use of $4.80 per hour of travel time savings for work trips and $2.40 per hour of travel time savings for non-work trip, for use in calculating the offset to costs. This value was based on a factor of 40 percent of the national average wage rate for work travel, and one-half this amount for non-work travel. The paper cited recent analysis of the valuation of time in other programs of the Department of Transportation and elsewhere in government that suggested that this value is inconsistent with these other practices. For example, analysis of models used by the Federal Highway Administration indicates use of a much higher factor of wage rates for travel time savings. Accordingly, FTA is participating with other elements of the Department to develop consistent approaches for valuing travel time savings. The paper stated that, in the interim, FTA expected to use a factor of 80 percent of the local wage rate for calculating the value of travel time savings.

The paper noted also that, in the past, FTA did not attempt to value the environmental benefits of transit investments. The benefits of emission reductions can take a variety of forms, such as improved visibility, crop yields, and public health. The Environmental Protection Agency (EPA) is currently developing, pursuant to Section 812 of the Clean Air Act, standard monetary values of such benefits. The paper stated that the results of this analysis were expected to be available in 1995, and may be used to evaluate the environmental benefits of transit.

Absent standard values of the benefits from emission reductions, the paper noted that ''avoided cost'' is an inferior, but potentially useful approach. The avoided cost approach, which generally is only applicable to nonattainment and maintenance areas, uses standard unit costs of pursuing alternative means of achieving emission reductions as a proxy for the benefits of such emission reductions. Some EPA analyses have, in the past, used the avoided cost approach.

Pending further analysis by EPA and additional work by FTA with other agencies within and outside the Department of Transportation, the paper stated that FTA intended to use values based on avoided cost as an interim proxy for the benefits of emission reductions in the relevant nonattainment/maintenance areas.

The paper noted that the standard unit values proposed were based on nationwide averages and, therefore, did not reflect the fact that the cost of achieving emission reductions by alternative means varies depending on project location. The paper stated that if the environmental impacts of a proposed transit project are significant, additional analysis to develop an avoided cost relevant to that specific nonattainment/maintenance area would be appropriate.

The paper indicated that the set of measures recommended was selected to be mindful of the need for multimodal project appraisal measures. While the measures included in FTA's revised New Starts Criteria will be used primarily by FTA to make informed decisions about project ratings in the annual Report on Funding Levels and Allocations of Funds, required by 49 U.S.C. 5309(m)(3) (formerly Section 3(j) of the FT Act), an effort had been made to make some of the measures applicable at the local level when multimodal studies are conducted.

The paper indicated that an examination of nine prototypical Alternatives Analysis/Draft Environmental Impact Studies (AA/DEIS) suggested that the new indices should be calculable in the major investment study phase of planning without significant extra work on the part of local project sponsors.

The paper indicated FTA's intention to apply the proposed measures to projects which have not yet completed the Alternatives Analysis process. Projects which were in Preliminary Engineering would not have been required to undergo the additional analysis. These projects would have been evaluated based on existing data.

The paper stated that the criteria proposed were intended to be interim measures. As noted earlier, SCBA forms a useful tool for analyzing the worthiness of public investments. However, the key to successful SCBA is the proper accounting for and monetizing of the full range of the benefits of a proposed investment. The paper stated that it is FTA's belief that while it is possible to quantify and monetize many of the benefits of transit investments, as evidenced by the approach proposed, ascribing a monetary value to many of the benefits is particularly difficult.

This is particularly true in the absence of Government-wide standard values for some of the benefits which may be ascribed to transit projects. In addition, there was an absence of general agreement on even the valuation of certain other benefits, such as those related to the land use effects of transit investments.

This lack of Government-wide standard values or generally agreed valuation was given as the key reason why FTA would be unable to use SCBA as the sole recommended approach at this time. In the paper, FTA indicated its intention to conduct research into the valuation and monetization of the benefits of transit investments in order to develop an accepted approach. As this research proceeds, FTA intends to apply it to the quantified benefits of the investments being considered, in order to move closer to a complete SCBA approach. This research should permit FTA to begin to construct partial indices of costs and benefits as part of its evaluation of project worthiness. With time, more complete indices can be constructed, ultimately resulting in a full-fledged SCBA approach.

In addition to requesting comments on the specifics of the criteria proposed, FTA also asked that the following questions be specifically addressed in replies:

1. Are there other ways FTA could manage the ''New Starts'' program and still comply with statute (e.g. , industry standards and measurements which FTA accepts and utilizes for the Section 3(j) Report)?

2. What are the key issues in monetizing transit's benefits? What information is now available? What are the most fruitful areas for research?

3. What approaches are available for valuing travel time savings? How should the value of travel time savings be set? Is a value based on average wage rates appropriate? Is 80 percent appropriate? Is it appropriate to use different values by trip purpose? By mode? By type of time saved (e.g. wait time versus in-vehicle time)?

4. What approaches are available for valuing emission reductions? How should the values of unit emission reductions be set? Are the values suggested by EPA based on cost-avoidance appropriate?

5. Is the overall appraisal strategy (i.e., use of the multiple measure method) appropriate? Can the use of this strategy be made workable without explicitly specifying how FTA will trade off between the criteria? Should FTA, instead, specify that it will explicitly

weight one or more of the criteria more heavily? If so, which one(s), why and how?

6. Are the particular measures proposed for each of the ISTEA justification criteria appropriate? Do the proposed measures adequately represent the criteria called out in Section 5309(e) (formerly Section 3(i))? Are the proposed measures workable? Can data be developed for the measures as part of the normal process of evaluating major investments? Are the measures likely to be able to distinguish between projects of varying merit?

7. How can FTA assure the quality of the data submitted in support of proposed projects in terms of the measures proposed when Major Investment Analyses are to be conducted as part of the Metropolitan Planning Process, as called for in the Final Rule on planning, issued October 28, 1993? How can FTA assure consistency among cities in terms of modeling input assumptions (e.g., gasoline prices, inflation rates, or modeling methods)? Must it?

8. Is this approach sufficiently quantifiable to allow for the Secretarial findings and determinations for funding required by the Federal Transit Act, and for FTA ranking among candidate projects?

9. How much additional effort is involved in calculating the proposed annualized, levelized cost-effectiveness index using multiple forecasts of ridership impacts? How many different year forecasts are needed to accurately portray the stream of ridership impact benefits? Which years are most appropriate to forecast (year of opening, forecast year, last year of analysis period, other years)? How much additional accuracy is gained compared to synthesizing the stream of ridership impacts using a single forecast year and known trends in ridership growth for new investments?

III. Summary of Comments on Discussion Paper

At the close of the comment period, a total of 31 responses had been received. Comments were received from 13 transit operators, nine Metropolitan Planning Organizations (MPO's), three State DOT's, two Councils of Government, one county government, one city government, one university, and one major organization representing the interests of the transit industry (on behalf of 13 transit operators, two MPO's, 12 consultants, and two local governments).

Four central issues emerged from these comments. First, there was considerable confusion regarding the relationship between the proposed policy revisions and the Major Investment Study (MIS) process required under the joint FTA/FHWA planning regulations. Specifically, 16 responses (including the transit industry group's) spoke to this issue, either directly or by noting that the criteria should apply to both FTA and FHWA projects.

The MIS process requires an evaluation of alternatives using criteria such as cost effectiveness; mobility improvements; social, economic, and environmental effects; safety; operating efficiencies; land use and economic development; financing; and energy consumption. The information generated through this process will be used as the primary source of information for the purposes of 49 U.S.C. 5309(e) (formerly Section 3(i) of the FT Act).

This Notice clarifies the intent of the revised FTA criteria, making it clear that the intermodal decisionmaking process is carried out on the local level as part of the MIS and affirming that FTA will use the criteria only for purposes of allocating discretionary New Starts funds. Accordingly, the name has been changed from ''Major Investments Criteria'' to ''Section 5309 (Section 3) FTA New Starts Criteria'' to reflect the true role of the policy in evaluating projects for the purposes of recommending discretionary Federal funding allocations. It also notes that the criteria are interim until a fully-defined multimodal cost-benefit method is developed. Finally, it reiterates that local MIS decisions are based on local criteria and policies, and that the FTA criteria are to be used for Federal funding recommendations in the annual Report on Funding Levels and Allocations of Funds.

However, this Notice does not (and cannot) address immediate concerns that highway projects are not required to undergo similar evaluation at the Federal level. There is a fundamental difference between FTA and FHWA capital investment programs. The FTA New Starts program is discretionary in nature, and requires a determination by the Secretary of Transportation that a project meets the statutory justification criteria. The measures described in this notice will be used to determine whether those criteria have been met, and to make comparisons among projects for funding purposes. FHWA funds highway projects through a formula program; once the planning process has identified a highway project as the best alternative, it is funded out of the formula funds apportioned to that State. There is no requirement for a separate determination of project justification at the Federal level.

It is important to note, however, that the same local evaluation process should apply to both highway and transit alternatives being considered in an MIS. It is only after the MIS process has resulted in the selection of a project at the local level, and funding is sought from FHWA or FTA, that the programmatic differences in Federal capital investment programs become an issue.

The second central issue involved the use of the Transportation System Management (TSM) alternative as the base for evaluating the benefits of the proposed New Start project. The transit industry group commented that the distinction between the TSM and no-build (or ''do-nothing'') alternatives was becoming blurred as regions implement Congestion Management Systems under the planning regulations. Seven other comments raised the same issue.

The argument in favor of the TSM basis has been that it provides a level playing field for evaluation of projects on a nationwide basis. Use of the no-build scenario as the baseline, the argument goes, would introduce a bias against cities with an already-significant commitment to transit; the incremental benefits of a new start would appear smaller than for cities with less existing transit.

The transit industry group argued that requiring a separate TSM alternative is no longer realistic, given requirements for regions to develop Congestion Management Systems (CMS) under the joint planning regulations. These cities will be required to take some steps to improve congestion, whether or not a new transit system is built. In essence, the argument goes, the no-build alternative becomes the TSM alternative. However, CMS strategies are only candidates for inclusion in long-range plans, and do not necessarily fit the definition of a no-build alternative which includes *existing and committed* projects and policies. The TSM alternative allows the comparison of more costly new start projects against lower-cost alternatives in order to determine the extent to which travel benefits may be generated at less cost; to focus on doing more with less.

FTA is not persuaded that the transportation strategies developed in response to CMS requirements completely eliminate the need for studying system management-related alternatives to a new start. However, the argument has merit. In response to these comments, the final policy statement calls for evaluation of the new start alternative against both the TSM

alternative and the no-build case. This will provide a better assessment of the relative benefits of each than would a comparison between build and TSM scenarios, and TSM and no-build.

The third issue concerned the proposed use of multiple forecast years for evaluating costs and benefits, to account for the fact that the benefits from transit accrue over time. The comments almost universally indicated that the effort involved in calculating benefits for multiple forecast years would far outweigh the small gains in accuracy. This point was made by 12 of the commenting entities, though two supported the proposal.

The discussion draft proposed the use of three forecast years: system opening, forecast year, and the end of the forecast period (years 7, 15, and 30). The intent was to increase the accuracy of ridership impact assessments, which accrue over time. However, the consensus of the comments received on this issue was that the additional cost and effort involved in using multiple forecast years far outweighed any gains in accuracy over single-year forecasts.

In response to these comments, the final policy statement adopts a single forecast year methodology, using year 20 of the analysis period. Opening year forecasts performed by project planners would be used for financial analysis and to verify the likelihood of ridership forecasts. This is consistent with current industry practice under existing FTA evaluation methodology, and does not increase the local planning burden. It is also consistent with requirements for a 20-year planning horizon for the transportation plans required by the joint FTA/FHWA planning regulations.

The final central issue involved the need to ensure the accuracy of the data and modeling inputs (such as gasoline prices and inflation rates) used for project evaluation. Fifteen comments were received to the specific question posed for this issue; the responses indicated a need to consider local conditions and policies in project evaluations, but also were strongly in favor of applying consistent standards to all projects. However, opinion was divided as to whether national standards or local policies and criteria should take precedence. The transit industry group suggested a peer review process to set consistent standards for project evaluation.

In order to balance the need for consistent national standards with the industry desire for input into standard modeling assumptions, the final policy statement calls for FTA to develop and issue advisory guidance to be provided through training, documented case studies, and preparation of manuals of best practice. Industry peer groups will review specific projects to determine the degree of consistency of modeling inputs and their relative success. This meets both the need for consistent national standards and the desire of the transit industry to have input into the standard modeling assumptions. It also retains FTA involvement in assuring data quality while avoiding the impression of mandated Federal standards.

These central themes emerged from comments to the nine questions posed in the discussion draft. These questions and a summary of the responses are outlined below:

Question 1: ''New Starts'' Program Management

The discussion draft solicited comments as to whether there might be other ways FTA could manage the ''New Starts'' program and still comply with statute.

Comments: The responses to this question generally indicated that the proposed policy represents an improvement over the existing process. The transit industry group commented that, under a narrow interpretation, the statute does not require comparisons among projects. They would prefer that FTA rely on MIS results to justify a project, and simply report this information in the annual Report on Funding Levels and Allocations of Funds. Other responses noted an apparent disconnect between the major investment policy and the MIS process required under the FTA/FHWA planning regulations.

Question 2: Monetizing Transit Benefits

Comments were solicited concerning the key issues in monetizing transit's benefits; specifically, what information is now available, and what are the most fruitful areas for research.

Comments: The most frequent response was that local needs and priorities vary to the extent that monetizing benefits may not be relevant for national comparisons. Other benefits, such as reduced wait times, fewer transfers, and better reliability are not so easily monetized.

Suggested areas for research included the exploration of ''shadow pricing'' to account for factors such as the ability to forgo a second car or the benefit to the region of having a ''backup'' transportation mode; the marginal cost of transportation alternatives; and quantification of the ''cost avoidance'' benefits of transit, such as social and economic costs and long-term energy and environmental benefits.

Question 3: Value of Travel Time Savings

Comments were solicited regarding available approaches for valuing travel time savings; methods for setting the value of travel time savings; use of values based on average wage rates; and use of different values by trip purpose, mode, and time saved.

Comments: Nearly a third of the responses to this question addressed the need to account for regional variations in prevailing wage rates; otherwise, this measure would be biased in favor of larger areas with higher costs of living.

Comments from the transit industry group indicated that its members could not reach consensus as to whether local or national wage rates were more appropriate. As an alternative, it suggested that time is a limited resource that should be conserved, and the measure should be expressed as a percentage of time saved due to a major investment. Opinion was split as to whether different values by mode or trip purpose were appropriate.

Question 4: Value of Emissions Reductions

The discussion draft solicited comments on available approaches for valuing emission reductions, setting values for emissions reductions, and the use of EPA cost-avoidance values.

Comments: There was general agreement among those who responded to this question that the cost-avoidance method is acceptable, though some cautioned that this approach undervalues the true cost of emissions. One transit operator in a western state suggested that market values be permitted in areas where programs exist for buying/selling emissions credits.

There was some concern that the use of a single national standard would not reflect regional air quality situations. Others cited the need for a measure that was meaningful to the average citizen, such as ''pollution per mile.''

Question 5: Use of Multiple Measures

Comments were solicited on the appropriateness of the overall strategy (i.e., use of the multiple measure method). Specifically, input was sought on whether this strategy can be made workable without explicitly specifying how FTA will trade off between the criteria, or whether FTA should, instead, specify that it will explicitly weigh one or more of the criteria more heavily.

Comments: The respondents generally agreed that the multiple measure method proposed is appropriate. Opinion was split as to how (or

whether) the criteria should be weighted. Some favored no weighting, others asked that FTA specify which criteria would be more heavily weighted, and others said that the weights should be determined locally. The transit industry group supported an unweighted system as being more consistent with an emphasis on local goals and values.

There was also general agreement among the commenters that the criteria should be multimodal; i.e., developed jointly by FTA and FHWA and apply to both highway and transit projects. Many asked how this process related to the MIS.

Question 6: Proposed Justification Measures

Comments were sought on the appropriateness of the proposed measures for each of the ISTEA justification measures, whether the proposed measures adequately represent the criteria called out in Section 5309(e) (formerly Section 3(i)), whether they are workable, whether data can be developed for the measures as part of the normal process of evaluating major investments, and whether the measures are likely to be able to show a distinction between projects of varying merit.

Comment: The use of zero-car households as a basis for evaluating mobility improvements generated substantial comment. Most comments indicated that this measure did not adequately capture the basic mobility function of transit. Suggested alternatives included automobiles per capita, the number of low-income households within ½-mile of boarding points, and a measure accounting for relative time savings from areas of high transit dependence to critical destinations.

Opinion was scattered regarding measures for operating efficiencies. Among the comments that specifically addressed the measures proposed, there was some consensus that passenger-based measures were preferable to vehicle-based measures.

Most comments on the criteria for transit-supportive land use concerned the difficulties involved in determining what to measure. Problems cited included the difficulty of obtaining regional land-use commitments before a project has been approved, the subjectivity of this measure, and the difficulty in making comparisons from region to region.

Question 7: Quality and Consistency of Data

The discussion draft specifically requested comment on how FTA can assure the quality of the data submitted in support of proposed projects in terms of the measures proposed, and how to assure consistency among cities in terms of modeling input assumptions.

Comments: Responses to this question generally supported the need to ensure quality and consistency of data through fair and consistent inputs. The transit industry group spoke to the need to ensure consistency with respect to basic modeling inputs, and recommended a peer review within the industry to accomplish this.

Other suggested methods included relying on FTA-established standards and guidelines and relying on the results of the MIS process.

Question 8: Quantifiability of Approach

Comments were solicited concerning whether this approach is sufficiently quantifiable to allow for the Secretarial findings and determinations for funding required by the Federal Transit Act, and for FTA ranking among candidate projects.

Comments: There was general support for the multiple-measure approach, tempered with concern of a return to the use of a single number for comparison purposes. The transit industry group expressed support for greater use of qualitative methods and a descriptive ranking of projects.

Two responses commented that the overall approach favors extensions to existing systems over new systems.

Question 9: Additional Effort for Multiple Ridership Forecasts

The discussion draft solicited comments regarding the additional effort involved in calculating the proposed annualized, levelized cost-effectiveness index using multiple forecasts of ridership impacts, and how much additional accuracy is gained.

Comments: Almost all of the responses to this question indicated that the additional effort required for multiple forecast years far outweighs any gains in forecast accuracy, and that such an effort was tremendously burdensome when compared to requirements for highway projects.

FTA also received substantial comment on the specific measures proposed for the individual project justification criteria that were incorporated into the multiple measure method. Specifically, projects would be evaluated according to the following five criteria: cost effectiveness, mobility improvements, operating efficiencies, environmental benefits, and transit-supportive land use policies. These criteria are specified in 49 U.S.C. 5309(e) (formerly Section 3(i) of the FT Act). The transit industry group recommended a sixth evaluation criterion for ''system development and performance,'' which would measure the historical and projected level of commitment a region must have in order to have a successful high-capacity transit project.

Criteria: Cost Effectiveness

The proposed measure for cost effectiveness was the total incremental cost per incremental passenger-trip (or -mile), where the projected streams of capital and net operating costs and passenger trips have been expressed in constant dollar terms and both cost and ridership have been discounted at the social discount rate. This was a departure from the current ''cost per new rider'' method, which assigns costs and benefits to passengers assumed to have been diverted from private vehicles.

Comments: Most of the comments received objected to a measure based on costs per ''new rider,'' contending that it is confusing to the public and decisionmakers, and that it does not account for the many intangible benefits of transit. Some (including the transit industry group) supported a modified Social Cost Benefit Analysis (SCBA), even though the discussion draft outlined several pitfalls with applying this type of analysis to transit projects.

The transit industry group proposed that, if a ''modified'' SCBA approach could not be used, a ''descriptive'' approach would be the next best alternative. FTA would classify each project, based on a comprehensive review of the other measures, as ''Cost-Effective,'' ''Marginal,'' or ''Not Cost-Effective.''

Response: After much consideration, FTA has retained the use of a single ''cost-per-incremental-rider'' index. While not a perfect measure, it has the advantage of retaining the only ''hard'' number in the evaluation process. It is also more easily understood than abstract ratings of ''high,'' ''medium,'' or ''low.'' Further, dropping the index would appear to be a step back from a true cost-benefit analysis, when FTA is in fact moving toward a more complete assessment.

The new cost-per-incremental-rider measure has been revised from the traditional index, which subtracted the value of travel time savings from annualized incremental costs. The index will now be calculated using only the

projected change in annual transit ridership and total (Federal and local) capital investment and operating cost. Because travel time savings are now reported separately in assessing mobility improvements, this measure will focus exclusively on incremental ridership. The aggregate change in systemwide annual ridership will also be reported.

Criteria: Mobility Improvements

The proposed measures for mobility improvements included (1) the projected aggregate value of time savings per year (forecast year) anticipated from the new investment, compared to the TSM alternative, valued as a percentage of the average wage rate in an urbanized area; and (2) the absolute number of zero-car households (or residents of those households) located within ½-mile of boarding points for the proposed system increment.

Comments: Most of the comments received on this measure addressed the need to account for regional variations in prevailing wage rates; otherwise, commenters said, this measure would be biased in favor of larger areas with higher costs of living.

The transit industry group indicated that its members could not reach consensus as to whether local or national wage rates were more appropriate. As an alternative, it suggested that time is a limited resource that should be conserved, and the measure should be expressed as a percentage of time saved due to a major investment.

Nearly all comments objected to the use of zero-car households as a basis for measuring basic mobility. The transit industry group suggested that low-income households be used instead of zero-car households, and recommended an additional measure of mobility including the number of jobs within 30–45 minutes transit travel time and the number of low-income households within 30–45 minutes travel time of jobs. This group's comments also suggested that travel time savings should be ''net'' across all modes (highway and transit) and exclude those who shift to transit and incur longer travel times by choice (arguing that for these people, other intangible benefits outweigh the extra travel time). Including projected changes in highway travel times associated with the proposed transit project, the comment suggested, would account for the overall effect on mobility in the corridor.

Response: FTA recognizes the need to consider that people who switch to transit can incur longer travel times but are gaining other benefits (such as reduced travel under congested conditions, improved ride quality, reduced overall commuting costs, etc.). Therefore, any such travel time increase should not be counted against overall travel time improvements for new riders. FTA has therefore adopted a consumer surplus approach in the final policy statement, which will account for the aggregate value of travel time savings and other travel benefits for new riders. Travel time savings and other travel benefits for existing transit riders and remaining highway users would be included in the overall measure. Values would be expressed in terms of the dollar value of the projected travel benefits for the project study area. The value of travel time would be set at 80 percent of the average wage rate in the urbanized area. This approach provides a better picture of overall mobility improvements associated with a proposed major investment.

FTA is also persuaded that the use of zero-car households as a measure for basic mobility is much more problematic than using low-income households. Therefore, the final policy statement uses the absolute number of low-income households located within ½-mile of boarding points associated with the proposed system. This measure is not limited to stations that are part of the proposed project, and includes boarding points that will feed into the new system.

Criteria: Operating Efficiencies

The discussion draft proposed that the measure for operating efficiencies be based on (1) the forecast change in operating cost per vehicle service-hour (or -mile) for the part of the system affected by the new investment, expressed in absolute and regional percentage terms, (2) the forecast change in passengers per vehicle service-hour (or -mile), and (3) the forecast change in passenger-miles per vehicle service-hour (or -mile).

Comments: The transit industry group suggested that the measures for operating cost and passengers per vehicle service-hour or -mile would be more meaningful if a common base were used when comparing projects. They recommended a ''bus equivalent'' capacity measure based on the standard 40-foot transit bus, which is similar to the passenger-car equivalent measure used for highway performance in the Highway Capacity Manual issued by the Transportation Research Board. Standard industry capacity measures such as place-miles or seat-miles are not easily understood by the public, and the use of revenue vehicle-miles without accounting for the vast differences in capacity of the various transit modes is misleading. Use of the bus equivalent provides for a more accurate view of efficiency, considering the larger capacity of rail cars, and makes rail alternatives look (correctly) better than if unweighted vehicle miles are used.

The industry group's comments also suggested that the measure for the forecast change in passenger-miles per vehicle service-hour (or -mile) be dropped. This measure would be helpful in true multimodal comparisons, such as comparing fixed-guideway transit projects to High-Occupancy Vehicle projects and/or highway improvements, but would tend to be equal for alternatives of similar length and therefore of limited use.

Response: While FTA agrees that the bus-equivalent capacity measure will perhaps be more easily understood by the public than seat-miles or place-miles, especially when comparing among bus and rail modes, such measures may actually be more confusing to local and Federal decisionmakers accustomed to traditional measures of capacity. In addition, a ''bus-equivalent vehicle-mile'' measure would impart an additional analysis and reporting requirement on project sponsors. In order to avoid adding burdensome additional requirements to the local project development process, FTA has adopted for this measure the forecast change in operating cost per passenger-mile, for that part of the system that will be directly affected by the proposed new investment, expressed in terms of absolute dollar value. This will focus attention on the overall change in costs to produce a unit of service for the customer. Further, it avoids the problems inherent in making comparisons across modes which use vehicles with substantially different capacities.

Criteria: Environmental Benefits

Comments: The most frequent comments on the measures for environmental benefits addressed the issue of placing a value on emissions reductions. The transit industry group and a transit operator in a western state both supported the use of market-based values where they are documented and available, at local option. Otherwise, standard national values should be used.

Response: FTA recognizes the importance of avoiding the ''one-size-fits-all'' approach to program management. However, the use of ''national standards'' lends a degree of simplicity to the evaluation process,

reducing the reporting and data-collection burden on project sponsors. Use of consistent standards also permits greater comparability of projects among cities, which is consistent with the purpose of these criteria and the statute from which they are derived. Therefore, this measure will be based on standardized national assumptions about the unit value of each emission.

Criteria: Transit-Supportive Land Use

Comments: Most of the comments on the criteria for evaluating transit-supportive land use policies concerned the difficulties involved in determining what to measure. Problems cited included the difficulty of obtaining regional land-use commitments before a project has been approved, the subjectivity of this measure, and the difficulty in making comparisons from region to region.

The transit industry group suggested the use of a descriptive rating of projects according to factors such as existing land use, containment of sprawl, transit-supportive corridor policies, supportive zoning regulations near transit stations, tools to implement land use policies, and performance of those policies. Alternatively, a ''multiple criteria ordinal ranking'' approach could be used, where the project would be given a rating of ''high,'' ''medium,'' or ''low'' according to the same factors.

Response: The final policy statement implements a combined rating for important land use factors consisting of both ''high,'' ''medium,'' and ''low'' ratings and corresponding descriptive indicators. Projects will be rated according to existing land use, containment of sprawl, transit-supportive corridor policies, supportive zoning regulations near transit stations, tools to implement land use policies, and the performance of land use policies. The one-word rating acts as a summary for the evaluation of each respective factor, while the description acts as the definition of that rating. Ratings for transit supportive land use will be developed in the same manner as that currently used by FTA to assess financial capacity, and expressed in a single rating based on the ratings for each factor.

In addition to these five criteria, the transit industry group suggested a sixth that would measure the historical and projected level of commitment a region must exhibit in order to have a successful high-capacity transit project (i.e., a new start). This criterion would address a number of factors which would otherwise be overlooked by the other measures. These would include (1) local efforts to adopt and enforce transit-supportive parking policies, (2) efforts to coordinate highway and transit project development (for example, withdrawing a highway improvement project in favor of the proposed transit investment), and (3) an ''implementation capability'' measure to judge the likelihood that forecast costs will be accurate. This last factor would focus on the ability of a region to successfully implement a major transit investment, based on its record of experience with such projects. Descriptive ratings were recommended for each of these factors; alternatively, a ''multiple criteria ordinal ranking'' approach could be used, where the project would be given a rating of ''high,'' ''medium,'' or ''low'' according to the same factors.

FTA recognizes that there are often additional factors which may contribute to the overall success of the project. Thus, in response to this recommendation, FTA has adopted a sixth project justification criterion for ''other relevant factors.'' This criterion will evaluate the degree to which the institutions (local transportation planning, programming and parking policies, etc.) assumed in the forecasts are in place, the capability of project sponsors to manage a project of the planned scope, and such other factors as may be relevant to the successful implementation of the project and/or local and national priorities. This provides an added assessment of the likelihood of a successful transit investment, measured against regional considerations. The measure combines both the ''high,'' ''medium,'' and ''low'' ratings with the descriptive ratings, as appropriate, in order to provide both a ''summary'' rating for each factor and its definition.

This comment also recommended that factors for successful implementation of transit-supportive land use plans be included in this measure. However, this would largely duplicate the information collected under the evaluation criteria for ''Transit Supportive Land Use Policies.'' While it may be possible to combine these two criteria, the use of a separate measure for land use is more consistent with statute.

IV. Explanation of Policy

Statement of Federal Transit Administration Policy—Criteria for Discretionary New Starts Funding

Section 5309(e)(2)–(7) of Title 49, United States Code (U.S.C.) (formerly Section 3(i) of the Federal Transit Act [FT Act]), requires the Secretary to make certain findings before new transit fixed guideway and extension projects are eligible for assistance under 49 U.S.C. Section 5309 (formerly Section 3). Specifically, a project must be ''(1) based on the results of an alternatives analysis and preliminary engineering, (2) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies, and (3) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable funding sources to construct, maintain, and operate the system or extension.''

In addition, Section 5309(m)(3) (formerly Section 3(j)) requires the Secretary annually prepare a report to Congress outlining ''a proposal of the allocation of the funds to be made available to finance grants and loans for construction of new fixed guideway systems and extensions to fixed guideway systems among applicants for such assistance.'' This annual Report on Funding Levels and Allocations of Funds (the ''Section 3(j) Report'') is submitted annually as a collateral document to the President's budget.

This Statement of Federal Transit Administration (FTA) Policy describes the criteria FTA will use to make the statutory determination required under Section 5309(e)(2)–(7) (formerly Section 3(i)) and to determine the recommendations included in the annual report to Congress required by Section 5309(m)(3) (formerly Section 3(j)). These criteria apply only to projects seeking Federal discretionary funds for new transit fixed guideway and extension projects (''new starts'') under Section 5309 (formerly Section 3).

Title III of ISTEA exempted a number of specific projects from the New Starts criteria described in Section 5309(e)(2)–(7) (formerly Section 3(i)). Additionally, Section 5309(e)(6)(A) (formerly Section 3(i)(5)(A)) exempts projects if: (1) they are located in an extreme or severe nonattainment area and are a transportation control measure (as defined by the Clean Air Act) required to carry out an approved State Implementation Plan; or (2) the total amount of funding to be provided under Section 5309 (formerly Section 3) is less than $25,000,000, or less than one-third of the total cost of the project or program of projects as defined by the Secretary. However, FTA may still rate such projects for informational purposes only, to the extent relevant information is available.

I. Planning and Project Development Procedures

New start projects, like all transportation investments in

metropolitan areas, must emerge from the transportation planning process in order to be eligible for Federal funding. In addition, Section 5309(e)(2) specifies that discretionary grants or loans for new starts may only be approved if a proposed project is based on the results of alternatives analysis and preliminary engineering, and that certain project justification and financial criteria have been met. This section outlines the procedural requirements for planning and project development that apply to new starts. Figure 1 depicts the FTA new start planning and development process.

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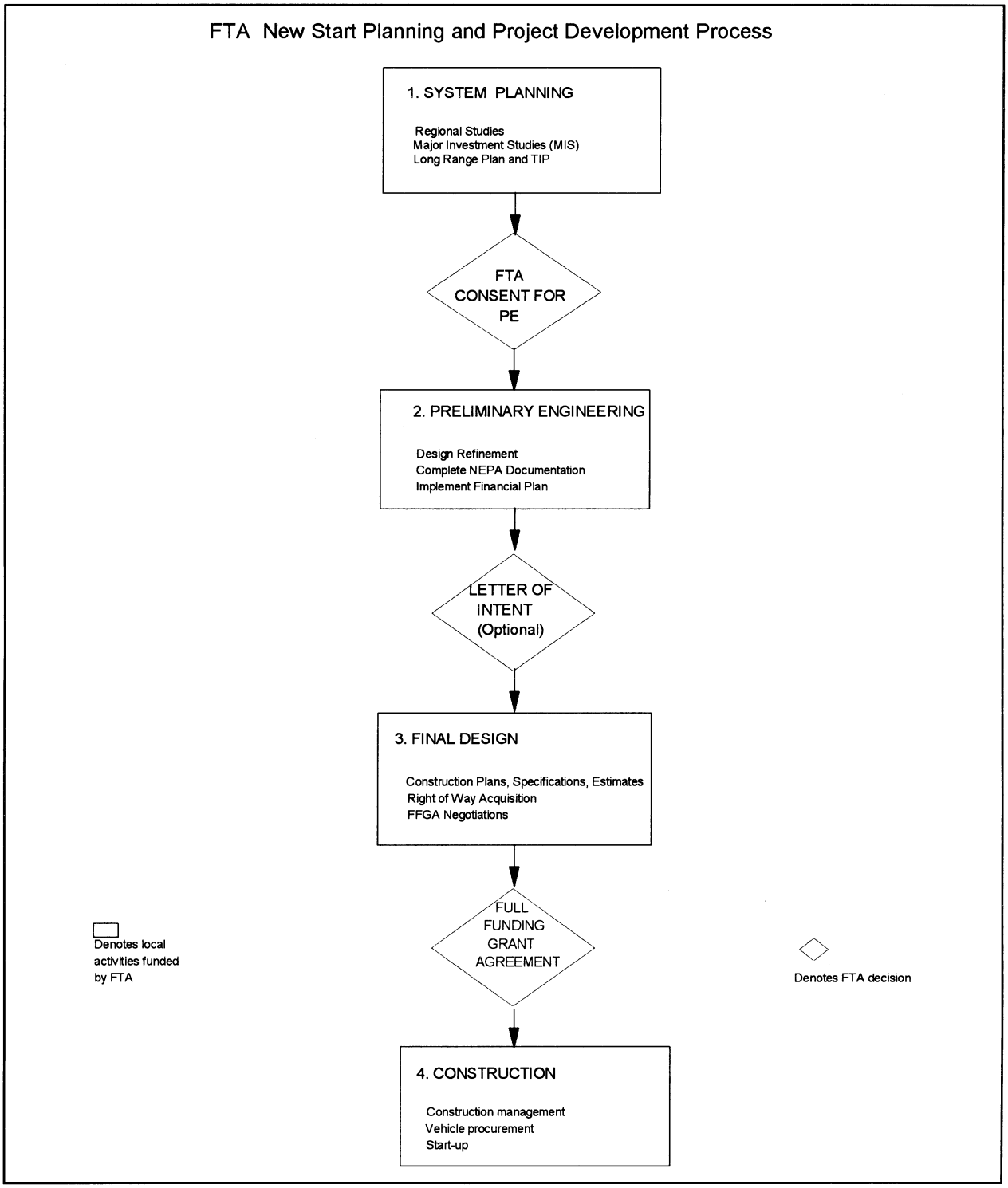

FIGURE 1

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Planning: Sections 1024, 1025 and 3012 of ISTEA implemented a continuing, cooperative, and comprehensive transportation planning process which is to be conducted in each metropolitan area in the United States. This planning process leads to the adoption, by the designated metropolitan planning organization, of a metropolitan transportation plan (''plan'') and a transportation improvement program (TIP). The plan and TIP provide for the development and operation of an integrated transportation system that facilitates the efficient movement of people and goods. Projects proposed for FTA assistance must be consistent with the adopted plan and TIP. FTA and FHWA regulations on the metropolitan transportation planning process are found in 23 CFR Part 450.

The planning process includes the development of a financial strategy for the construction and operation of planned facilities and services. The cost of the plan is constrained to the revenues reasonably expected to be available.

The metropolitan planning regulations provide for a Major Investment Study (MIS) where the planning process identifies transportation problems that lend themselves to a high cost, high impact solution. An MIS is a corridor level analysis which evaluates all reasonable alternatives for addressing a transportation problem. (Each major corridor is considered separately to determine the facilities and services that will best meet its projected requirements.) The MIS develops information on the benefits, costs, and impacts of alternative strategies, leading to the selection of a locally preferred alternative or strategy. The selected strategy is then included in the metropolitan transportation plan and transportation improvement program. It is expected that most new start proposals will result from an MIS. All projects proposed for Section 5309 funding assistance must emerge from the metropolitan planning process, including an MIS where applicable (an MIS is only required in cases where Federal funds are potentially involved in the financing of the selected alternative).

The FTA/FHWA planning regulations found in 23 CFR Part 450 merged the alternatives analysis requirement into the metropolitan planning process. Thus, the completion of an MIS in accordance with 23 CFR Part 450 satisfies the statutory requirement for an alternatives analysis.

The alternatives analysis requirement does not apply to certain new start projects that, by statute, are exempted from the new start criteria. Under 49 U.S.C. Section 5309(e)(6)(A), projects are exempt from these requirements if: (a) The project is located within an extreme or severe nonattainment area and is a transportation control measure, as defined by the Clean Air Act, that is required to carry out an approved State Implementation Plan; (b) the amount of Section 5309 assistance being sought for the project is less than $25 million; (c) the amount of Section 5309 assistance being sought is less than ⅓ of the total cost of the project; or (d) the amount of Section 5309 assistance being sought is less than ⅓ of the total cost of a program of projects as determined by the Secretary.

An MIS may be appropriate even though an alternatives analysis is not required by statute. Since FTA intends that an MIS be performed before local decisions are reached on the strategy for solving a corridor's transportation problems, it is likely that most exempt projects would emerge as a preferred solution only after an MIS is completed. In addition, the cost estimates and funding arrangements that are needed to determine if a project is exempt may not be available until an MIS has been completed. Even where it is clear that a new start alternative is exempt from the alternatives analysis requirement, an MIS may be an appropriate means to evaluate that alternative in the context of other strategies being considered for the corridor.

Situations may also arise where the MIS requirements do not apply but an alternatives analysis is still required by statute. This could occur, for example, where the total cost of the project is not significant in regional planning terms but the Section 5309 share exceeds $25 million and ⅔ of the project cost. In such cases, FTA will work with the local participating agencies to determine the appropriate scope for an alternatives analysis.

Federal financial support for the planning process is derived from a number of sources, including the FTA Planning and Research Program under 49 U.S.C. Section 5314, and planning programs administered by the Federal Highway Administration. FTA Urbanized Area Formula funds under Section 5307 and flexible funds under the Surface Transportation (STP) Program and the Congestion Mitigation and Air Quality (CMAQ) Program may also be used to support planning. Given the significant demands placed on the Section 5309 new start program, FTA does not support the use of new start funds for planning.

Preliminary Engineering: The preliminary engineering stage of project development follows the completion of the planning process, as evidenced by the adoption of a locally preferred alternative in the metropolitan area's adopted transportation plan and TIP. Under 49 U.S.C. 5309(e)(5), a proposed new start project may advance from alternatives analysis into preliminary engineering only if the Secretary makes certain findings with regard to the completion of alternatives analysis, project justification, and the degree of local financial commitment. The Secretarial finding is not required for exempt projects as defined above.

When the sponsoring agency for a new start project desires to initiate the preliminary engineering phase of project development, it should submit a request to the FTA regional office identifying the project. The request should provide information on the planning process that led to the selection of the project, including the inclusion of the project in the metropolitan transportation plan and TIP. The request should also address the project justification and local financial commitment criteria outlined below. (This information would normally be developed as part of the MIS process that led to the selection of the project.) Where the sponsoring agency believes that a proposed project is exempt from the new start criteria, the agency need not provide project justification and financial commitment information, but would request FTA concurrence that the project is exempt from the criteria. FTA approval to initiate preliminary engineering is not a commitment to fund final design or construction.

During the preliminary engineering phase, local project sponsors refine the design of the proposal, taking into consideration all reasonable design alternatives. The PE process results in estimates of project costs and impacts in which there is a high degree of confidence. In addition, environmental requirements are completed (for new starts, this will normally entail the completion of an environmental impact statement), project management concepts are finalized, and any required funding sources are put in place. Information on project justification and the degree of local financial commitment will be continually updated as appropriate.

Localities are encouraged to incorporate into their preliminary engineering activities, and to implement, a program of supportive policies and actions designed to

enhance the benefits of the project and its financial feasibility. Such policies and actions might include:

- Zoning policies and development incentives to stimulate high density and mixed use development around transit stations.
- Land use plans that support or reinforce the development impact and shaping influence of the transit system.
- Coordinated bus and/or paratransit feeder services.
- Pricing, regulatory, or traffic control measures aimed at managing peak period auto use and increasing the speed of transit vehicles (e.g., higher parking fees and tolls, traffic metering, priority treatment and signal preemption for transit).
- Financing mechanisms which make use of taxes and/or fees paid by developers and property owners benefiting from the transit system.

Preliminary engineering is typically financed with Section 5307 funds, local revenues, and flexible funds under the Surface Transportation (STP) Program and the Congestion Mitigation and Air Quality (CMAQ) Program. Given the significant demands placed on the Section 5309 new start program, FTA does not support the use of new start funds for preliminary engineering except in the case of unusually large and costly projects.

Final Design: This is the last phase of project development and includes right-of-way acquisition, utility relocation, and the preparation of final construction plans (including construction management plans), detailed specifications, construction cost estimates, and bid documents. The final design stage cannot be initiated until environmental requirements have been satisfied, as evidenced by a Record of Decision (ROD) or a Finding of No Significant Impact (FONSI). Final design is typically financed with Section 5309 new start funds.

FTA Ratings and Funding Commitments: Each year, FTA will rate the projects which are performing or have completed the preliminary engineering phase. Pursuant to 49 U.S.C. Section 5309(m)(3), FTA will then recommend an allocation of new start funds among projects for the succeeding fiscal year. The rating will be assigned based on the project justification and financial commitment criteria contained in this statement. Funding commitments will be given ultimately to those projects which are most highly rated and which are ready to utilize the funds consistent with available program authorization.

During preliminary engineering or final design, FTA may issue a Letter of Intent to signal its intention to participate in the cost of a new start project. The Letter of Intent is a formal pledge but is not a Federal obligation or administrative commitment.

When FTA has decided to participate in a project with new start funds, FTA and the grantee will negotiate, during final design, a full funding grant agreement (FFGA). The FFGA will specify a fixed ceiling on the Federal contribution. The grantee will be required to complete construction of the project, as defined, to the point of initiation of revenue operations, and to absorb any additional costs incurred, except under certain specified extraordinary circumstances. The FFGA will include a mutually agreeable schedule for anticipating Federal contributions during the final design and construction period. Specific annual contributions under the FFGA will be subject to the availability of budget authority and the ability of the grantee to use the funds effectively.

The total amount of Federal obligations under full funding grant agreements and potential obligations under Letters of Intent will not exceed the amount authorized for Section 5309 new starts. FTA may also make ''contingent commitments,'' which are contingent upon future congressional authorizations, beyond the amount authorized for section 5309 new starts.

II. Criteria for Grants and Loans for Fixed Guideway Systems

In order to approve a grant or loan under Section 5309 (formerly Section 3), the Secretary of Transportation must find that the proposed project is justified as described in Section 5309 (e)(2)(B) (formerly Section 3(i)(1)(B)), and supported by an acceptable degree of local financial commitment, as described in Section 5309(e)(2)(C) (formerly Section 3(i)(1)(C)).

a. Project Justification Criteria

To make the statutory approval required for a project to enter preliminary engineering, as required by Section 5309(e)(2)–(7) (formerly Section 3(i)), FTA will evaluate information developed in Major Investment Studies. The method used to make this determination will be a Multiple Measure approach in which the merits of candidate projects will be evaluated against a set of measures. These measures will also be used to determine which projects to recommend for funding in the report required by Section 5309(m)(3) (formerly Section 3(j)). The ratings for each measure will be updated throughout the preliminary engineering and final design processes, as costs, benefits and impacts are more precisely defined. As a candidate project proceeds through the stages of the development process, a greater degree of certainty is expected with respect to these measures. The measures are as follows:

1. For ''mobility improvements''—(1) The projected value of aggregate travel time savings per year (forecast year [1]) anticipated from the new investment, compared to both the no-build and TSM alternatives [2]. This aggregate includes the travel time savings of people using competitive modes, along with those on the trips made by transit (both new and existing transit riders). It is a net figure in the sense that travel time increases should be explicitly considered and used to offset the time savings of those people who experience savings. Travel time savings for those switching from highways to transit will be calculated using a consumer surplus approach, taking one-half of the total travel time savings for existing riders. The net figure will be expressed in terms of the dollar value of the projected travel time savings for the study area. Total travel time savings will be valued at 80 percent of the average wage rate in the urbanized area. (2) The absolute number of low income households (households below the poverty level) located within ½ mile of boarding points associated with the proposed system increment.

2. For ''environmental benefits''—(1) the value per year (forecast year) of the forecast change in criteria pollutant emissions and in greenhouse gas emissions, ascribable to the proposed new investment, calculated according to standardized national assumptions about the unit value of each emission; (2) the forecast net change per year (forecast year) in the regional consumption of energy, ascribable to the proposed new investment, expressed in British Thermal Units (BTU); and (3) current Environmental Protection Agency designations for the region's

[1] For the purposes of this analysis, the forecast year will be year 20 of the analysis period. An opening year forecast will be used for financial analysis and as a check on initial ridership projections.

[2] In all cases, the no-build case will be based on committed elements of the region's transportation plan, except for the proposed fixed guideway or extension. As areas are required to develop Congestion Management Systems, and give priority to the strategies included in the CMS in developing long range transportation plans and programs, it is expected that the base case will include substantial system management elements designed to reduce congestion by improving the operation of the transportation system. The TSM alternative is the no-build case plus low-cost transportation improvements such as traffic engineering, transit operational changes, and modest capital improvements that improve transportation performance.

compliance with National Ambient Air Quality Standards. The new start alternative will be compared to both the no-build and TSM alternatives.

3. For ''operating efficiencies''—the forecast change in operating cost per passenger-mile (forecast year), for that part of the system that will be directly affected by the proposed new investment, expressed in terms of absolute dollar value. The new start will be compared to both the TSM and no-build alternatives.

4.For ''cost-effectiveness''—the incremental change in total capital and operating cost per incremental passenger, based on the forecast change in annual transit ridership (forecast year) and the annualized total (Federal and local) capital investment and operating cost, compared to the no-build and TSM alternatives.

5. For ''transit supportive existing land use policies and future patterns''—the degree to which local land use policies are likely to foster transit supportive land use, measured in terms of the kinds of policies in place, and the commitment to these policies. A combined rating consisting of both ''high,'' ''medium,'' and ''low'' ratings and corresponding descriptive indicators will be used to assess each of the following six factors: (1) existing land use; (2) containment of sprawl; (3) transit-supportive corridor policies; (4) supportive zoning regulations near transit stations; (5) tools to implement land use policies; and (6) the performance of land use policies. The ratings for each factor will then be combined into a single ordinal rating for transit supportive land use.

6. For ''other factors''—(1) the degree to which the institutions (local transportation planning, programming and parking policies, etc.) are in place as assumed in the forecasts, (2) project management capability, and (3) additional factors relevant to local and national priorities and relevant to the success of the project. Ratings will be expressed as appropriate in ordinal ratings and descriptive statements.

b. Local Financial Commitment

The local financial commitment to a proposed project will continue to be evaluated according to the following measures:

1. The proposed local share of project costs, defined as the percentage of capital costs to be met using funds from sources other than Section 5309, including both the local match required by Federal law and any additional capital funding (''overmatch''). Consideration will be given to the use of (1) innovative financing techniques, as described in the May 9, 1995 Federal Register notice on *FTA's Innovative Financing Initiative;* and (2) ''flexible funds'' as provided under the Congestion Mitigation and Air Quality Improvement Program (CMAQ) and the Surface Transportation Program (STP) under ISTEA.

2. The strength of the proposed capital financing plan, according to (1) the stability and reliability of each proposed source of local match, including inter-governmental grants, tax sources, and debt obligations, with an emphasis on availability within the project timetable; (2) whether adequate provisions have been made to cover unanticipated cost overruns. The strength of the capital finance plan will be rated high, medium, or low.

3. The ability of the local transit agency to fund operation of the system as planned once the guideway project is built, according to (1) an evaluation of the operating revenue base and (2) its ability to expand to meet the incremental operating costs associated with a new fixed guideway investment and any other new services and facilities. Ratings of high, medium, and low will be used to describe stability and reliability of operating revenue.

Issue Date: December 16, 1996.

Gordon J. Linton,

Administrator.

[FR Doc. 96–32199 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–57–P

Surface Transportation Board

[STB Finance Docket No. 33304]

Track Tech, Inc.—Acquisition and Operation Exemption—Burlington Northern Railroad Company

Track Tech, Inc. (TTI) has filed a verified notice of exemption under 49 CFR 1150.31: (1) to acquire and operate approximately 65.01 miles of rail line owned by the Burlington Northern Railroad Company as follows: between milepost 25.15 at Denrock, IL, and milepost 28.35 at Lyndon, IL; between milepost 96.30 at Bladen, NE,[1] and milepost 119.34 at Hildrath, NE; between milepost 98.00 at Hamar, ND, and milepost 103.92 at Warwick, ND; between milepost 4.00 at Tatman Junction (near Minot), ND, and milepost 16.70 at Tatman Air Force Base, ND;[2] between milepost 761.80 at Amarillo, TX, and milepost 775.70 at Bushland, TX; and between milepost 351.15 and milepost 357.40 at Lubbock, TX. The proposed transaction was to be consummated not sooner than November 27, 1996, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33304, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: T. Scott Bannister, 1300 Des Moines Building, 405 6th Avenue, Des Moines, Iowa 50309

Decided: December 12, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–32232 Filed 12–18–96; 8:45 am]

BILLING CODE 4915–00–P

[1] TTI has confirmed that the milepost at Bladen, NE, is milepost 96.30 (rather than milepost 95.82).

[2] TTI has confirmed that the milepost at Tatman Air Force Base, ND, is milepost 16.70 (rather than 12.70).

[STB Docket No. AB–88 (Sub-No. 8X)]

Bessemer and Lake Erie Railroad Company—Abandonment Exemption—in Armstrong and Butler Counties, PA

Bessemer and Lake Erie Railroad Company (B&LE) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 3.13 miles of its line of railroad, known as the Western Allegheny Branch, extending from Station 2294+53 eastward to the end of the track at Station 2460+01, in Armstrong and Butler Counties, PA.

B&LE has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 18, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 30, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 8, 1997, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Robert J. Koch, Esq., Bessemer and Lake Erie Railroad Company, 135 Jamison Lane, P.O. Box 68, Monroeville, PA 15146.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

B&LE has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 24, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 12, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–32231 Filed 12–18–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[STB Docket No. AB–167 (Sub-No. 1172X)]

Consolidated Rail Corporation; Abandonment Exemption in Middlesex County, NJ

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.08-mile portion of its line of railroad known as the Raritan North Shore Industrial Track between milepost 0.00 and milepost 1.08 in the city of Perth Amboy, Middlesex County, NJ.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 18, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 30, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 8, 1997, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John K. Enright, Associate General Counsel, Consolidated Rail Corporation, 2001 Market Street—16A, Philadelphia, PA 19101–1416.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 24, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 12, 1996.

By the board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–32230 Filed 12–18–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–

463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held on January 8, 1997, at VA Headquarters, 810 Vermont Avenue, NW., Washington, DC. The meeting will be held in Room 930 and commence at 2:30 p.m. and adjourn no later than 4:30 p.m. The purpose of this meeting is for VA to solicit input from the Advisory Committee on Prosthetics and Special-Disabilities Programs concerning VA's implementation of section 1706 of 38, U.S.C., (Public Law 104–262, The Veterans' Health Care Eligibility Reform Act). Specifically, a draft decision paper regarding VA's definition of capacity and special disability programs will be discussed. Due to the fact that Committee members are located geographically across the country and that this meeting is anticipated to be held no longer than two hours, members of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be contacted for this meeting via conference call.

The meeting is open to the public. Due to the shortness of the meeting, public participation is restricted to written comments. Comments should be submitted 5 days before the meeting or 10 days after the meeting. For those wishing to attend, and/or requesting a copy of Public Law 102–262, section 1706 or additional information concerning the meeting, please contact Kathy Pessagno, Veterans Health Administration (113), phone (202) 273–8512, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, prior to January 7, 1997. All written comments received will be available for public inspection at the above address.

Dated: December 12, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–32180 Filed 12–18–96; 8:45 am]

BILLING CODE 8320–01–M

Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Pub. L. 92–463, that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Sheraton Gunter Hotel, 205 E. Houston Street, San Antonio, TX, January 7 through January 9, 1997. The session on January 7, 1997, is scheduled to begin at 1 p.m. and end at 5 p.m. (Central Time). The sessions scheduled for January 8 and 9 are scheduled to begin at 8 a.m. and end at 5 p.m. (Central Time). The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding their funding are prepared for the Chief Research and Development Officer (12).

This meeting will be open to the public (to the seating capacity of the room) at the start of the January 7 session for approximately one half-hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with the qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to frustrate significantly implementation of proposed agency action regarding such research projects). As provided by the subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings are in accordance with 5 U.S.C. 552b(c) (6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. E. William, M.S.H.A., Review Program Manager (124F), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C., at least five days before the meeting. For further information, he can be reached at 202.273.8254.

Dated: December 12, 1996.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–32179 Filed 12–18–96; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 61, No. 245
Thursday, December 19, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

Correction

In notice document 96–31342, appearing on page 65029, in the issue of Tuesday, December 10, 1996, make the following correction:

On Page 65029, in the second column, in the fourteenth line from the bottom, the date ''December 7, 1996'' should read ''December 17, 1996''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94–38–001]

Ouachita River Gas Storage Company, L.L.C.; Notice of Application

Correction

In notice document 96–31792, appearing on page 66030, in the issue of Monday, December 16, 1996, in the second column, the subject heading should read as set forth above.

BILLING CODE 1505–01–D

FEDERAL TRADE COMMISSION

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims

Correction

In rule document 96–25938 beginning on page 53311 in the issue of Friday, October 11, 1996, make the following corrections:

§ 260.5 [Corrected]

1. On page 53317, in the first column, in § 260.5, in the eighth line, footnote reference ''13'' and the footnote at the bottom of the page should read ''1''.

§ 260.7 [Corrected]

2. On page 53318, in the first column, in § 260.7 introductory text, in the last line, footnote reference ''14'' and the footnote at the bottom of the page should read ''2''.

3. On page 53319, in the first column, in § 260.7(b)(2), in *Example 4*, in the last line, footnote reference ''15'' and the footnote at the bottom of the page should read ''3''.

BILLING CODE 1505–01–D

Federal Register

Thursday
December 19, 1996

Part II

Environmental Protection Agency

40 CFR Part 76

Acid Rain Program; Nitrogen Oxides Emission Reduction Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[AD–FRL–5666–1]

RIN 2060–AF48

Acid Rain Program; Nitrogen Oxides Emission Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates standards for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act (''CAA'' or ''the Act'') by establishing nitrogen oxides (NO_X) emission limitations for certain coal-fired electric utility units and revising NO_X emission limitations for others as specified in section 407(b)(2) of the Act. The emission limitations will reduce the serious adverse effects of NO_X emissions on human health, visibility, ecosystems, and materials.

EFFECTIVE DATE: December 19, 1996.

ADDRESSES: *Docket.* Docket No. A–95–28, containing information considered during development of the promulgated standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section (LE–131), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

Background information document. The background information document containing responses to public comments on the proposed standards may be obtained from the docket. Please refer to ''Phase II Nitrogen Oxides Emission Reduction Program—Response to Comments Document''.

FOR FURTHER INFORMATION CONTACT: Peter Tsirigotis, Source Assessment Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 (202–233–9620).

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities regulated by this action are electric service providers that run or operate coal-fired electric utility boilers including dry bottom wall-fired and tangentially fired boilers (Group 1) and certain other boiler types including boilers applying cell-burner technology, cyclone boilers, wet bottom boilers, and other types of coal-fired boilers (Group 2). Regulated entities and boilers include:

Regulated Entities	Regulated Boilers
Electric Service Providers.	Dry bottom wall-fired. Tangentially fired. Cell Burners. Cyclones (larger than 155 MWe). Vertically fired. Wet bottoms (larger than 65 MWe).

This table is not intended to represent a definitive enumeration of all existing and future entities regulated by this action. Rather, its intent is to provide a general guide for readers and to list entities that EPA is now aware will 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 and 76.1 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 named in the preceding ''For Further Information Contact'' section.

The information in this preamble is organized as follows:

I. Rule Background

A. Purpose of Acid Rain NO_X Emission Reduction Program

The primary purpose of the Acid Rain NO_X Emission Reduction Program is to reduce the multiple adverse effects of the oxides of nitrogen, a family of highly reactive gaseous compounds that contribute to air and water pollution, by substantially reducing annual emissions from coal-fired power plants. Since the 1970 passage of the Clean Air Act, NO_X has increased about 7%; it is the only conventional air pollutant to show an increase nationwide.

Electric utilities are a major contributor to NO_X emissions nationwide: in 1980, they accounted for 30 percent of total NO_X emissions and, from 1980 to 1990, their contribution rose to 32 percent of total NO_X emissions. In 1994, electric utility emissions represented about 33 percent of the total annual NO_X emissions. Approximately 90 percent of estimated electric utility NO_X emissions were attributed to coal combustion (see docket item IV–A–8 (USEPA, National Air Pollution Emission Trends, 1900–1994 (EPA–454/R–95–011) at 2–2, October 1995)).

The NO_X emissions discharged into the atmosphere from the burning of fossil fuels consists primarily of nitric oxide (NO). Much of the NO, however, reacts with organic radicals in the air to form nitrogen dioxide (NO_2) and, over longer periods of time, reacts with and forms other pollutants, including ozone (O_3), nitric acid (HNO_3) and fine particles. These pollutants are harmful to public health and the environment.

NO_2 and airborne nitrate also degrade visibility, and when they return to the earth through rain, snow, or fog (''wet deposition'') or as gases (''dry deposition''), they contribute to acidification of lakes and streams and to excessive nitrogen loadings to estuaries and coastal water systems such as in the Chesapeake Bay (''eutrophication'').

NO_2 has been documented to cause eye irritation, either by itself or when oxidized photochemically into peroxyacetyl nitrate (PAN). Ozone, the most abundant of the photochemical oxidants, is a highly reactive chemical compound which can have serious adverse effects on human health, plants, animals, and materials. Fine particles at current ambient levels contribute adversely to morbidity and mortality.

B. Summary of Final Rule

1. NO_X Standards Promulgated by This Rule

EPA today is promulgating new emission limitations to be implemented for nitrogen oxides (NO_X) emissions for wall-fired and tangentially fired boilers (Group 1 boilers) and establishing emission limitations for certain other boilers (Group 2 boilers). The final rule implements section 407 (b)(2) of the Act, which applies to NO_X emission limitations for Group 1 and Group 2 boilers during Phase II of the Acid Rain Program (January 1, 2000 and beyond). Under section 407(b)(2) the Administrator ''may revise'' the applicable NO_X emission limitations for Group 1 boilers in Phase II if the Administrator determines that ''more effective low NO_X burner technology is available,'' i.e., that data on the effectiveness of low NO_X burner technology (LNB) installed after passage of the Clean Air Act Amendments of 1990 supports emission limitations more stringent than the limitations established for Group 1 boilers during Phase I of the Acid Rain Program pursuant to section 407(b)(1) of the Act. 42 U.S.C. 7651f(b)(2). Also under section 407(b)(2) of the Act, the Administrator must establish NO_X emission limitations (on a lb/mmBtu annual average basis) for Group 2 boilers, which include wet bottom boilers, cyclone boilers, cell burner boilers, and all other types of utility boilers not classified as dry bottom wall-fired and tangentially fired boilers, and must meet certain requirements in establishing these limitations. In setting the final emission limitations for Group 1 and Group 2 boilers, as summarized below, the Administrator has met the requirements in section 407(b)(2) of the Act.

i. Revision of NO_X Emission Limits for Phase II, Group 1 Boilers

The Agency has developed a computerized database containing detailed information on the characteristics and emission rates of all coal-fired units with Group 1 boilers on which low NO_X burners (LNBs) have been installed without any other NO_X controls, and for which EPA has both quality assured long-term post-retrofit hourly NO_X emission rate data, measured by continuous emission monitoring systems (CEMS), certified pursuant to 40 CFR part 75 (Acid Rain Continuous Emission Monitoring Rule), and quality assured short-term CEM or test data measurements of uncontrolled emission rates. This database, called the ''LNB Application Database,'' consists of 39 dry bottom wall-fired boilers and 14 tangentially fired boilers and forms the technical basis for EPA's evaluation of the effectiveness (percent NO_X removal) of LNBs applied to Group 1 boilers.

For the final rule, EPA has adopted a methodology that employs ''load-weighted annual average NO_X emission rates'' over the full ''post-optimization period'' for evaluating the effectiveness of LNBs. The post-optimization period includes all available data beginning with the first hour of the low NO_X period,[1] when the LNBs were operating under optimized NO_X removal conditions, and extending to the end of the entire data set, i.e., through June 30, 1996, the end of the latest available reporting period from the Acid Rain Emissions Tracking System (ETS). The post-optimization period contains quality assured CEM data spanning at least 4 calendar months for every boiler and at least 11 calendar months for most boilers (83%). In addition, EPA applied a NO_X/load weighting scheme, using hourly load data reported for 1995, to develop ''load-weighted'' annual average NO_X emission rates from the data set (see discussion in section III.A.2.iii of this preamble). Two advantages of using load-weighted annual average NO_X emission rates over the post-optimization period are that the criteria used to define the ''post-optimization period'' take into account the site-specific nature of the LNB equipment optimization and operator training processes while the use of ''load weighting'' accounts for any potential impact of annual load dispatch patterns on NO_X emissions.

Following the identification of appropriate LNB applications and time period for analysis, EPA developed a two-part model to estimate: (1) Annual average emission rates that can be sustained by LNBs installed on Phase II units with Group 1 boilers and (2) percentile distributions of Phase II units that can comply with various performance standards. The first part of the model calculates the percent reduction achievable by LNBs as a function of uncontrolled emission rate, and the second part applies the estimated percent reduction to boiler-specific uncontrolled emission rates for the population of units that will be subject to any revised NO_X emission limitations in Phase II. EPA used the percentile distributions to select reasonably achievable emission limits for the two types of Group 1 boilers, where ''reasonably achievable'' is defined as the controlled emission rate 85 to 90 percent of the affected population of units can meet or exceed on an annual average basis.

EPA concludes that more effective low NO_X burner technology is available for dry bottom wall-fired and tangentially fired boilers. Further, EPA concludes that for dry bottom wall-fired boilers, 0.46 lb/mmBtu is a reasonable emission limitation that is achievable using such technology. EPA estimates that 85 to 90% of the Phase II dry bottom wall-fired boilers can achieve this emission rate. The implementation of this standard, will result in an additional NO_X emissions reduction of approximately 90,000 tons per year, beginning in 2000, below the emission levels anticipated under the Phase I Acid Rain NO_X Emission Reduction Rule (60 FR 18751, April 13, 1995).

Finally, EPA concludes that for tangentially fired boilers, 0.40 lb/mmBtu is a reasonable emission limitation that is achievable using such technology. EPA estimates that 85 to 90% of the Phase II tangentially fired boilers can achieve this emission rate. The implementation of this standard will result in an additional NO_X emissions reduction of approximately 30,000 tons per year, beginning in 2000, below the emission levels anticipated under the Phase I Acid Rain NO_X Emission Reduction Rule. As discussed below, EPA exercises its discretion under section 407(b)(1) to adopt these revised Group 1 NO_X emission limitations because the resulting additional reductions are a reasonable step toward achieving necessary, significant NO_X reductions and are consistent with the guideline in section 401(b) concerning the level of NO_X reductions to be achieved.

ii. Establishment of Group 2 Emission Limitations

In order to meet the requirements of section 407(b)(2), EPA is using the following methodology for establishing Group 2 emission limitations:

First, EPA determines what NO_X control technologies are the best systems of continuous emission reduction available for each category of Group 2 boilers. Further, EPA considers only technologies for which there is reliable cost information on which to base a determination of whether they are of comparable cost to LNBs, applied to Group 1 boilers.

Second, EPA evaluates each such NO_X control technology and estimates the dollar cost per ton of NO_X removed using the control technology on each boiler in the Group 2 population that is in the appropriate Group 2 boiler category. EPA then compares the dollar cost per ton of NO_X removed for each

[1] The ''low NO_X period'' EPA used for assessing performance of LNBs applied to Group 1 boilers was defined by identifying the lowest average NO_X emission rate each boiler has sustained for at least 52 days, i.e., over a period of 1,248 hours when the boiler was operating and valid CEM data, measured by CEMS certified pursuant to 40 CFR part 75, were available. (Data for 30 calendar days following estimated date boiler began operating after shutdown for LNB retrofit are not used when making this determination. See Table 1, DQO #4D).

NO_X control technology applied to the Group 2 boiler category to the dollar cost per ton of NO_X removed for low NO_X burners applied to dry bottom wall-fired and tangentially fired boilers. Based on this comparison, EPA determines whether the NO_X control technology applied to the Group 2 boiler category has a cost-effectiveness comparable to that of LNBs applied to Group 1 boilers.

Third, EPA estimates the percent change in electricity rates for consumers resulting from costs (in mills per kilowatt-hour) associated with the application of emission limitations on Group 2 boilers. This value is then compared to the percent change in nationwide electricity rates due to the establishment of emission limitations for LNBs on Group 1 boilers. EPA also estimates the emission reductions that are likely to be achieved and considers any other environmental impacts likely to result from application of each NO_X control technology.

Fourth, EPA assesses the performance (percent NO_X reduction) of each cost-comparable Group 2 control technology and applies that reduction percentage to data on the uncontrolled emissions of each boiler that is in the particular category of Group 2 boilers and that will be subject to the Group 2 emission limitation. The emission limitation that will be achievable by 85 to 90% of the boiler population is generally selected, after taking account of energy and environmental impacts, as the emission limitation for that category of Group 2 boiler.

EPA concludes that for cell-burner fired boilers, 0.68 lb/mmBtu is a reasonable emission limitation that meets the requirements of section 407(b)(2). For cell burner boilers, plug-in retrofits and non-plug in retrofits are the best continuous control systems that are available and meet the cost comparability requirement. EPA bases the emission limitation on the use of these control technologies and estimates that 80% of the cell burner population can achieve the limitation. The energy impact, i.e., impact of mills/kWh cost on electricity consumers, of using these technologies to meet the emission limitation is small and similar in magnitude to the energy impact of using LNBs on Group 1 boilers. The emission limitation will result in a total NO_X emissions reduction of approximately 420,000 tons per year, beginning in 2000, without significant increases in other air pollutants or solid waste. As discussed below, the resulting NO_X reductions are a reasonable step toward achieving necessary, significant NO_X reductions and are consistent with section 401(b).

EPA concludes that for cyclone fired boilers larger than 155 MWe, 0.86 lb/mmBtu is a reasonable emission limitation that meets the requirements of section 407(b)(2). For cyclone fired boilers, gas reburning, and SCR are the best continuous control systems that are available and meet the cost comparability criteria. The energy impact, i.e., impact of mills/kWh cost on electricity consumers, of using these technologies to meet the emission limitation is small and similar in magnitude to the energy impact of using LNBs on Group 1 boilers. EPA bases the emission limitation on the use of these technologies and estimates that 85 to 90% of the cyclone fired boiler population can achieve the emission limitation. The emission limit will result in a total NO_X emissions reduction of approximately 225,000 tons per year, beginning in 2000, without significant increases in other air pollutants or solid waste. As discussed below, the resulting NO_X reductions are a reasonable step toward achieving necessary, significant NO_X reductions and are consistent with section 401(b). EPA has decided not to set a NO_X emission limitation for cyclone boilers of 155 MWe or less.

EPA concludes that for wet bottom boilers larger than 65 MWe, 0.84 lb/mmBtu is a reasonable emission limitation that meets the requirements of section 407(b)(2). For wet bottom boilers, gas reburning, and SCR are the best continuous control systems that are available and meet the cost comparability requirement. EPA bases the emission limitation on the use of these technologies and estimates that 85 to 90% of the wet bottom boiler population can achieve the emission limitation. The energy impact, i.e., impact of mills/kWh cost on electricity consumers, of using these technologies to meet the emission limitation is small and similar in magnitude to the energy impact of using LNBs on Group 1 boilers. The emission limitation will result in a total NO_X emissions reduction of approximately 80,000 tons per year, beginning in 2000, without significant increases in other air pollutants or solid waste. As discussed below, the resulting NO_X reductions are a reasonable step toward achieving necessary, significant NO_X reductions and are consistent with section 401(b). EPA has decided not to set a NO_X emission limitation for wet bottom boilers of 65 MWe or less.

EPA concludes that for vertically fired boilers 0.80 lb/mmBtu is a reasonable emission limitation that meets the requirements of section 407(b)(2). For vertically fired boilers, combustion controls are the best continuous control system available and meet the cost comparability requirement. EPA bases the emission limitation on the use of these technologies and estimates that 85 to 90% of the vertically fired boiler population can achieve this emission limitation. The energy impact, i.e., impact of mills/kWh cost on electricity consumers, of using these technologies to meet the emission limitation is small and similar in magnitude to the energy impact of using LNBs on Group 1 boilers. The emission limitation will result in a total NO_X emissions reduction of approximately 45,000 tons per year, beginning in 2000, without significant increases in other air pollutants or solid waste. As discussed below, the resulting NO_X reductions are a reasonable step toward achieving necessary, significant NO_X reductions and are consistent with section 401(b). EPA has decided not to set a NO_X emission limitation for arch-fired boilers, a subset of the vertically fired boiler category.

Finally, EPA has decided not to set a NO_X emission limitation for FBC boilers. Because these units are already low NO_X emitters by design, the NO_X emissions reduction achieved by installing any additional control technology, would not meet the cost-comparability requirement of section 407(b)(2). Moreover, setting an emission limitation that can be achieved by every existing FBC boiler without installing any additional control technology would have an adverse environmental impact. Some existing boilers emit at rates considerably below the highest annual rate observed among FBC boilers and these boilers could offset the emission reductions otherwise required of other affected boilers through emissions averaging under § 76.10.

EPA has also decided not to set a NO_X emission limitation for stoker boilers. EPA has not found any continuous control technology for stoker boilers that meets the cost-comparability requirement.

2. Rationale for Revising Group 1 NO_X Emission Limits and Environmental Impact of Group 2 NO_X Emission Limits

EPA is exercising its discretion to revise the Phase II, Group 1 NO_X emission limitations because: (1) NO_X emissions have significant adverse effects on human health and the environment; (2) significant, additional regional NO_X reductions from current levels are likely to be necessary; (3) without additional actions NO_X emissions are projected to increase

nationwide starting in 2002; (4) the revision of Phase II, Group 1 emission limitations is one of the most cost-effective means of achieving additional NO_X reductions; and (5) the additional reductions from the revision represent a reasonable step toward achieving necessary NO_X reductions. In addition, the resulting NO_X reductions are consistent with section 401(b). The adverse health and environmental effects of NO_X emissions are discussed in the proposed rule on Phase II NO_X emission limitations. 61 FR 1442, 1453–55, January 19, 1996. EPA reaffirms that discussion, which summarizes the adverse impact of NO_X emissions through: The formation of ozone, particulate matter, and nitrogen oxides; and atmospheric deposition resulting in eutrophication of water bodies and acidification of lakes and streams. For the same reasons, EPA also concludes that the adoption of the Group 2 emission limitations set forth in today's rule is supported by the environmental impact of the emission reductions that will result.

The contribution of nitrogen oxides to the formation of ozone, acid deposition and eutrophication of water bodies is substantial. Consequently, in order to address these problems, significant NO_X emission reductions are likely to be needed on a regional scale, particularly in the eastern half of the U.S. This is the portion of the nation in which most of the boilers subject to NO_X emission limitations under the Acid Rain Program are located; 87% of Phase II, Group 1 boilers and 89% of Group 2 boilers covered by today's final rule are in the eastern U.S.

i. Ozone

With regard to ozone, additional regional NO_X reductions of at least 50% from current levels are likely to be needed over large portions of the nation to attain and maintain the national ambient air quality standard for ozone. Modeling results using EPA's Regional Oxidant Model (ROM) estimated that NO_X reductions of about 75% will be needed over large portions of the nation to reduce ozone concentrations to levels at or below the NAAQS (see docket item IV–J–8 (EXISTMOD.TXT, OTAG Modeling and Assessment Subgroup Files on EPA's TTN Bulletin Board, February 7, 1996)). The ROM modeling results were among the reasons for the formation of the Ozone Transport Assessment Group (OTAG), comprised of the 37 eastern-most States and tasked with developing a consensus approach for reducing regional NO_X emissions. OTAG recently completed atmospheric modeling simulations using SAI's Urban Airshed Model (UAM–V) (see docket item IV–J–21 (OTAG Air Quality Analysis Workgroup, 1996)). The results indicate that: broad NO_X emission reductions will decrease regional ozone, high ozone, and ozone in non-attainment areas; and NO_X emission reductions in each OTAG sub-region will be needed to both lower ozone in that same sub-region, as well as other sub-regions.

Further, necessary NO_X reductions to achieve or maintain the ozone standard have been estimated for several other areas of the country: 50–75% from 1990 levels throughout the Northeast Ozone Transport Region (OTR) (60 FR 4712, 4722, January 24, 1995); up to 90% reductions in the Southeast (see docket item II–I–98 (State of the Southern Oxidants Study, 1995)); and a combination of 75% reductions for NO_X and 25% for VOCs regionally, combined with 25% for NO_X and 75% for VOCs locally in the New York region (60 FR 4721); and significant NO_X reductions in the Lake Michigan area, not yet quantified. The results of a study analyzing ozone non-attainment in the eastern U.S. found that nationwide NO_X emission reductions of about 50% from 1990 levels will be needed to approach achievement of the necessary ozone standards (see docket item IV–J–9 (Rao, S.T., et.al., Dealing with the Ozone Non-Attainment Problem in the Eastern United States, AWMA journal, January 1996)).

ii. Acid Deposition

Similarly, additional, regional NO_X reductions of at least 40% are likely to be necessary in order to mitigate the effects of acid deposition. In particular, it is estimated that between 40–50% reductions of NO_X in the Eastern U.S. beyond those already required in the Clean Air Act may be necessary simply to keep the number of acidified lakes in the Adirondacks in New York at 1984 levels. (See docket item IV–A–6 (*Acid Deposition Standard Feasibility Study* (EPA 430–R–95–001a) at xvi).) Without additional reductions, the number of acidic lakes in the Adirondacks are projected to increase by almost 40% by 2040. *Id*. at 47. Significant, additional reductions may also be necessary with regard to the Mid-Appalachian region (see docket item IV–A–6 (*Acid Deposition Standard Feasibility Study* at xvi)).

iii. Eutrophication

NO_X emissions also contribute significantly to eutrophication, i.e., an overabundance of nitrogen to water bodies that leads to problems of nutrient enrichment. Regional NO_X emission reductions of up to 40% are likely to be needed. The signatories to the Chesapeake Bay Agreement, (Maryland, Pennsylvania, Virginia, the District of Columbia, the Chesapeake Bay Commission, and the federal government) have agreed on a goal of a 40% reduction in nitrogen loadings to the Bay by 2000 (relative to a 1985 baseline), representing a reduction of 34 million kilograms of nitrogen (see docket item IV–J–11 (Hicks et al., 1995:6)). In addition, they agreed to maintain, after 2000, a cap on nitrogen loadings at 60% of baseline loadings. Present estimates are that approximately 27% of total nitrogen loading to the Bay system comes from atmospheric sources in the form of NO_X emissions (see docket items IV–J–26 (Linker et al., 1993) and IV–J–19 (Valigura et al., 1995)). Since reducing nitrogen loading through the control of NO_X emissions can be as cost-effective as controlling non-atmospheric sources of nitrogen loading (e.g., point sources such as waste water treatment and non-point sources such as farms), up to a 40% reduction of the contribution in NO_X emissions to the Bay in areas contributing to the eutrophication of the Bay is likely to be necessary.

Although the watershed of the Chesapeake Bay encompasses approximately 64,000 square miles, the Chesapeake Bay ''airshed,'' which is the contiguous area providing 70% of the atmospheric deposition loads to the watershed (see docket item IV–J–18 (Dennis, 1996)), covers up to 600,000 square miles in area (see docket item IV–J–3 (Valigura et al., 1996:23)). The airshed extends upwind of, as well as bordering the water body itself: south to South Carolina, north to Ontario, Canada, and westward up to 500 miles (see docket item IV–J–11 (Hicks et al., 1995:6)). NO_X emissions from outside this area not only contribute to eutrophication in the Bay but also to the entire coastline, such as from the Carolinas to New York (see docket item IV–J–3 (Valigura et al., 1996:23)).

iv. Utility Contribution to Atmospheric NO_X Emissions

Electric utilities contributed approximately 33% of total atmospheric NO_X emissions in 1994, thus substantially contributing to ozone formation, acid deposition, and eutrophication.

Table 1 summarizes the reductions in atmospheric NO_X emissions likely needed and the additional reductions provided by today's final rule. Although the additional reductions from coal-fired utility boilers under the final rule are substantial, they represent only

about 5% of all atmospheric NO_X emissions from all sources of NO_X emissions. The additional reductions under the final rule represent about a 15% reduction in total utility emissions. Since utilities presently contribute about 33% of total NO_X emissions, the final rule provides reductions of about 5% of total NO_X emissions. This reduction level is significantly less than the reduction level likely to be needed to mitigate ozone, acid deposition, and eutrophication (see docket item IV–A–8 (EPA, ''National Air Pollution Emission Trends, 1900–1994'' at 2–2, October, 1995, EPA–454/R–95–011)).

TABLE 1.—ESTIMATED REGIONAL REDUCTIONS NECESSARY TO MITIGATE VARIOUS ENVIRONMENTAL EFFECTS

	Environmental effect		
	Ozone	Acid deposition	Eutrophication
Regional NO_X Reductions Necessary.	More than 50%.	More than 40%.	Up to 40%

TABLE 1.—ESTIMATED REGIONAL REDUCTIONS NECESSARY TO MITIGATE VARIOUS ENVIRONMENTAL EFFECTS—Continued

	Environmental effect		
	Ozone	Acid deposition	Eutrophication
NO_X Reductions Achieved from the Final Rule as Percentage of Total NO_X Emissions.	5%	5%	5%

v. NO_X Reductions Not Sustained

Although national NO_X emissions are expected to decrease up to the year 2000, (see docket item IV–A–8 (EPA, ''National Air Pollution Emission Trends, 1900–1994'' at 5–5, October, 1995, EPA–454/R–95–011)), emissions are projected to begin increasing after 2000 (*id.* at 5–2 and 6–8 [2]). The existing NO_X control programs under the Clean Air Act (including the Mobile Source Program under title II and the Acid Rain NO_X Program under title IV) limit NO_X emission rates (e.g., the pounds of NO_X emissions per amount of fuel consumed (under title IV)) for emission sources. The programs do not cap the total tonnage of nationwide emissions. As the number of emission sources and the use of emission sources increases, reductions due to emission rate limitations are offset to an increasing extent. For this reason, after 2002, when implementation of these NO_X control programs is largely completed and growth in sources and source use continues, NO_X emissions will gradually increase for the foreseeable future (*id.* at 5–5). Section 401(b) of the Act suggested, as a guideline, that NO_X emissions should be reduced nationwide by 2 million tons from the 1980 level. By about 2006, total NO_X emissions will surpass that guideline unless additional efforts are made (e.g., under title IV) to reduce NO_X emissions (*See* figure 1, below). The projected increase in total NO_X emissions is well within the time frame considered by Congress in title IV. EPA notes that the nationwide annual cap for SO_2 emissions, also established under section 402, begins to apply in the year 2010. Until 2010, total annual allocated SO_2 allowances will exceed the cap, because of additional allowances allocated under section 409 for repowered units and bonus allowances under section 405. Additional NO_X reductions, such as these under today's final rule, are necessary both in light of the likely need to reduce NO_X to address ozone, acid deposition, and eutrophication, and in light of the NO_X reduction guideline in section 401(b) of the Act. In short, new initiatives are needed to reduce NO_X emissions on a regional scale in order to improve environmental quality and health beyond 2000.

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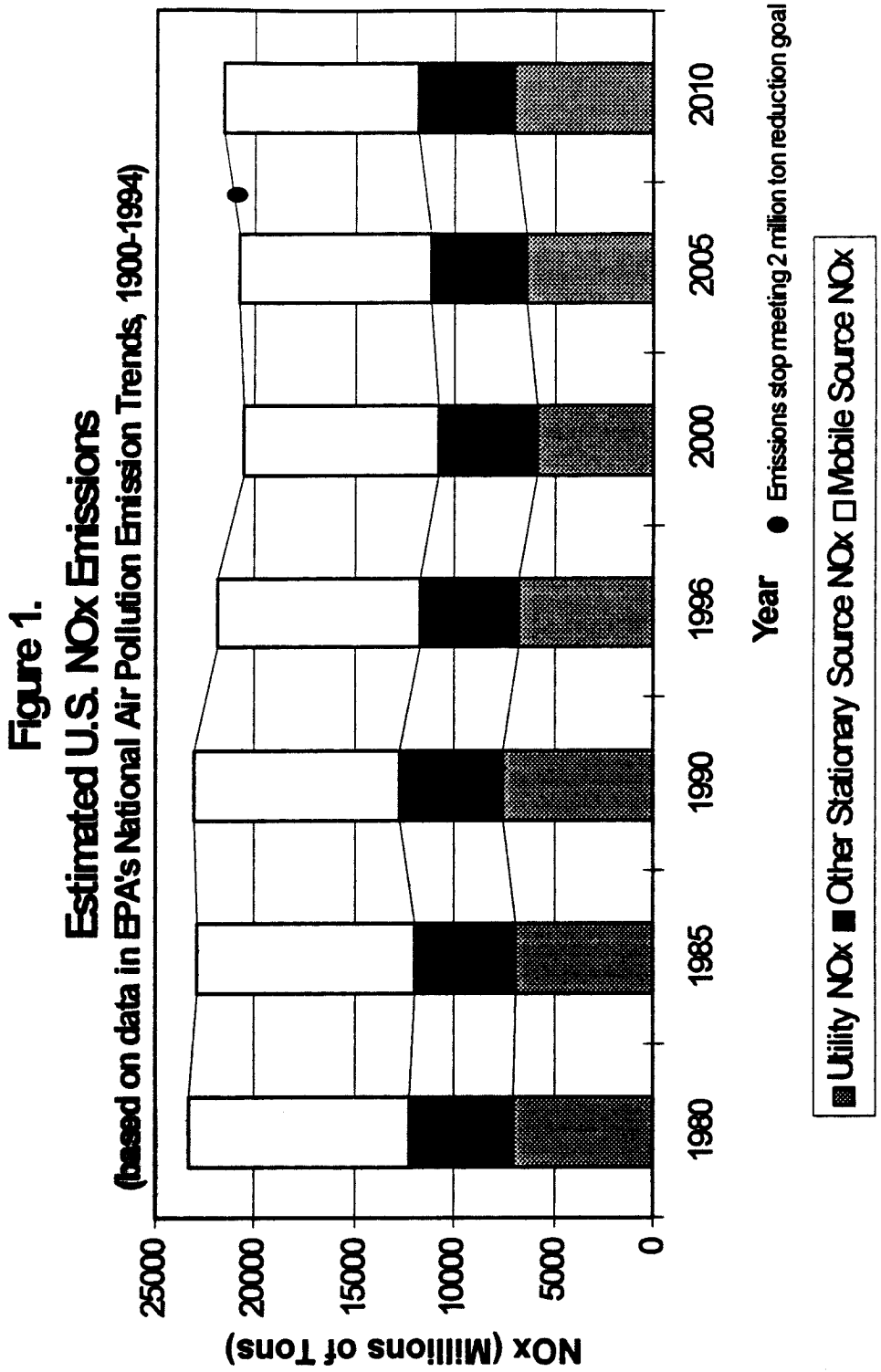
[2] Report's projections take into account requirements for Reasonably Available Control Technologies (RACT) under title I, enhanced programs for inspection and maintenance of mobile sources under title I, and title IV Group 1 emission limits promulgated April 13, 1995 (*id.* at 6–8, (assuming, for analytical purposes, that title IV emission limits are set at RACT)).



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vi. Cost-Effectiveness

The revision of Phase II, Group 1 emission limitations and establishment of Group 2 emission limitations is a cost-effective means of achieving the likely necessary, additional regional NO_X reductions. The control technologies on which the revised Group 1 limits and the Group 2 limits are based are more cost-effective (i.e., have a lower cost per ton of NO_X removed) when applied to the respective Group 1 and Group 2 boiler types than most other control technologies applied to these boiler types or to non-utility sources. As shown below, the dollar cost per ton of NO_X removed for reductions under the final rule is less than, or at the lower end of, the range of dollar cost per ton of NO_X removed for most alternative reductions. In short, the NO_X reductions achievable under this final rule are among the less expensive that can be made.

Utility Sources: For coal-fired utility boilers using higher level control technologies, (e.g., SCR with higher NO_X reduction capability) than the technologies on which the title IV limits are based, the average cost-effectiveness for typical wall-fired boilers ranges from $1,226/ton to $1,670/ton with percent reductions ranging from 60–90%. For typical tangentially fired boilers, the cost-effectiveness ranges from $1,439/ton to $1,935/ton with percent reductions ranging from 60–90%. For typical cyclone boilers, the cost-effectiveness ranges from $440/ton to $880/ton with percent reductions ranging from 60–90%. For typical cell-burner boilers, the cost-effectiveness ranges from $624/ton to $801/ton with percent reductions ranging from 60–80%. For typical wet bottom boilers, the cost-effectiveness ranges from $572/ton to $733/ton with percent reductions ranging from 60–90%. For typical roof-fired (vertically-fired) boilers, the cost-effectiveness ranges from $750/ton to $907/ton with percent reductions ranging from 60 to 90%. For typical oil and gas utility boilers, the average cost-effectiveness for wall-fired dual-fired boilers under various NO_X reduction technologies ranges from $748/ton to $2,263/ton with percent reductions ranging from 40–90%. For typical tangentially fired dual-fired boilers, the cost-effectiveness ranges from $507/ton to $1,573/ton with percent reductions ranging from 30–90% (see docket item IV–J–4 (Ozone Transport Assessment Group, Control Technologies and Options Workgroup, Final Report, April 11, 1996)).

As compared to the cost-effectiveness ranges for higher level control technologies applied to typical utility boilers, the average cost-effectiveness for meeting the Group 1 and Group 2 emission limits under today's final rule, using the control technologies on which the limits are based, is approximately $229/ton of NO_X removed.

Non-Utility Point Sources: Non-utility point sources NO_X reductions are less cost effective, on average, than NO_X reductions under today's final rule. For example, the average cost-effectiveness for process heaters ranges from $290–50,000/ton at an average reduction of 5–90%. For cement manufacturing, the average cost-effectiveness ranges from $470–4,870/ton at an average reduction of 20–90%. For wood manufacturing, the average cost-effectiveness ranges from $1,000 to over $10,000/ton at an average reduction of 0–60% (see docket item IV–J–4 (Ozone Transport Assessment Group, Control Technologies and Options Workgroup, Final Report, April 11, 1996)).

Mobile Sources: For mobile sources, the cost-effectiveness under various NO_X control options is also high, on average, as compared to reductions under today's final rule. For example, the average cost-effectiveness for light-duty on highway vehicles ranges from $1,100–$260,000/ton, with percent reductions ranging from 0.2–21%. For heavy-duty on highway vehicles, the average cost-effectiveness ranges from $1,000/ton to $40,000/ton, with percent reductions ranging from 0.02–5.6%. For non-road sources, the average cost-effectiveness ranges from $119/ton to $23,000/ton, with percent reductions ranging from 0.4–3.4% (see docket item IV–J–6 (Mobile Sources Assessment: NO_X and VOC Reduction Technologies for Application by the Ozone Transport Assessment Group, Final Report, March 4, 1996)).

Table 2 summarizes the cost-effectiveness ranges of NO_X controls for the three major NO_X emitting sources, as compared to the cost-effectiveness of reductions under the revised Group 1 limits and Group 2 limits.

Other: The reductions from applying control technologies to coal-fired power plants under today's final rule can be as cost-effective to achieve as reductions from other point sources (e.g., wastewater plants) and area sources (e.g., farms, animal pastures). Studies concerning eutrophication in the Chesapeake Bay estimate the following average cost-effectiveness of control technologies applied to non-utility sources: chemical addition or biological removal of nitrogen from wastewater processing, $4,000 to over $20,000/ton of nitrogen removed; and management practices to reduce nitrogen from fertilizers, animal waste, and other non-point sources, $1,000 to over $100,000/ton of nitrogen removed (see docket items IV–J–25 (Camacho, 1993:97–98) and IV–J–27 (Shulyer, 1995:6)).

TABLE 2.—AVERAGE COST-EFFECTIVE OF NO_X Controls by Source

[Utility, other point source, mobile]

	Range in typical cost-effectiveness ($/ton)	Percent reduction
Utility sources (Coal w/advanced NO_X controls):		
Wall-fired	$1,226–1,670	60–90
Tangentially-fired	1,439–1,935	60–90
Cyclones	440–880	60–90
Cell burners	624–801	60–80
Wet bottoms	572–733	60–90
Roof (vertically-fired)	750–907	60–90
Utility sources (Oil and Gas):		
Wall dual-fired	748–2,263	40–90
Tangential dual-fired	507–1,573	30–90

Source: Ozone Transport Assessment Group, Control Technologies and Options Workgroup, Final Report, April 11, 1996.

Title IV phase II NO_X rule	Average cost-effectiveness of § 407(b)(2) ($/ton)	Percent reduction under § 407(b)(2)
Group 1 and group 2	$229	20

See section IV.B (Table 17) of this preamble.

Non-utility point sources	Range in typical cost-effectiveness ($/ton)	Percent reduction
Non-utility boilers	$490–19,600	5–90
Process heaters	290–50,000	20–90
I.C. engines	180–13,400	5–98
Gas turbines	130–2,760	60–90
Residential fuel combustion	1,600–62,500	50–100
Cement manufacturing	470–4,870	20–90
Metals processing	120–11,600	12–96
Wood manufacturing	1,000–10,000+	0–60
Agriculture chemical manufacturing	76–715	44–99
Incineration	800–10,000	10–77

Source: Ozone Transport Assessment Group, Control Technologies and Options Workgroup, Final Report, April 11, 1996.

Mobile sources	Range in typical cost-effectiveness ($/ton)	Percent reduction
Light-duty (on highway)	$1,100–260,000	0.2–21
Heavy-duty (on highway)	1,000–40,000	0.02–5.6
Non-road	119–23,000	0.4–3.4

Source: Mobile Sources Assessment: NO_X and VOC Reduction Technologies for Application by the Ozone Transport Assessment Group, Final Report, March 4, 1996.

Title IV phase II NO_X rule	Average cost-effectiveness of § 407(b)(2) ($/ton)	Percent reduction under § 407(b)(2)
Group 1 and Group 2	$229	20

vii. Need to Revise Group 1 Limits and Establish Group 2 Limits

As discussed above, in order to mitigate adverse effects on health and the environment due to NO_X emissions, significant, additional reductions in regional atmospheric NO_X emissions from current levels are likely to be necessary. Further, the contribution of the final rule toward the overall NO_X reduction goal is approximately 5%. The NO_X reductions under the rule represent only a portion of the much larger NO_X reductions likely to be needed and are among the most cost-effective reductions available. EPA concludes that the reductions under the final rule represent a reasonable step toward achieving necessary NO_X reductions.

Some commenters suggested that, because the authority to revise the Phase II, Group 1 emission limitations and to issue Group 2 emission limitations arises under title IV of the Clean Air Act, EPA must consider only the acidification impacts of NO_X emissions in deciding whether to revise or issue limitations. Allegedly, all other impacts must be addressed only under other provisions of the Act. EPA rejects this crabbed view of its authority under section 407(b)(2) as having no basis in statutory language or logic. In granting EPA the authority to decide to revise the Phase II, Group 1 emission limitations, section 407(b)(2) only requires a determination of the availability of more effective LNB technology and does not bar consideration of non-acidic deposition impacts. Similarly, in requiring EPA to issue Group 2 emission limitations, section 407(b)(2) sets forth several criteria for setting the limitations but none of the criteria bars consideration of non-acidic deposition impacts. On the contrary, section 407(b)(2) has a general requirement that EPA take account of ''environmental impacts'' in setting Group 2 emission limitations. 42 U.S.C. 7651f(b)(2).

In the absence of a statutory bar on considering all environmental impacts of NO_X emissions and in light of the general purpose of the Clean Air Act to, *inter alia,* ''protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population'', it would be illogical for EPA to focus exclusively on acid deposition.[3] 42 U.S.C. 7401(b)(1). The latter approach would require EPA to regulate on a piecemeal basis and to blindly ignore a major part of the harmful effects of NO_X emissions when setting nationwide NO_X emission limits under title IV. In any event, EPA maintains that, even if the Agency were confined to considering only the acidic deposition effects, referred to above, of NO_X emissions, it would still conclude that additional NO_X reductions are necessary and that the emission limitations set forth in today's rule should be adopted.

Some commenters also noted that section 401(b) states that the purpose of title IV is to reduce acidic deposition through reduction of annual SO_2 emissions of ten million tons from 1980 levels ''and, in combination with other provisions of this Act, of nitrogen oxides emissions of approximately two million tons from 1980 emission levels, in the forty-eight contiguous States and the District of Columbia.'' 42 U.S.C. 7651(b). According to such commenters, because this goal is already met by the existing Phase II, Group 1 emission limitations (as well as by regulations under other parts of the Clean Air Act), there is no basis for revising the limitations. However, section 401(b) provides only general guidance concerning implementation of title IV and, in light of the imprecision of its language, does not—and was not intended to—impose an absolute limit on the amount of NO_X reductions that can be required under emission limitations promulgated under section 407.

In contrast to the SO_2 provisions of title IV, which set a nationwide cap on total tonnage of SO_2 emissions (i.e., 8.95 million tons starting in 2010), the NO_X provisions of title IV provide only for limits on the NO_X emitted per mmBtu of fuel burned. Even if the NO_X emission limitations are met, increased use of existing coal-fired and other

[3] Although, as discussed below, section 401(b) states that the general purpose of title IV is ''to reduce the adverse effects of acid deposition'', this provision should not be interpreted as barring consideration of other environmental impacts for purposes of setting emission limitations under section 407. 42 U.S.C. 7651(b). EPA's interpretation—which harmonizes sections 101(b)(1) (stating the general purposes of the Clean Air Act) and 401(b) (stating the general purposes of title IV)—is that, while the primary focus in promulgating regulations under title IV is reduction of acidic deposition, other environmental impacts may also be considered.

utility boilers in the future in response to growth in demand for electricity can result in increased tonnage of NO_X emissions. The NO_X emissions reductions projected to be achieved through adoption of any given set of NO_X emission limitations under title IV are therefore not permanent. For this reason, when EPA estimates NO_X reductions resulting from title IV emission limitations, the estimates are tied to a specific year, in this case the year 2000. *Regulatory Impact Analysis of NO_X Regulations* at 1–7 and 1–8, December 8, 1995. Moreover, as discussed above, total NO_X emissions are projected to decline through 2000, increase thereafter, and exceed the two million guideline by around 2006. In short, the commenters' claim that a two-million-ton emission reduction ''goal'' is ''satisfied'' by the existing Group 1 emission limitations is inaccurate because a two-million-ton level of reductions from 1980 achieved for a given year (e.g., for 2000) through these limitations is unlikely to be maintained, in the near future without further reductions.

Although EPA maintains that the 2 million ton guideline in Section 401(b) aims at total NO_X emissions of 2 million tons below the 1980 levels, EPA notes that the final rule will result in total Group 1 and Group 2 boiler NO_X emissions around 2 million tons less than what they otherwise would have been in 2000. The annual NO_X reductions anticipated from the existing Group 1 emission limitations under the April 13, 1995 rule and additional annual reductions anticipated from the Phase II, Group 1 and Group 2 emission limitations under today's final rule are about 1,170,000 tons and 890,000 tons respectively for the year 2000, for a total of about 2,060,000 tons. EPA's current estimate of reductions from the April 13, 1995 rule is lower than the reductions originally estimated (i.e., about 1,890,000 tons for the year 2000) for that rule. 59 FR 13538, 13562–63 (March 22, 1994); *see also* 59 FR 18760 (adopting for April 13, 1995 rule the Regulatory Impact Analysis originally promulgated for the March 22, 1994 rule).

In making the original estimates of reductions, EPA used emissions factors (i.e., estimated uncontrolled emission rates based on coal type and boiler type) to determine the uncontrolled emissions of boilers to which the existing Group 1 emission limitations were to be applied. In response to comment in today's rulemaking concerning the inaccuracy of emission factors, EPA has minimized its use of emission factors and instead relied almost exclusively on actual, short-term, uncontrolled emissions data from continuous emissions monitoring obtained during annual monitor certification testing (i.e., CREV data) or submissions of CEM, EPA reference method, or other test data by utilities. This data was not generally available to EPA when the April 13, 1995 rule was published.[4] As a result of using more accurate uncontrolled emissions data, EPA's estimates of anticipated reductions under the existing Group 1 emission limitations are now more accurate and are lower. Even if section 401(b) were viewed as imposing a ''ceiling'' of ''approximately two million tons'' of NO_X reductions under section 407, the reductions anticipated under the emission limitations adopted in the April 13, 1995 rule and today's final rule are consistent with that ''ceiling.''

For the reasons discussed above, EPA concludes that it should exercise its discretion under section 407(b)(2) to revise the Phase II, Group 1 emission limitations. The revised Group 1 limits represent a reasonable step toward achieving the significant NO_X reductions that are likely to be necessary, and are consistent with the 2 million ton guideline for NO_X reductions. The revision of the Group 1 emission limitations will result in about 120,000 tons of additional annual NO_X reductions. Actions to achieve NO_X reductions beyond those realized under title IV are being considered, or will be considered in the future, under other titles of the Clean Air Act.

Unlike the Group 1 limitation revisions, which are discretionary under section 407(b)(2), the issuance of Group 2 emission limitations is mandatory under that section so long as the requirements of the section (e.g., cost comparability) are met. However, as noted above, EPA is required, when setting Group 2 emission limitations under section 407(b)(2), to consider environmental impacts. EPA's application of the section 407(b)(2) requirements for setting Group 2 emission limitations—including the consideration of environmental impacts—is set forth in detail below in section III.B of this preamble. EPA concludes that, like the Group 1 revisions, the Group 2 emission limitations supported and adopted in that section of the preamble represent a reasonable step toward achievement of necessary, significant NO_X reductions and are consistent with the 2 million ton guideline for NO_X reductions.

[4] For the January 19, 1996 proposal in the instant rulemaking, EPA replaced many, but not all, of the emissions factors with actual data, which resulted in estimated annual reductions under the current Group 1 emission limitations of about 1,540,000 million tons. *See* Regulatory Impact Analysis for the proposed rule (docket item II–F–2).

II. Public Participation

Regulations were proposed in the Federal Register on January 19, 1996 (61 FR 1442). The notice invited public comments and copies of the proposed rule were made available to interested parties.

EPA held a public hearing to provide interested parties the opportunity for oral presentation of data, views, or arguments concerning the proposed regulations. The hearing was held on February 8, 1996 in Washington, DC. Four persons testified at the hearing concerning issues related to the proposed regulations. The hearing was open to the public, and each attendee was given an opportunity to comment on the proposed regulations. (See docket items IV–F–1, IV–F–2 and IV–F–3.) The initial public comment period (January 19, 1996 to March 4, 1996) was extended by two weeks to March 19, 1996 to allow additional time for inspection of interagency review materials which EPA added to the docket on January 26, 1996. (See docket item III–A–2.)

III. Summary of Major Comments and Responses

EPA received approximately 100 comment letters regarding the proposed regulations, presenting more than 200 issues. Commenters included public and municipal utilities, utility associations, state/local agencies and Attorneys General, environmental organizations, vendors, general industry, research/trade groups, and private citizens. A copy of each comment letter received is included in the rulemaking docket. A list of commenters, their affiliations, and the EPA docket item number assigned to their correspondence is included in the background information document.

All of the comments have been carefully considered, and where determined to be appropriate by the Administrator, changes have been made in the final regulations. The background information document includes a summary of all the comments and EPA's response on each of the relevant issues. The following sections of the preamble provide a summary of the major comments received and the Agency's response to those major comments.

A. Phase II, Group 1 Boiler NO_X Emission Limits

1. Boiler Population Used To Assess NO_X Emission Limits

Background. For the proposed rule, EPA developed a computerized boiler database containing detailed information on the characteristics and pre-retrofit and post-retrofit emission rates of coal-fired units with Group 1 boilers on which low NO_X burners (LNBs) had been installed without any other NO_X controls (''the LNB Application Database''). This database contained all known applications of LNBs to Group 1 boilers that were installed subsequent to 11/15/90 (the date of enactment of the 1990 amendments to the CAA) and for which EPA had at least 52 days of quality assured post-retrofit data measured by continuous emission monitors (CEMs) certified according to 40 CFR part 75. The 24 wall-fired boilers and 9 tangentially fired boilers in this database formed the empirical basis for EPA's assessment of the effectiveness of low NO_X burner technology and the revised annual NO_X emission limitations provisions for Group 1 boilers in the proposed rule.

Comment/Analyses: EPA received approximately 25 comment letters (from 19 utilities, 3 utility associations, 2 states, and an environmental organization) on the appropriateness of including or excluding certain boilers and the selection criteria used to define eligibility for the LNB Application Database.

Several commenters suggested that EPA include specific boilers to increase the size and improve the representativeness of the tangentially fired subset in the LNB Application Database: Riverbend 7 and 8, Allen 1 and 3, J.H. Campbell 3, Gallatin 4, and Lansing Smith 2 (see, for example, docket items IV–D–22, p. 1; IV–D–21, pp. 2–3; IV–D–20, pp. 7–9, and IV–D–65, p. 22). The commenters acknowledged that many of these retrofit cases did not satisfy the quality assurance criteria that EPA had established for inclusion in the LNB Application Database. They believed, however, that the general benefits of broadening the experiential basis for tangentially fired boilers outweighed specific data quality concerns. As one commenter said, ''Although not [based on] CEM data, Gallatin Unit 4's performance test result of 0.47 lb/10^6 Btu is reliable, relevant evidence * * * and should be considered by EPA.'' (See docket item IV–D–20, p. 9.)

Commenters also suggested that EPA include specific boilers to improve the representativeness of the wall-fired subset in the LNB Application Database, particularly with respect to boilers with high uncontrolled emission rates: Hammond 4, Watson 4 and 5, Valley 1 and 2 (see, for example, docket items IV–D–65, p.22). Several commenters cited additional wall-fired retrofit cases within the context of the related issue of the dependence of NO_X emissions on boiler load: Conesville 3, Picway 9, Amos 1 and 2, Big Sandy 2, Glen Lyn 6, Colbert 5, Valley 1–4; Presque Isle 5 and 6 (see docket items IV–D–73, p.1; IV–D–20, p.5; IV–D–26, p.2).

On the other hand, several commenters fully endorsed the quality assurance criteria EPA has used to determine eligibility for the LNB Application Database (see, for example, docket items IV–D–063, p.12; IV–D–046, p.3–4). They said that EPA properly excluded older LNB installations (such as Gallatin 4, Lansing Smith 2, and Hammond 4) for which quality assured long-term post-retrofit CEM data did not exist. (EPA notes that this criterion generally excludes experimental or otherwise short-lived LNB installations such as those used for technology demonstrations, and the Allen units.[5]) These commenters also recommended that EPA should attach greater significance to (or rely exclusively on) LNB applications in the 13-state Northeast Ozone Transport Region (OTR) for the evaluation of LNB technology effectiveness because these applications have been required to meet a NO_X emission limit beginning May 31, 1995, whereas most other applications have not had to comply with a recently established NO_X standard.

Some commenters correctly noted that one wall-fired boiler in the LNB Application Database used for the proposed rule analysis, North Valmy 1, should be excluded because this boiler had pre-existing NO_X controls (i.e., Babcock and Wilcox (B&W) DRB version LNBs) so its baseline measurement does not represent an uncontrolled emission rate. EPA notes that this NSPS boiler, when retrofitted with modern LNBs (i.e., B&W XCL version), has sustained an average post-retrofit controlled emission rate of 0.264 for calendar year 1995 (see docket item II–A–9). ''NSPS boilers'' are new coal-fired utility units on which construction commenced after August 17, 1971, which are subject to New Source Performance Standards (NSPS) (40 CFR part 60, subparts D or Da). Some NSPS boilers had early versions of LNBs and/or some other type of NO_X combustion control installed as original equipment. EPA has excluded these ''controlled NSPS boilers'' from the LNB Application Database and regression models because their measured baseline emission rates do not generally represent uncontrolled emissions. EPA has included all NSPS boilers, both controlled and those without built-in NO_X combustion control equipment, in the Phase II, Group 1 boiler set to which the models are applied since NSPS boilers represent approximately one third of the units affected by this rulemaking.

One commenter recommended that EPA exclude two boilers, Coleman C1 and Pulliam 7, because, according to this commenter, these boilers have low NO_X combustion controls beyond the LNB definition in 40 CFR 76.2. EPA disagrees with this commenter's opinion that these two retrofits include auxiliary combustion air outside the waterwall hole which are '' 'staging' combustion on active burners analogous to overfire air'' (see docket item IV–D–51, p. 9). EPA also notes that another commenter, who represents 67 utilities, included both units in their regression analyses on the performance of LNBs applied to wall-fired Group 1 boilers (see docket item IV–D–65, p. 58 and Enclosure 8, Table 4–1). DOE included Coleman C1 in its regression analyses, but excluded Pulliam 8 (probably because, as EPA learned after the rule proposal, the utility switched to Powder River Basin coal for both Pulliam 7 and 8) (see docket item II–D–62).

Some commenters recommended that EPA include Group 1 boilers that installed both LNB and overfire air (OFA) in the LNB Application Database, primarily because they believe units with high uncontrolled emission rates were under-represented in the proposed rule analysis (see, for example, docket item IV–D–58, p. 4). These commenters provided supporting data for certain boilers, including: Eastlake 1, 3, and 4; and Ashtabula 7 (see docket item IV–D–23, p. 5). As discussed later in this section of the preamble, EPA disagrees with this recommendation. First, OFA cannot be considered in determining whether to revise the Group 1 limits and the assessment of the achievable performance of LNBs alone is problematic when LNBs are used in combination with other technologies. Further, the addition of 20 units to the LNB Application Database has

[5] The Allen plant is located in Gaston County, NC, which, until July 1995, was considered in non-attainment for ozone. The utility installed LNBs on two Allen boilers, the vendor is reported to have optimized in mid 1995. In July 1995, Gaston County was redesignated to ozone attainment and low NO_X operation was discontinued on Allen 1 and 3 on September 1, 1995 (see docket item IV–D–22, p. 1). As a result, Allen units 1 and 3 each have less than 52 days of emissions data after optimization of their respective LNBs.

significantly improved the robustness of EPA's regression models for units with high uncontrolled emission rates.

Several commenters agreed with EPA's decision to exclude boilers using Powder River Basin or other subbituminous coal from the LNB Application Database (see, for example, docket items IV–D–15, p. 3; IV–D–65, p. 20). For such boilers, measured post-retrofit NO_X emission reductions reflect the combined effects of switching to a coal with inherently lower NO_X emissions plus the application of LNBs.

Response: In light of the comments requesting the inclusion and/or exclusion of specific boilers from the LNB Application Database, EPA has formalized and expanded the data quality assurance criteria used in the rule proposal into Data Quality Objectives (DQOs). The DQOs are rigorous and precisely defined rule tables which were used to screen all candidate boiler retrofit cases and hourly CEM data observations. The DQOs are designed to ensure that the LNB Application Database satisfies objective and consistent data quality assurance standards. Table 3 presents EPA's DQOs for evaluating candidate boiler retrofit cases (DQOs Applied to Boilers) and for quality assuring hourly post-retrofit CEM data (DQOs Applied to Data).

TABLE 3.—DATA QUALITY OBJECTIVES APPLIED TO BOILERS AND DATA TO SCREEN BOILERS FOR INCLUSION IN THE LNB APPLICATION DATABASE

DQO#	DQOs applied to boilers	Rationale
1B	Only dry bottom wall-fired and tangentially fired boilers will be included in the database.	NO_X emission rates for Group 1 boilers affect dry bottom wall-fired and tangentially fired boilers only.
2B	Boilers must have an installed LNB control technology only. Boilers with LNB plus overfire air (OFA) or other controls will not be included in the database. This determination is made by either (1) information in EPA's Program Tracking System Database or (2) direct contact with individual utilities.	Consistent with *Alabama Power v. EPA,* 40 F.3d 450 (D.C. Cir. 1994), EPA cannot consider LNB+OFA installations when setting Group 1 limits.
3B	Any boiler with an LNB installation date prior to November 15, 1990 will not be included in the database. LNB installation dates are determined from (1) EPA's Program Tracking System Database, (2) estimation of the dates from visual interpretation of hourly emissions plots, or (3) direct contact with the utilities.	Revised Group 1 limits are to be based on improved performance of LNBs installed after passage of 1990 Clean Air Act Amendments (CAAA).
4B	Only boilers with at least 52 days of post-retrofit data, following an equipment ''break-in'' period of 30 calendar days, will be included in the database.	52 days is generally accepted as the minimum time period for assessing long-term performance of NO_X combustion control technology (see preamble section III.A.2.ii). Vendors and utilities acknowledge existence of ''break-in'' period, lasting about 30 calendar days, during which boiler operations are often highly irregular.
5B	Boilers for which LNB design, installation and/or operations are known to be seriously flawed will be excluded from the database. This determination will be made on the basis of published utility papers or information submitted to EPA for a rulemaking docket. (This DQO, however, was never used as the sole basis for rejecting any candidate boiler retrofit cases from current database.).	Boilers with serious and persistent LNB design, installation, and operational flaws do not reflect the true NO_X emission reduction associated with LNB retrofit. (This DQO is a logical extension of a pertinent statutory concept. Section 407(d) requires selection of appropriate control equipment ''designed to meet the applicable emission rate'' as well as proper installation and operation of such equipment for determining eligibility, and an appropriate emission rate, for an alternative emission limitation).
6B	Boilers must have a pre-retrofit uncontrolled emission rate based on quality assured short-term CEM or test data that is verifiable in the CREV database, the Acid Rain Cost Form for NO_X Control Costs, or another source available to EPA.	Quality assured short-term uncontrolled emission rate data are needed to perform consistent analysis and projections using first and second parts of model (see preamble, section III.A.3.ii.).
7B	Quarterly report submissions for boilers must pass the quality assurance (QA) criteria in 40 CFR part 75.	Quarterly report submissions that do not satisfy the CEM and other QA criteria in 40 CFR part 75 contain insufficient information to verify the accuracy of reported NO_X emission rate data.
8B	NSPS boilers are excluded from the database	Pre-NSPS boilers differ from NSPS boilers with regard to furnace volume and heat release rates and, as a result, NSPS units can more easily meet a NO_X reduction target by retrofitting LNBs. This makes NSPS units unrepresentative for establishing overall LNB NO_X reduction efficiency.
9B	Only boilers not using Powder River Basin coal will be included in the database.	Powder River Basin coal has been identified by utilities as a subbituminous coal which produces very low NO_X emission rates. Its performance cannot necessarily be reproduced by any other type of coal for LNB applications.
DQO#	DQOs applied to data	Rationale
1D	Data generated using EPA's missing data substitution procedures will not be used (40 CFR part 75).	The missing data routines include a penalty for not properly maintaining CEM equipment. In order to assess actual LNB performance, only measured NO_X emission rate data will be used.
2D	Hourly emission rate data will be adjusted using the appropriate bias adjustment factor for the boiler.	Using bias adjusted NO_X emission rates will ensure compatibility of CEM NO_X emission rate measurements obtained from different monitors.

TABLE 3.—DATA QUALITY OBJECTIVES APPLIED TO BOILERS AND DATA TO SCREEN BOILERS FOR INCLUSION IN THE LNB APPLICATION DATABASE—Continued

DQO#	DQOs applied to boilers	Rationale
3D	NO_X emission rates greater than 10 lb/mmBtu and less than or equal to 0 lb/mmBtu will be discarded.	Such reported data values are clearly erroneous (i.e., physically impossible) and, thus, should not be included when estimating achievable emission rates.
4D	Hourly emission rate data for ''break-in'' period, defined as the 30 calendar days following estimated date the boiler began operating after shutdown for LNB retrofit (denoted on tables as ''LNB retrofit date''), will be discarded.	Vendors and utilities acknowledge existence of ''break-in'' period, lasting about 30 calendar days, during which boiler operations are atypical due to vendor performance guarantee testing. Discarding hourly emissions data for ''break-in'' period also allows for any uncertainty associated with exact date of beginning of post-retrofit period.

EPA applied these DQOs to candidate boilers: those used in the Phase II proposed rule analysis (Tables 2 and 3, 61 FR 1442, 1446–1447, January 19, 1996); those that commenters requested EPA to consider (many of which are named above); and additional LNB boiler applications which EPA identified using 1995 and first and second quarter, 1996 CEM data submitted pursuant to 40 CFR part 75 and other program information. A detailed presentation of the results of EPA's comprehensive data evaluation appears in docket item IV-A–6. The resulting LNB Application Database, presented in Tables 4 and 5, consists of 39 wall-fired boilers and 14 tangentially fired boilers and contains over 477,800 hours of quality assured post-retrofit CEM data on LNB performance.

TABLE 4.—WALL-FIRED BOILERS IN THE LNB APPLICATION DATABASE

Obs. No.	ORISPL	Unit name/unit ID	Phase	Uncontrolled No_X rate (ln/mmBtu)	Load weighted post-optimization No_X rate (ln/mmBtu)	Percent No_X removal
1.	26	Gaston unit 1	1	0.900	0.384	57.3
2.	26	Gaston unit 2	1	0.780	0.384	50.8
3.	26	Gaston unit 3	1	0.800	0.413	48.4
4.	26	Gaston unit 4	1	0.800	0.413	48.4
5.	47	Colbert unit 1	1	0.800	0.421	47.4
6.	47	Colbert unit 2	1	0.670	0.421	37.2
7.	47	Colbert unit 3	1	0.830	0.421	49.3
8.	47	Colbert unit 4	1	0.860	0.421	51.0
9.	47	Colbert unit 5	1	0.780	0.434	44.4
10.	641	Crist unit 6	1	1.040	0.492	52.7
11.	641	Crist unit 7	1	1.160	0.517	55.4
12.	856	Edwards unit 2	2	1.000	0.514	48.6
13.	1043	Ratts unit 1SG1	1	1.080	0.508	53.0
14.	1043	Ratts unit 2SG1	1	1.090	0.468	57.1
15.	1295	Quindaro unit 2	1	0.635	0.405	36.2
16.	1355	Brown unit 1	1	1.000	0.495	50.5
17.	1357	Green River unit 5	1	0.836	0.400	52.2
18.	1381	Coleman unit 1	1	1.410	0.489	65.3
19.	1381	Coleman unit 2	1	1.290	0.466	63.9
20.	1384	Cooper unit 1	1	0.900	0.419	53.4
21.	1384	Cooper unit 2	1	0.900	0.419	53.4
22.	2049	Watson unit 4	1	1.100	0.413	62.5
23.	2049	Watson unit 5	1	1.220	0.431	64.7
24.	2629	Lovett unit 4	2	0.570	0.349	38.8
25.	2629	Lovett unit 5	2	0.585	0.329	43.8
26.	2840	Conesville unit 3	1	0.852	0.412	51.6
27.	2843	Picway unit 9	1	0.866	0.415	52.1
28.	3131	Shawville unit 1	1	0.990	0.486	50.9
29.	3131	Shawville unit 2	1	1.020	0.483	52.6
30.	3159	Cromby unit 1	2	0.600	0.378	37.0
31.	3178	Armstrong unit 2	1	1.042	0.420	59.7
32.	3948	Mitchell unit 1	1	0.999	0.500	50.0
33.	3948	Mitchell unit 2	1	0.999	0.500	50.0
34.	4042	Valley unit 1	1	1.100	0.477	56.6
35.	4042	Valley unit 2	1	1.100	0.477	56.6
36.	4042	Valley unit 3	1	1.050	0.473	55.0
37.	4042	Valley unit 4	1	0.925	0.473	48.9
38.	6041	Spurlock unit 1	1	0.900	0.414	54.0
39.	6085	RM Schahfer unit 15	2	0.420	0.228	45.7

TABLE 5.—TANGENTIALLY FIRED BOILERS IN THE LNB APPLICATION DATABASE

Obs. No.	ORISPL	Unit name/unit ID	Phase	Uncontrolled NO_X rate (lb/mmBtu)	Load weighted post-optimization NO_X rate (lb/mmBtu)	Percent NO_X removal
1.	710	McDonough unit 1	1	0.657	0.388	40.9
2.	710	McDonough unit 2	1	0.600	0.388	35.3
3.	728	Yates unit Y4BR	1	0.561	0.421	25.0
4.	728	Yates unit Y5BR	1	0.650	0.421	35.2
5.	1374	Elmer Smith unit 2	1	0.859	0.419	51.2
6.	1710	Campbell unit 1	1	0.690	0.456	33.9
7.	2554	Dunkirk unit 1	2	0.478	0.343	28.2
8.	2554	Dunkirk unit 2	2	0.478	0.331	30.8
9.	2642	Rochester 7 unit 4	2	0.587	0.365	37.8
10.	2732	Riverbend unit 7	2	0.580	0.421	27.4
11.	2732	Riverbend unit 8	2	0.640	0.383	40.2
12.	2732	Riverbend unit 10	2	0.772	0.357	53.8
13.	4041	S. Oak Creek unit 7	1	0.661	0.377	43.0
14.	4041	S. Oak Creek unit 8	1	0.665	0.377	43.3

The Agency believes that the addition of 20 units to the LNB Application Database increases the overall representativeness of the database for use in analyzing the achievable emission rates for Group 1 boilers and addresses commenters'' concerns that the original database may not adequately represent units with high uncontrolled emission rates. The current database contains 22 units with uncontrolled emission rates above the rates classified by one utility commenter as ''high'' (i.e., for wall-fired boilers, above 0.90 lb/mmBtu and for tangentially fired boilers, above 0.68 lb/mmBtu, see docket item IV–G–16, p. 7). For several reasons, the Agency believes these additions to the database are more appropriate than adding boilers with LNB and overfire air (OFA) as suggested by some commenters. First, under the ruling in *Alabama Power* v. *EPA*, 40 F.3d 450 (D.C. Cir. 1994), EPA cannot consider LNB with OFA installations in the LNB Application Database for setting Group 1 limits. Second, isolating the true NO_X reduction performance of the LNB portion of LNB+OFA systems is problematic because the controls are designed to reduce NO_X as an integrated system and site-specific factors influence the relative contribution that each component (LNB vs. OFA) is designed to achieve. Further, there is no basis for assuming that the performance of the LNB portion, even if this could be measured accurately, is representative of the performance that could be achieved by LNBs without the addition of OFA.

2. Time Period/Averaging Basis Used To Evaluate Performance of Low NO_X Burner Technology

i. Background

Because the Acid Rain Phase I NO_X Emission Reduction Program did not go into effect until January 1, 1996, EPA did not have, at the time the proposed rule was issued, CEM data on the performance of LNBs applied to Group 1 boilers during a period when affected boilers were required to meet the annual Phase I NO_X emission limitations. Further, for the reasons discussed below, it could not be assumed that all the CEM data available, some of which had been recorded as early as January 1, 1994, reflected LNB performance during optimized NO_X removal conditions.

As discussed in the Regulatory Impact Analysis (RIA) for the proposed rule (see docket item II–F–2), plants incur both fixed and variable operation and maintenance (O & M) costs when operating LNBs to reduce NO_X emissions to the lowest practicable level consistent with prudent boiler operations to comply with regulatory emission limitations. Therefore, even though LNB controls are installed, utilities have a financial incentive not to operate units throughout an extended period of pre-compliance to sustain the emission reductions the controls were designed to achieve, since this would increase O & M costs when the NO_X emission reductions are not yet required. Thus, the average NO_X emission rate measured over an extended pre-compliance period may not be a good predictor of LNB performance under actual compliance conditions. On the other hand, it is reasonable to expect that utilities operated their newly installed NO_X controls for some period of time following optimization of the equipment to simulate compliance conditions, perhaps as a dry run or for training purposes.

EPA's objective, then, was to identify the time period in the stream of post-retrofit hourly CEM data that corresponds to operation under optimized NO_X removal conditions. EPA believed this time period should contain 52 days of valid CEM data since, in publications and in past rulemakings, the Department of Energy (DOE) and the utility industry have stated that acceptable results of long-term performance require data sets of at least 51 days with each day containing at least 18 valid hourly averages (see docket items II–I–99, Advanced Tangentially-Fired Combustion Techniques for the Reduction of Nitrogen Oxide (NO_X) Emissions from Coal-Fired Boilers, and II–I–100, Demonstration of Advanced Wall-Fired Combustion Modifications for the Reduction of Nitrogen Oxide (NO_X) Emissions from Coal-Fired Boilers). EPA defined a 52-day ''low NO_X period'' for the purposes of assessing performance of LNBs applied to Group 1 boilers in the proposed rule. The ''low NO_X period'' was determined by identifying the lowest average NO_X emission rate each boiler has sustained for at least 52 days, i.e., over a period of 1,248 hours when the boiler was operating and valid CEM data (measured by CEMS certified pursuant to 40 CFR part 75) were available. The low NO_X period for most boilers is considerably longer than 52 calendar days since hours during which the boiler did not operate or hours for which valid CEM data were not recorded are ignored and do not count

towards the required total of 1,248 hours.

Even prior to the proposed rule, utility commenters and DOE had expressed the concern that by not using essentially all the recorded by post-retrofit CEM data, EPA was not accurately assessing the long-term performance capabilities of LNBs (61 FR 1442).[6] Further, these commenters believed that using a fixed-length shakedown period of 30 to 90 days, applied universally to all installations, to allow for optimizing LNBs and operator training was more objective than using the variable-length and site-specific shakedown periods implicit in EPA's low NO_X period methodology. Accordingly, for the proposed rule, EPA also developed estimates of post-retrofit average NO_X emission rates for another time period beginning 30 calendar days after the estimated date the boiler began operating after shutdown for LNB installation and continuing to the end of the CEM data set. This period is referred to as the ''overall post-retrofit period'' in the proposed rule (61 FR 1447 (Tables 4 and 5); also see docket item II–A–9, Table 2) and as the ''post-retrofit minus 30 days period'' (abbreviated as ''30-day post-retrofit period'' in tabular column headings) in the technical support document for the final rule (see docket item IV–A–6).

For the proposed rule, EPA developed estimates of post-retrofit average NO_X emission rates for a third period which, like the overall post-retrofit period, uses most of the recorded post-retrofit CEM data and, like the low NO_X period, allows for a variable-length shakedown period to accommodate the site-specific nature of LNB equipment optimization and operator training processes. This time period begins with the first hour of the low NO_X period and continues to the end of the CEM data set. It is referred to as the ''post-optimization period'' in both the proposed rule and final rule analyses. As mentioned previously in section B of this preamble, the post-optimization period forms the basis for EPA's final assessment of the effectiveness of LNBs applied to Group 1 boilers.

Another concern, which was raised prior to the proposed rule by utility commenters and DOE, is that limited time periods such as the low NO_X period may not adequately capture annual dispatch patterns and seasonal variations in demand for electrical power generation. Accordingly, for the proposed rule, EPA also investigated the representativeness of load dispatch during the low NO_X period by comparing it to the load dispatch during calendar year 1994 for each boiler or common stack in the LNB Application Database. EPA developed two histograms using ''load bins'' for the horizontal axis: (1) Average hourly NO_X emission rate as a function of load during the low NO_X period; and (2) frequency of various boiler operating loads throughout 1994 (for which EPA had actual performance data from the CEM data set). Then, EPA used these histograms to estimate ''load-weighted annual average NO_X emission rates'' based on weighted averages of the average emission rate during the low NO_X period for each load bin times the number of hours the boiler operated in that load bin during 1994 (61 FR 1448 (Tables 6 and 7)). To test the representativeness of boiler operations during the low NO_X period, EPA also created bar charts comparing the percentage of time a boiler operated in each load bin during the low NO_X period to the percentage of time it operated in that load bin during calendar year 1994 (see docket item II–A–9, Appendix B). Using these graphical analyses, EPA concluded that most boilers in the LNB Application Database had a load dispatch pattern during their low NO_X period similar to their annual dispatch pattern in 1994.

When analyzing long-term post-retrofit CEM data for the proposed rule, EPA found no strong correlation between boiler operating loads and hourly average NO_X emission rates for either wall-fired boilers or tangentially fired boilers in the LNB Application Database. While earlier technical analyses performed for EPA in support of other utility NO_X emission rulemakings had generally adopted the industry accepted presumption of a NO_X vs. boiler load relationship for many uncontrolled Group 1 boilers, they also showed the direction, magnitude, and form of this correlation to be both highly boiler-specific and difficult to predict (see, for example, docket item IV–J–20).

Nevertheless, EPA recognized that a predictable systematic correlation between hourly average NO_X emission rates and boiler load for all or some boilers could have significant ramifications for proper application of a 52-day low NO_X period methodology. Accordingly, EPA developed the ''load-weighted annual average NO_X emission rates,'' defined above, to account for the potential existence of a NO_X vs. boiler load relationship. Because the load-weighted annual average NO_X emission rates were essentially the same as or lower than the average NO_X emission rates for the low NO_X period for these boilers (see 61 FR 1446 (Tables 5 and 6)) EPA selected the simpler form, a straight average over the low NO_X period, as the basis for the proposed rule.

The Agency received many detailed comments and supporting data about the appropriateness of using a limited low NO_X period for assessing LNB performance, the merits of site-specific variable-length vs. universal fixed-length shakedown periods to reflect LNB equipment optimization and operator training, the advantages and disadvantages of the alternative time periods EPA had considered for the proposed rule analysis, and the technical issue of the existence of a NO_X vs. load relationship and its relevance for assessing LNB performance applied to Group 1 boilers. The first three issues are discussed in the next section within the context of the low NO_X period methodology whereas the last issue, for which EPA received approximately 25 site-specific data submissions from utility boiler owners or operators, is treated separately in the subsequent section.

ii. Use of 52-Day Low NO_X Period

Comment/Analyses: EPA received approximately 29 comment letters (from 22 utilities, 2 utility associations, 3 states, a gas industry representative, and an environmental association) on the appropriateness of using a 52-day low NO_X period for assessing LNB performance when, for some boilers, considerably more post-retrofit data was available.

Some commenters fully endorsed EPA's 52-day methodology and implicit assumption that utilities not under a compliance obligation are unlikely to operate the controls for maximum emission reductions following LNB optimization and a low NO_X test period. They believed EPA had demonstrated that the 52-day methodology and ''load-weighted annual average NO_X emission rates'' adequately addressed annual dispatch and load patterns in most cases. A utility that owns and operates coal-fired units which have become subject to state-mandated NO_X Reasonably Available Control Technology (RACT) requirements in 1995 said EPA should go even further and ''use NO_X data only from units that have had to comply with a recent NO_X standard (such as NO_X RACT)'' for

[6] EPA notes that the tangentially fired boilers in the LNB Application Database used for the proposed rule had little more than the requisite 52 days of quality assured post-retrofit CEM data. Only CEM data reported through June 30, 1995, the end of the second quarter reporting period, were available for analysis and the LNB retrofit dates for tangentially fired boilers occurred in late 1994 or early 1995.

evaluating the effectiveness of LNB technology (see docket item IV–G–14, p. 1). EPA notes that 6 wall-fired boilers and 3 tangentially fired boilers in the LNB Application Database are located in the Northeast Ozone Transport Region and are subject to NO_X RACT requirements. The mean load-weighted annual average NO_X emission rates over the post-optimization period for these boilers are: 0.403 lb/mmBtu (wall-fired) and 0.344 lb/mmBtu (tangentially fired).

One commenter noted that utilities had an explicit disincentive for operating their LNBs to achieve the maximum practicable emission reductions during 1994 and 1995, since section 407(b)(2) allows EPA to promulgate revisions to Group 1 emission standards if measured average post-retrofit NO_X emission rates during this time frame indicate ''more effective low NO_X burner technology is available'' (see docket item IV–D–63, p.14). Another commenter endorsed the conclusion that observations during the 52-day low NO_X period may understate the actual reduction capability of LNBs (see docket items IV–D–047, p. 2 and IV–D–063, p. 12–14).

Other commenters disagreed with the assumption that utilities did not have any incentive to operate the installed LNBs to achieve maximum emission reductions consistent with prudent boiler operations. One utility stated that plant personnel ''operated [their] NO_X control systems in a compliance mode even though its units were technically not yet subject to the Phase I NO_X standard. [The utility] established performance goals based on operating NO_X reductions systems to meet the standard and management bonuses were geared to meeting these goals'' (see docket item IV–D–020, p. 6). EPA notes that all of this utility's wall-fired units sustained average NO_X emission rates below 0.44 lb/mmBtu throughout their ''post-optimization'' periods (i.e., the post-retrofit period excluding a shakedown period based on actual boiler experience). The post-optimization periods for these units varied in length from 12 to 18 months. Another utility stated that boilers were operated in a manner to optimize NO_X emission reduction; to do otherwise would be ''counterproductive to the design of the burners and would defeat the training of the operating staff'' (see docket item lV–D–023, p. 4). EPA notes that the units owned and operated by both of these utility commenters are located outside designated ozone nonattainment areas and are not subject to NO_X RACT or any other state-mandated NO_X control requirements. Their decision to operate in a low-NO_X mode, therefore, was voluntary and not made on the basis of whether a compliance obligation existed.

Several commenters indicated that the best approach for estimating annual average NO_X emission rates is to use a full year of post-retrofit monitoring data (see, for example, docket item IV–D–38, p. 3). Commenters reiterated the concern raised prior to the proposal rule, that by not using essentially all the recorded post-retrofit CEM data, EPA is not accurately assessing the long-term performance capabilities of LNBs (see, for example, docket items IV–D–35, p. 3; IV–G–15, pp. 2–3). They said EPA's 52-day low NO_X period methodology fails to take into account all of the operating variables that affect LNB performance and biases the LNB performance assessment toward emission reduction levels that may not be achievable over the long term. Further, commenters who participated in DOE Clean Coal Technology Demonstrations where the 52-day methodology was used, said the ''52-day rule'' defines ''the *minimum* number of continuous days of data needed before a data set can be considered 'long-term' data. It is not a rule that justifies selective editing of data, when more data are available'' (see docket item II–D–65, p. 29).

Some of these commenters suggested using all CEM data recorded after a fixed-length shakedown period whereas others believed a variable-length shakedown period is more appropriate given the site-specific nature of the LNB equipment optimization and operator training processes. EPA notes that one utility commenter reported that burner optimization for each of their five tangentially fired retrofits was completed within 120 days of startup (see docket item IV–D–23, p.4), which is considerably longer than the fixed 30-day shakedown period recommended by DOE and others. Another utility commenter reported that one of their wall-fired boilers, E.D. Edwards 2, was still being optimized more than a year after the retrofit date (see docket item IV–D–73, p. 3).

Several commenters indicated support for the post-optimization period approach, which EPA had presented in the proposed rule together with the 52-day low NO_X period methodology and load-weighted annual average NO_X emission rates. As one utility said, 'the post-optimization period' emission results are the best data set characterizing long-term low-NO_X mode boiler operation. This database maximizes the amount of low-NO_X mode data (i.e., sample size) collected following a period of demonstrated minimum NO_X operation.'' (See docket item IV–D–051, p. 8.)

Some commenters indicated a 52-day low NO_X period methodology would be credible for assessing the long-term performance of LNB technology if NO_X emission rates following LNB optimization do not vary significantly with boiler load (see, for example, docket item IV–D–72, p. 4). While these commenters generally believe NO_X emission rates are a function of load for many boilers (see discussion below under NO_X vs. Boiler Load Relationship), they do endorse the concept of using less than essentially all the recorded post-retrofit CEM data for assessing LNB performance.

Response: EPA believes that the 52-day low NO_X period methodology is technically justified for evaluating the achievable NO_X reduction capability of LNBs. This time period is sufficiently long, in most instances, to reflect long-term operation as evidenced by the generally similar load dispatch patterns observed during the low NO_X period and for calendar year 1994 for most boilers in the LNB Application Database. However, assuring proper selection of a low NO_X period that is representative of long-term boiler operating conditions in all instances can be difficult. An example of this is E.D. Edwards 2 where, according to the utility, the 52-day low NO_X period EPA had selected for the proposed rule analysis was atypical because it represents ''a period of testing in a low NO_X mode when the boiler was not optimized.'' Shortly thereafter, the utility re-tuned the boiler for improved efficiency, to reduce loss on ignition (LOI), and to maintain full compliance with particulate and opacity emissions standards. (See docket item IV–D–073, pp. 3–4.) Another commenter suggested possible adverse plant impacts may have occurred during the low NO_X period for a few other boilers in the LNB Application Database (see docket item IV–D–65, Enclosures 7 and 14); EPA's analysis of the specific impacts and remedial actions cited indicates that these possible issues are adequately addressed by extending the low NO_X period into the longer post-optimization period. Therefore, to maximize the likelihood that the performance evaluation period is representative and to assure observations over the broadest possible range of boiler operating variables and electric power generation demand scenarios, EPA is using the longer post-optimization period as the basis for assessing the performance of LNBs applied to Group 1 boilers for the final rule.

EPA's decision to use the post-optimization period is also based, in part, on the comments utilities have submitted regarding their actions to operate installed LNBs in a compliance mode during 1995, prior to the effective date of the Acid Rain Phase I NO_X Emission Reduction Program. EPA believes that there were reasons for utilities to operate installed LNBs as if the emission standards were in effect, even though such operation could increase utility O & M costs. EPA has rejected the concept of using a ''post-retrofit minus 30 (or 60 or 90) days period'' approach because utilities submitted significant evidence documenting that the time required for LNB optimization is highly variable and can be much longer than any of the fixed shakedown periods under consideration (see, for example, docket items IV–D–023, IV–D–073, and IV–G–04). Nonetheless, for comparison purposes, EPA has computed average NO_X emission rates based on the post-retrofit minus 30 days period for boilers in the LNB Application Database (see docket item IV–A–6, Table 3–1).

The addition of four more quarters of CEM data to the LNB Application Database substantially lengthens the post-optimization period for most boilers.[7] The post-optimization period also includes six months of 1996 compliance data for each Phase I boiler in the database. Table 6 presents summary statistics on the amount of hourly CEM data and calendar months encompassed by the post-optimization periods.

TABLE 6.—LNB APPLICATION DATABASE: HOURS OF CEM DATA AND CALENDAR MONTHS IN POST-OPTIMIZATION PERIODS

Boiler types	Hours of CEM data	Calendar months
Wall-fired boilers: 85% have at least 11 months of CEM data in post-optimization period:		
Range	3,877–15,829	6–30
Average	9,547	16
Total	372,324	610
Tangentially fired boilers: 79% have at least 11 months of CEM data in post-optimization period:		
Range	1,280–12,327	4–18
Average	7,537	14
Total	105,523	190

[7] A notable exception is the post-optimization time period for E.D. Edwards 2, which has been lengthened by a lesser amount. In response to the utility's comments, EPA has selected another low NO_X period, beginning after October 1, 1995, the date on which EPA believes corrections for adverse opacity and particulate emissions were substantially complete.

iii. NO_X vs. Boiler Load Relationship

Comment/Analyses: EPA received approximately 23 comment letters (from 21 utilities and 2 utility associations) criticizing EPA's decision in the proposed rule to base revised Group 1 emission limitations on a time period and averaging method which do not explicitly recognize the existence of a NO_X vs. load relationship. As mentioned previously under section III.A.2.i. of this preamble, EPA found no strong correlation between boiler operating loads and hourly average NO_X emission rates for either wall-fired boilers or tangentially fired boilers in the LNB Application Database when analyzing long-term post-retrofit CEM data for the proposed rule. Nevertheless, to test the potential impact of a NO_X/load relationship, in the analysis accompanying the proposed rule EPA developed a methodology that assumed the existence of a functional relationship between NO_X and boiler load. EPA then used this methodology to estimate ''load-weighted annual average NO_X emission rates'' for each boiler or common stack in the LNB Application Database (see docket item II–A–9, pp. 9–10).

The load-weighting methodology produced a weighted average based on the frequency of various operating load intervals (or ''bins'') during calendar year 1994 as reported in the CEM data set and the mean hourly NO_X emission rates for each load bin observed during the low NO_X period. (The computational procedures EPA used to estimate load-weighted annual average NO_X emission rates for the proposed rule are described under preamble section III.A.2.i.) Finding that the load-weighted annual average NO_X emission rates for these boilers were essentially the same as or lower than the average NO_X emission rates for the low NO_X period without the assumption of a NO_X/load relationship (see 61 FR 1446 (Tables 5 and 6)), EPA believed it was not necessary to investigate the NO_X vs. load relationship further and selected the more conservative (i.e., higher) of the two sets of estimates for modeling annual average emission rates that could be sustained by LNBs installed on Phase II, Group 1 boilers.

The commenters who criticized EPA's treatment of the NO_X/load relationship raised the following main issues:

Lack of statistical measures to quantify the extent of the NO_X/load relationship: Several commenters indicated that a critical missing link in EPA's analysis of this issue for the proposed rule was the failure to develop any statistical measures describing the strength of the association, if any, between NO_X and boiler load. As one utility said, EPA concluded ''through observance of the data'' that the relationship between NO_X and load is not strong for wall-fired boilers (see docket item IV–D–023, p. 5)

Inconsistency with earlier EPA studies: Some commenters claimed that earlier EPA studies and utility emission rulemakings supported the existence of the NO_X/load relationship.

Examples to show presence of a NO_X/load relationship: Many of the commenters on this issue included site-specific data intended to document the presence of a well-correlated NO_X/load relationship.

On the other hand, some commenters who supported EPA's use of the low NO_X period for evaluating the performance of LNBs also said EPA's comparison of load-weighted annual average NO_X emission rates vs. average NO_X emission rates without the assumption of a NO_X/load relationship satisfactorily addresses this issue (see, for example, docket items IV–D–46, p. 5 and IV–D–56, p. 1). According to a state agency, the ''52-day time frame is representative of a wide range of operations in a facility'' because the load variations over a seven-day week are likely to be more significant than seasonal variations. This agency said that, for most load-following units, load changes are likely to be more significant between weekends and weekdays than between seasons. Only the highest base-loaded units do not exhibit this load cycle and such units are ''likely not affected by seasonal changes'' (see docket item IV–D–27, p. 9).

Response: After further extensive boiler-by-boiler analysis of NO_X and boiler load, using both data provided by commenters and reported independently under 40 CFR part 75 requirements, EPA has determined that the installation of LNBs dampens any NO_X/load correlation that may have

existed at uncontrolled boilers and, in many instances, virtually eliminates any long-term relationship. A NO_X vs. load relationship appears to have persisted for none of the tangentially fired boilers and for only a few of the wall-fired boilers (Colbert 5, E.D. Edwards 2, Quindaro 2, and Jack Watson 5) in the LNB Application Database (see docket item IV–A–6, pp. 4–2 through 4–7). However, despite these findings, in response to commenters' insistence that a definite functional relationship exists between NO_X and boiler load, EPA has employed a NO_X/load weighting scheme in establishing NO_X emission limits in this final rule. This load-weighting method incorporates at least two distinct improvements over the method used for the proposed rule analysis. First, following commenters' recommendation, the load weighting method employs ten load bins consistent with the convention specified in 40 CFR part 75, rather than the 25–MW increments used in the proposal. Second, the method uses post-retrofit CEM data over the longer post-optimization period, rather than the 52-day low NO_X period, to estimate mean hourly NO_X emission rates for each load bin, thus making it unnecessary to combine load bins due to sparse data. (Commenters had also said the combining of load bins with little or no data tended to mask the NO_X/load relationship. See docket item, IV–D–65, p. 35.) The load weighting method uses hourly boiler or common stack load as reported in the CEM data set for 1995 to establish the frequency of operation in different load bins over a year. EPA has rigorously investigated the relationship of individual load patterns of boilers sharing a common stack to the combined load patterns over a year and, thus, to the annual average NO_X emissions for the common stack (see discussion of common stack issues in section III.A.3.v of this preamble). Finally, EPA has compared, where data are available, boiler or common stack load patterns for 1994 and 1995 to assess inter-year variations in dispatch and demand for electrical power generation (see docket item IV–A–6).

This improved load weighting scheme accounts for any potential impact that annual load dispatch patterns may have on NO_X emissions. Its use should allay concerns raised by commenters on how the presence of a NO_X/load relationship might impede accurate assessment of long-term LNB performance. In addition, EPA's specific responses to the main NO_X/load issues are presented below:

Lack of statistical measures to quantify the extent of the NO_X/load relationship: Even among those commenters who most strongly assert the presence of a NO_X/load correlation, there is little consistency from boiler to boiler in either the functional form or the direction of the NO_X/load relationship. For example, of the three commenters submitting regression equations as evidence of a NO_X/load relationship, one was based on a cubic model (see docket item IV–D–20, Figure 3), another was based on a logarithmic model (see docket item IV–G–14, p. 3), and a third was based on a quadratic model (see docket item IV–G–16). A fourth commenter, represented the NO_X/load relationship from one-third to full load for eight boilers as straight line plots with slopes varying from approximately 15° to 45° (see docket item IV–D–72, Attachment 1). Although no supporting documentation was provided explaining how these plots were derived, they would imply a linear model was appropriate. The situation is further complicated when a NO_X/load relationship is discernible over only a portion of the load range. This is particularly an issue for wall-fired boilers retrofit with LNBs. EPA's plots of data from post-retrofit wall-fired boilers show that if a NO_X/load relationship is discernible at all, it occurs almost entirely in the upper 10–20% of the boiler load range.

The absence of a consistent functional form for the NO_X/load relationship and a failure to persist across the full load range makes application of a statistical measure to quantify the extent of the NO_X/load correlation difficult. Nonetheless, assuming a linear relationship between NO_X and boiler load, EPA estimated the strength of correlation as indexed by R^2 during post-retrofit period for 30 wall-fired and 11 tangentially fired boilers or common stacks in the LNB Application Database and, during the pre-retrofit period, for 13 wall-fired and 6 tangentially fired boilers or common stacks (see docket item IV–A–6, Cadmus Group 1 technical report, Table 4–1). The R^2 statistic measures the fraction of the variability in the dependent variable, hourly average NO_X emission rate, explained by the model. EPA chose an R^2 of 40% as a threshold for detection of the possible existence of a predictable correlation. For the post-retrofit hourly average NO_X emission rate measurements, only 13% of the wall-fired and none of the tangentially fired boilers or common stacks had an R^2 of 40% or higher (suggesting no predictable correlation). EPA compared the load dispatch pattern during the post-optimization period for each boiler or common stack crossing the R^2 threshold to its annual dispatch pattern in 1995 and concluded the patterns were similar enough that the improved load-weighting methodology would mitigate the effects of any NO_X/load correlation on estimated controlled annual average emission rates.

Inconsistency with earlier EPA studies: Earlier technical analyses performed for EPA in conjunction with other utility NO_X emission rulemakings generally adopted the industry accepted presumption of a NO_X vs. boiler load relationship. However, this was almost exclusively for uncontrolled Group 1 boilers, not boilers retrofit with LNBs. Prior studies also showed the direction, magnitude, and form of this correlation to be both highly boiler-specific and difficult to predict. (See, for example, docket item IV–J–20). Thus, for example, in these earlier studies, some uncontrolled tangentially fired boilers exhibit increasing NO_X emission rates with decreasing boiler loads, others show precisely the reverse correlation, and still others have U-shaped curves. Uncontrolled wall-fired boilers typically exhibit increasing NO_X emission rates with increasing boiler loads. However, this relationship was not found to be universally valid either, and the strength of the correlation, when present, varies considerably from one boiler to another.

For this final rule, EPA's analysis is more exhaustive than these earlier studies. It encompassed more boilers, longer data streams, and better quality data. Separate graphs were generated for every boiler or common stack in the LNB Application Database, plotting NO_X hourly emission rates as a function of hourly load, using long-term quality assured CEM data. To allow comparison of uncontrolled and controlled emissions, wherever available, pre- and post-retrofit hourly data were plotted on the same graph, differentiated by distinct symbols.

A comparison of the pre-retrofit and post-retrofit plots shows that, with one exception, for both wall-fired boilers and tangentially fired boilers, if any NO_X vs. load relationship existed for uncontrolled emissions, the installation of LNBs both reduced the magnitude and shortened the effective range of that relationship.

As discussed above, EPA also developed a statistical measure (R^2) of the strength of the correlation between NO_X and boiler load, assuming a linear relationship. This statistical analysis corroborates the visual assessment of the data plots. For the post-retrofit hourly average NO_X emission rate measurements, only 13% of the wall-

fired and none of the tangentially fired boilers or common stacks had an R^2 of 40% or higher, suggesting possible presence of a predictable correlation. Even though this analysis confirms that the occurrence of a NO_X-load relationship is generally slight and for only some boilers, to eliminate all concerns in this regard, EPA has based the final rule on load-weighted annual average NO_X emission rates (instead of a straight average emission rates) observed over the post-optimization period (instead of the 52-day low NO_X period).

Examples to show presence of a NO_X/load relationship: A number of commenters provided data intended to demonstrate the presence of a NO_X/load relationship. The submissions either had drawbacks which rendered their conclusions questionable or corroborate EPA's finding that the installation and operation of LNBs generally dampen any pre-retrofit correlation of NO_X and boiler load and, in many instances, virtually eliminate any long-term relationship. The salient aspects of each submission and EPA's responses are summarized below:

Docket item IV–D–020, Figure 20: Using CEM data for the period 06/30/95 through 07/18/95, this submission included a regression analysis for a 550 MW wall-fired boiler retrofit with LNBs. The regression model fit NO_X emissions to boiler load during the period analyzed. The R^2 statistic, which captures the explanatory power of the regression model, was 77.3%, indicative of a good fit with the data.

There were a number of drawbacks, however, with the analysis. First, the period analyzed represents only 19 calendar days. This is too short a period to adequately represent long-term performance or to distinguish a strong, but transitory, NO_X/load correlation from a persistent NO_X/load correlation.

Second, the data plot shows a wide range of NO_X emission rate points at zero load. These appear to be spurious measurements which improperly dominated the regression results.

Docket item IV–G–14, Tables 1–4 and Figures 1 and 2: This submission included ''before LNB'' and ''after LNB'' regression analyses for a 80 MW tangentially fired boiler. The ''before LNB'' regression is based on five-and-a-half months of CEM data and the ''after LNB'' regression is based on eight months of CEM data. During the ''after LNB'' period, this boiler had to comply with a state-mandated NO_X RACT limit of 0.42 lb/mmBtu on a 24-hr average basis. The commenter rightly excludes NO_X emission data points for periods when load is zero, which is consistent with EPA's DQO 3D.[8] In both the ''before LNB'' and ''after LNB'' case, the highest NO_X emission rate is at minimum load. The R_2 statistic in the ''before LNB'' regression was 57.8%, indicating that the model had moderate explanatory power, whereas the R_2 value in the ''after LNB'' regression was only 29.1%, indicating poor explanatory power.[9] EPA believes that this ''before LNB'' and ''after LNB'' comparative regression analysis illustrates how the installation and operation of LNBs can dampen any NO_X vs. load relationship which may be observed at uncontrolled boilers.

Docket items IV–D–65, Enclosure 8; IV–D–23, Attachment 1; IV–D–73, Attachment A: Several commenters submitted line plots or histograms of average and/or maximum NO_X emission rates recorded for different load intervals or ''bins''. There were several problems with these submissions. First, although they criticize EPA in this regard, the commenters themselves do not develop any statistical measures of the association between NO_X and load for the data they submit (perhaps because it, too, fails to demonstrate the presumed relationship). Nor do they suggest functional representations for their plots.

A second drawback of these submissions is that some of the plots represent boilers retrofit with LNBs plus separated overfire air. As noted previously, such applications cannot be considered in this rulemaking.

Third, while the submitted graphs appear to support the commenters' statements about the existence of a NO_X vs. load relationship for the boilers analyzed, the use of a single value (whether the average or maximum) to represent all values in a load range bin is misleading. It hides the variability within the bin, thereby avoiding the issue of whether the range of values in one bin are distinguishable from those in another bin.

To address this issue EPA generated NO_X/load box-and-whisker plots for each boiler or common stack in the LNB Application Database. The box-and-whisker representation not only shows a mid-point value (the median), but it also characterizes the range of values found in each bin by displaying the minimum, maximum, and first and third quartile values. Where sufficient data were available, separate graphs were created for NO_X/load correlation before and after LNB retrofits. In response to the commenter's criticism that EPA's earlier analysis for the proposed rule had used too few load bins, ten load bins (in 10 percent increments from zero to maximum gross unit load) were used in all the NO_X/load analyses for the final rule.

The box-and-whisker plots reveal so much overlap in NO_X values from bin to bin that drawing conclusions about a NO_X/load relationship is technically inappropriate. This is particularly true for the post-retrofit situation.

Docket items IV–D–73, p. 5 and Attachment A; IV–D–65, p. 32: One utility reported that the NO_X emission rate guarantee, in its contract for LNBs on a 375 MW wall-fired boiler (E.D. Edwards 3), ''[is] designed specifically to achieve specific NO_X rates at specific loads.'' The annual NO_X emission rate is guaranteed to meet 0.50 lb/mmBtu based on a specified capacity. The NO_X emission rate guarantees for particular loads range from 0.28 lb/mmBtu at 40% of MCR (150 MW) to 0.63 lb/mmBtu at 100% of MCR (375 MW). The commenter also submitted graphs depicting the ''remarkable NO_X vs. load relationship'' for another wall-fired boiler (E.D. Edwards 2). The graphs plotted the average, maximum, and minimum hourly NO_X emission rates recorded in each of ten load bins for the four quarters of 1995 as well as the entire year.

EPA has analyzed all the post-retrofit CEM data for E.D. Edwards 2 to evaluate the extent of a discernible NO_X/load relationship. The analysis confirmed the existence of a well-defined NO_X vs. load relationship for this boiler, but only in the upper 20% of the load range (see docket item IV–A–6, Appendix D).

Another commenter noted that Babcock & Wilcox (B&W), a primary designer of wall-fired boilers and a major LNB vendor in the U.S., attests to the existence of a NO_X/load correlation. This commenter said EPA did not find a strong NO_X vs. load relationship because EPA did not examine closely the post-retrofit CEM data for wall-fired boilers designed by B&W. B&W has stated, ''a definite correlation [exists] between NO_X emissions and boiler load'' (see docket item IV–D–65, p. 32).

The LNB Application Database contains 18 wall-fired boilers designed by B&W. Five of these boilers, EPA believes, have also been retrofit with LNBs manufactured by B&W (Model DRB–XCL). Only one B&W boiler and none of the B&W LNB retrofits appeared among the wall-fired boilers or common

[8] The commenter applies a cutoff at 5 MW, to exclude periods when a small positive heat input may be recorded, but boiler load is actually zero.

[9] The commenter concludes that the relationship between NO_X and boiler load is much less well-defined after LNB retrofit, but maintains the relationship still exists based on an analysis of variance which produces a correlation coefficient of -0.54.

stacks that had an R^2 of 40% or higher for the correlation of post-retrofit hourly average NO_X emission rate measurements with boiler load.

3. Analysis Method Used to Establish Reasonably Achievable Emission Limitations for Phase II, Group 1 Boilers

i. Background

For the proposed rule, EPA used a three-step analytical procedure for establishing reasonably achievable annual emission limitations for the populations of wall-fired boilers and tangentially-fired boilers, retrofit with LNBs, that would be subject to any revised emission limitations (i.e., those units subject to NO_X emission limitations only in Phase II). The first step (Model Building) consisted of deriving linear regression equations, one for wall-fired boilers and another for tangentially fired boilers, that captured the percent reduction in post-retrofit load-weighted annual average NO_X emission rate as a function of the uncontrolled emission rate for boilers in the LNB Application Database. The second step (Calculation of Achievable Emission Rates) was to enter the uncontrolled emission rates of the Phase II boilers into the regression equations in order to derive the controlled NO_X emission rate that each boiler could be expected to achieve by LNB retrofit. Using the resulting set of achievable emission rates, the third step was to identify the annual emission limitation that a specified percentage (i.e., 85 to 90%) of the Phase II boilers could achieve. Separate limits were identified for wall-fired boilers and for tangentially fired boilers.

This three-step procedure afforded several advantages. First, by using regression equations, the estimates of achievable emission rates were not rough extrapolations from average Phase I post-retrofit experience but were estimates specifically tailored to the pre-retrofit NO_X emission rates actually observed at the Phase II units. As shown in Table 12 in the preamble to the proposed rule (61 FR 1452), Phase II units typically operate at lower uncontrolled emission rates than Phase I units (i.e., 23% lower for wall-fired boilers and 18% lower for tangentially fired boilers) so a simple extrapolation of the experience of the mostly Phase I units in the LNB Application Database would significantly underestimate the number of boilers that would be expected to achieve a given emission limitation.

Second, using regression models also allowed for quantitative, statistical evaluation of the explanatory power implicit in the resulting estimates and enabled objective comparison of different analytical approaches. Incorporating load-weighted annual averaging into Step 1 of the procedure meant that any NO_X/load effects would be factored into the model.

Furthermore, responding to comments criticizing the proposed rule for basing the regression model on 52 days of low NO_X post-retrofit emission data, the final rule uses the much longer post-optimization data stream to build the regression equations. Use of this longer data stream increases confidence that the regression equations model the long-term behavior of boilers in the LNB Application Database.

The Agency received detailed comments from utilities and a utility association on three data issues and related technical components of EPA's analysis methods. First, commenters questioned EPA's use of short-term data to characterize pre-retrofit uncontrolled emission levels when, for some boilers, long-term data were available. Uncontrolled emission rates are used in Step 1 (Model Building) and Step 2 (Calculation of Achievable Emission Rates) of EPA's analytical procedure for deriving the annual emission limitations. Second, in a related data issue, commenters believed that the uncontrolled emission rates used for the affected population of Phase II boilers were biased low, due partly to a misperception about how controlled NSPS units were treated in Step 2. (Controlled NSPS units have older LNBs or some other early type of NO_X combustion control installed as original equipment, so their measured baseline emission rates do not represent uncontrolled emissions.) Third, commenters disagreed with or raised questions about certain technical assumptions built into the models—namely, the methods used to estimate percent NO_X reduction outside the range of the observed model inputs and the form of the regression model. Finally, commenters said that monitored emissions data from boilers sharing a common stack should be used cautiously, if at all, when evaluating LNB performance and offered suggestions on how to properly assess such measurements.

Salient background points regarding EPA's treatment of certain data issues for the proposed rule are summarized in the paragraphs below. The subsequent sections of this preamble discuss the comments more fully, EPA's response to the issues raised, and how these data and technical components are treated in the analysis supporting the final rule.

EPA is fully cognizant that ''long-term data collection is the definitive method to determine actual NO_X reduction characteristics of a low NO_X combustion system'' and that DOE Clean Coal Technology Demonstrations routinely collect long-term CEM data to measure the baseline uncontrolled emission rate (see docket item II–I–99, p. 8). At the time of the proposed rule analysis, however, EPA had quality assured pre-retrofit long-term CEM data for only 21% of the boilers in the LNB Application Database. Such CEM data were unavailable for most of the wall-fired boilers (21 of 24) and over half of the tangentially fired boilers (5 of 9). Generally, CEM data on uncontrolled emissions were unavailable because the LNB retrofit had begun prior to certification of the CEM system in accordance with 40 CFR part 75. EPA decided that it was preferable to use consistent, quality assured, short-term measurements of uncontrolled emission rates based on EPA Reference Method, certified CEM, or other test data rather than to limit the LNB Application Database to only those boilers for which EPA had quality assured, pre-retrofit, long-term CEM data. EPA also rejected the possible option of using short-term data for some boilers and long-term data for other boilers for the reasons explained in detail in the next section of this preamble.

To assure that consistent data of known high-quality was used for the model projections, EPA identified specific sources of acceptable short-term uncontrolled emission rate data. These sources, listed in priority order, are: (1) Short-term CEM data reported in monitor certification review (CREV) tests (see docket item II–A–9); (2) utility-reported CEM or EPA Reference Method test data provided on the Acid Rain Cost Form for NO_X Control Costs; and (3) other short-term CEM or test data provided by utilities, generally as a correction or update to data previously submitted to EPA.

For the proposed rule analysis, EPA obtained acceptable short-term uncontrolled emission rate data for all units in the LNB Application Database and for 69% of the Phase II boiler population. For the proposal, EPA used uncontrolled emission rates based on long-term CEM data or, as a last resort, estimates in the National Utility Reference File (NURF), which were developed using emission factors, for the other boilers in the Phase II population. For the final rule, EPA has located substantial additional quality assured short-term uncontrolled emission rate data and has discontinued using both long-term CEM and NURF

estimates for the Step 2 (Calculation of Achievable Emission Rates) projections.

ii. Short-term vs. Long-Term Uncontrolled Emission Rate Data

Comment/Analysis. EPA received approximately 7 comment letters (from 6 utilities and 1 utility association) on the use of short-term uncontrolled emission rate data for assessing the performance of LNBs applied to Group 1 boilers. Concern was expressed that using short-term uncontrolled emission rates to build the regression equation would cause the model to overestimate or, at least wrongly estimate, the achievable reductions, because short-term uncontrolled emissions would tend to reflect full-load uncontrolled emissions whereas the corresponding controlled emissions values, used to build the regression model, would represent the ''average of 1248 points at different loads'' (see docket item IV–D–65, p. 51). The comments raised two issues:

(1) *Misuse of Short-Term Data:* EPA used short-term uncontrolled emission rate data even when, for some boilers, quality assured long-term CEM data were available for determining pre-retrofit uncontrolled emission rates. (See docket items IV–D–38, p. 3 and IV–D–65, pp. 50–51. No commenter suggested, however, that EPA restrict the analysis to only those boilers for which pre-retrofit, long-term CEM data were available. EPA notes that one commenter, who recommended using a full year of pre-retrofit monitoring data, selected CREV emission rates as the best available substitute for baseline measurements when long-term CEM data were not available.[10]

(2) *Load Cell 10 Approach:* Several commenters said the use of short-term measurements of pre-retrofit uncontrolled emission rates in both the EPA and DOE studies led to high estimates of uncontrolled emission rates which, in turn, exaggerated LNB reduction efficiencies (see, for example, docket items IV–D–11, p. 3 and IV–D–72, p. 3). (Traditionally, LNB percent reduction efficiency has been measured on a consistent pre-retrofit/post-retrofit basis, normally short-term to short-term though occasionally long-term to long-term.) The load cell 10 approach was suggested by one commenter as a solution: its argument runs as follows. In building the regression model, since EPA used short-term uncontrolled emission rate data, which tends to be obtained at full load, for consistency the post-retrofit controlled emission values should have been ''the average NO_X data in load cell 10 or the highest load cell experienced at the boiler,'' not the average of controlled emission values at all load levels. (See docket item IV–D–65, p. 52.)

Response. (1) Misuse of Short-Term Data: For analytical, practical, and statistical reasons, EPA chose to use short-term uncontrolled emission data rather than only long-term uncontrolled emission data or a combination of short-term and long-term uncontrolled emission data. For analytical consistency, it is desirable, if not essential, for all uncontrolled emission data to be long-term or short-term but not a mixture of both. Maintaining this consistency across both the LNB Application Database and the Phase II, Group 1 boiler population database provides the logical underpinnings for drawing inferences from the regression model to the Phase II data set, insofar as the uncontrolled emission rate represents the independent variable in the regression model. From an analytical standpoint it is perfectly acceptable for the regression model's dependent variable (controlled emission rate) to be based on a different duration standard (e.g., long-term as opposed to short-term) than the independent variable.

Practical and statistical considerations favored the selection of short-term data over long-term data. In particular, it was not possible to obtain quality assured long-term uncontrolled data for many units because CEM requirements for Phase I boilers were generally coincident with LNB retrofits. Fewer data points would have reduced the statistical confidence in the conclusions drawn from the data.

Some commenters were apparently unaware of certain practical data limitations. One commenter said, ''utilities have been required to provide EPA with CEM data since at least January 1, 1995 (pursuant to 40 CFR part 75 . . . (so) the CEM NO_X data should be used in most instances for uncontrolled emissions'' (see docket item IV–D–65, p. 51). However, while desirable, this approach was not a practical option. Since utilities are not required to report even approximate dates of LNB installations for Phase II units to EPA, as they did in Phase I on the Acid Rain Cost Form for NO_X Control Costs, it is exceedingly difficult to accurately determine the control status of each unit, the date and hour on which a specific unit is being taken off-line for installation of LNBs, and the end (i.e., date and hour) of the pre-retrofit monitoring period. In contrast, reliable information on unit control status accompanies the short-term uncontrolled emission data in the CREV database since utilities are required to report the type of NO_X controls, if any, on each unit to EPA with the annual certification review test data.

Using the short-term CREV data for the final rulemaking, EPA was able to amass uncontrolled NO_X emission rates for 85% of the Phase II, Group 1 boilers. This includes virtually every Phase II, Group 1 boiler whose uncontrolled emissions were not otherwise obscured by complex ''mixed'' common stack arrangements, either with respect to boiler type (e.g., wall and tangentially fired boilers sharing a common stack) or control status (e.g., controlled and uncontrolled boilers sharing a common stack). Quality assured short-term uncontrolled emission data were obtained for an additional 13% of the Phase II, Group 1 boilers from other acceptable sources. In all, about 98% of the affected Phase II, Group 1 boilers were included in the Step 2 analysis (Calculation of Achievable Emission Rates) for the final rule.

Notwithstanding commenters' concerns, the ability of the regression model to estimate achievable NO_X emission limits is not diminished by using short-term uncontrolled emission values as the regression model's independent variable. This is a consequence of the structure of the model. In the model building stage (Step 1) of EPA's analytical procedure a functional relationship is established between short-term uncontrolled emissions and the post-optimization load-weighted controlled average emission rate achieved by boilers in the LNB Application Database. In Step 2, as long as the Phase II short-term uncontrolled emission values that are fed into the regression equation remain within the range for which the model was designed, the model's ability to estimate the corresponding achievable post-optimization annual emission rate should remain unimpaired.

To evaluate the effect of using short-term rather than long-term data for uncontrolled emission rate on the annual emission limitations derived from the 3-step analytical procedure, EPA was able to assemble a database of 18 boilers containing long-term pre-

[10] This commenter combined annual CEM and CREV baseline measures when assessing the effect of a fuel switch on NO_X emissions for four boilers the utility owns and operates. The analysis used annual CEM data for the ''before'' measurement on two boilers, CREV emission rates for the ''before'' measurement on two other boilers, and annual CEM data for the ''after'' measurement on all four boilers (see docket item IV–D–038, Attachment A).

retrofit emission rate values.[11] This database was used to perform sensitivity tests on the effect of using long-term vs. short-term measurements of uncontrolled emission rate on the projections of the number of Phase II, Group 1 boilers that could comply with various performance standards. For these tests, EPA used the long-term, instead of short-term, measurements for uncontrolled emission rate in Step 1 (Model Building) wherever such pre-retrofit data were available (18 out of 53 boilers). The R^2 values for the resulting regression models based on load-weighted annual average emission rates over the post-optimization period were 65.3% (wall-fired boilers) and 78.9% (tangentially fired boilers), indicating acceptable fit (see docket item IV–A–6, Tables 4–6a and 4–6b). Applying these models to the Phase II, Group 1 data set of uncontrolled emission rates produced the results shown in docket item IV–A–6, Tables 4–7a and 4–7b. Within the primary range of interest (i.e., from 80th to 90th percentiles), the percentage of boilers estimated to achieve a specified emission limit using the long-term data typically varies by less than 2% (and not more than 5%) from the percentage derived using strictly short-term data. Both positive and negative differences occur, depending on the exact percentile and type of boiler, suggesting the emission limit could be lowered in some instances and raised in others. EPA concludes that using short-term measurements of uncontrolled emission rate has not systematically nor significantly lowered the resulting estimates of controlled emission rates achievable by Phase II, Group 1 boilers retrofit with LNBs.

(2) *Load Cell 10:* Use of load weighting in EPA's regression model makes the load cell 10 restriction unnecessary. As noted in the preceding paragraph, the regression model establishes a functional relationship between the short-term uncontrolled emission rate and the load-weighted annual average emission rate maintained over the post-optimization period. If, as the commenter maintains, the load level can be assumed to relatively constant for all the short-term uncontrolled emission data (i.e., at full load), all the more reason exists for the functional relationship captured in EPA's regression equation to remain intact.

The load cell 10 approach would establish a functional relationship between the short-term uncontrolled emission rate and the long-term controlled emission rate achieved when the unit is operating at essentially full load (i.e., in ''load cell 10,'' at 90–100% of total unit operating load).[12] The dependent variable in this regression model would be the unit's average ''load cell 10'' (or full-load) controlled emission rate. This approach would discard all post-retrofit CEM hourly data recorded when the unit is operating in load cells 1 through 9 and thus, would not be representative of unit's average emission rate over a calendar year. This would be inconsistent with the purpose under section 407(b)(2) of analyzing LNB performance, which is to determine whether the existing Group 1 emission limitation applied on any annual average basis should be made more stringent.

EPA notes that for boilers where NO_X emission rate increases with increasing load, the achievable full-load emission rate determined using the load cell 10 approach would be higher than the average emission rate observed over varying boiler loads throughout a year. At least 25% of the wall-fired boilers in the LNB Application Database operated at full load for less than 20% of total operating hours in 1995. Basing the annual performance standard on an achievable full-load emission rate would inappropriately bias the emission limitation since many boilers are typically operating at lower loads most of the time.

iii. Potential for Low Bias in Phase II Uncontrolled Emission Rate Estimates/ Treatment of NSPS Units

Comments/Analysis: EPA received approximately 5 comment letters (from 3 utilities and 2 utility associations) saying that EPA's estimates of uncontrolled emission rates for the Phase II boiler population appeared too low. The commenters cited different reasons for this outcome and some submitted unit-specific estimates of uncontrolled emission rate (see, for example, docket item IV–D–39, p. 3). Several commenters attributed the seemingly low rates to the inclusion of NSPS units in the Phase II boiler population baseline of uncontrolled emission rates. As one commenter stated, ''the NSPS units are by original design low NO_X emitters . . . and (if included), the overall Phase II, Group 1 boiler baseline rate will be artificially biased downward and will lead to conclusions that overstate the ability of both non-NSPS and NSPS units to achieve the final emission limit for this boiler group'' (See docket item IV–D–72, p. 3).

Response: These commenters correctly noted that the technical support document for the proposed rule does not contain a separate baseline for NSPS units nor any explicit discussion of the how these units are treated in Step 1 (Model Building) and Step 2 (Calculation of Achievable Emission Rates) of EPA's projection analyses. EPA developed a table comparing the average uncontrolled emission rates, by boiler category, for the Phase II, Group 1 boiler population with and without NSPS Subpart D and Subpart Da units against the Phase I, Group 1 boiler population (see docket item IV–A–10). This table shows that average uncontrolled emission rate for the Phase II population excluding units identified as ''NSPS-vintage units'' [13] is definitely lower than the average uncontrolled emission rate for the Phase I population: the difference is estimated as 10% for wall-fired boilers and 9% for tangentially fired boilers.

Subsequent to the rule proposal, EPA obtained additional data to refine both the classification of Phase II units subject to NSPS NO_X requirements, including both Subpart D and Subpart Da, and the description of any pre-existing NO_X combustion controls installed on these units. EPA notes that since no percent reduction standard for NO_X applies to Subpart D boilers, Subpart D units frequently do not have combustion controls installed as original equipment. Subpart Da boilers are required to achieve a specified percent reduction for NO_X, so Subpart Da units generally had some early form of NO_X combustion controls installed prior to November 15, 1990.

As discussed previously in section III.A.1 of this preamble, EPA has excluded controlled NSPS boilers from the model building regression analyses because their measured baseline emission rates do not represent uncontrolled emissions. However, EPA has included all NSPS boilers, controlled and uncontrolled, in the

[11] Long-term pre-retrofit emission rate values were defined from the hourly CEM data as follows. The pre-retrofit period, which is called ''pre-retrofit minus 30 days'' (abbreviated as ''30-day pre-rate'' in tabular column headings), starts at the beginning of the CEM data set. Because some uncertainty exists as to the exact date of the LNB retrofit, EPA used only quality assured CEM data recorded more than 30 calendar days before the primary boiler outage for installation of LNBs. These days are excluded to assure that no post-retrofit data are mixed with pre-retrofit data in the baseline measurement. Consistent with the post-retrofit situation, EPA included only boilers which had at least 1,248 hours (or 52 days) of quality assured pre-retrofit CEM data.

[12] The ''load cell 10 approach'' uses only data recorded for the highest load cell experienced at the boiler, which is normally load cell 10.

[13] This classification of ''NSPS-vintage units'' was based on boiler age as reported in the NURF data file.

Phase II boiler data set on which the regression models are applied because coal-fired NSPS boilers are subject to this rulemaking.

NSPS boilers are by original design inherently lower NO_X emitters and have larger furnace volumes per MW than most pre-NSPS boilers which makes it easier for NSPS boilers, when retrofit with current LNB technology, to achieve specified levels of controlled NO_X emission rates.[14] The only NSPS boiler for which EPA has long-term post-retrofit CEM data (North Valmy 1) corroborates the assessment that NSPS boilers, when retrofit with current LNB technology, can generally achieve lower NO_X levels than most pre-NSPS boilers. North Valmy 1 sustained an average controlled emission rate of 0.264 for calendar year 1995 (see docket item IV–A–9). Although several commenters discussed this particular LNB installation, none provided any information which would suggest this boiler is not typical of controlled NSPS boilers.

iv. Technical Assumptions Used in Group 1 Regression Model

EPA received approximately 3 comment letters (from 2 utilities and one utility association) on certain technical assumptions in the Group 1 regression model approach—namely, the methods used to estimate percent NO_X reduction outside the range of the observed model inputs and the form of the regression model.

a. Estimation Method for Units with High Uncontrolled Emission Rates

Comment/Analysis: Commenters said that percent NO_X reductions and controlled emission rates that seemed to be predicted by EPA's regression model at theoretically high values of uncontrolled emission rates were ''curious'' and seemingly contrary to experience and common sense.

Any regression model is statistically verifiable only for the range of data used to construct the model. Not realizing that EPA had assumed the percent NO_X reduction for any Phase II boilers with uncontrolled emission rates above the highest value in the LNB Application Database was equal to the percent NO_X reduction estimated for the highest data point (see docket item II–F–2, p. 4–3), some commenters said the model ''predicts NO_X control scenarios that lead to absurd results'' such that if one can only increase uncontrolled NO_X emissions to a sufficiently high level, one could achieve 100% NO_X removal!'' (see docket item IV–D–65, p. 43 and IV–G–16, p. 6).

Response: EPA's failure in the proposal to explicitly state a caveat that is routinely assumed in regression analysis led these commenters to draw erroneous conclusions from the model. The required caveat is that the statistically verifiable fit of a regression model is only assured within the range of the data actually used to construct the model. Thus, for the regression equations used in the proposed rule, the statistically verifiable range (in uncontrolled emission rates) for wall-fired boilers was from 0.51 lb/mmBtu to 1.34 lb/mmBtu and for tangentially fired boilers was from 0.48 lb/mmBtu to 0.66 lb/mmBtu. With the addition of 20 boilers to the LNB Application Database in support of the final rulemaking, the current upper limits on the ranges have increased to 1.41 lb/mmBtu for wall-fired, and to 0.86 lb/mmBtu for tangentially fired boilers (see docket item IV–A–6, Tables 3–1a and 3–1b).

Had the commenters been cognizant of the caveat described in the previous paragraph, they probably would not have drawn the admittedly ''curious'' conclusions noted above. Further, had they assumed proper application of the model instead of presuming improper application, they would have noted that the model was not applied outside its effective range.

Similarly, the commenters were also troubled by the seeming implication that the mathematical form of the regression seemed to pre-ordain that emissions could never exceed a certain maximum bound. As the commenter in docket item IV–D–65 puts it: The model predicts ''. . . that controlled emissions at wall-fired boilers will never exceed 0.454 lb/mmBtu.'' In fact, based on existing data, the model simply shows a maximum predicted emission reduction over the model's statistically verifiable range. For points outside the range of the model, no specific bound is implied, and the maximum observed emission reduction was not exceeded.

As in the proposal, when estimating the controlled emission rates for Phase II, Group 1 boilers with uncontrolled emission rates higher than the verifiable range of the model, EPA made the following assumption[15]: the percent NO_X emission reduction for such boilers was assumed to be no greater than the reduction obtained by the boiler with the highest uncontrolled emission rate in the LNB Application Database. In effect, this assumption would lead to emission limits that are less stringent than if it were assumed that the emission reductions for such boilers could exceed those of boilers in the LNB Application Database.

b. Form of the Regression Model

In both the analysis for the proposed and final rules, EPA considered two alternative forms of the regression models used to predict the achievable controlled emission rates from uncontrolled boiler NO_X emission rates:

Model #1 (One-step approach): Direct linear fit, regressing controlled emission rate on uncontrolled emission rate.

Model #2 (Two-step approach): Step 1—Direct linear fit, regressing percent NO_X reduction on uncontrolled emission rate. Step 2—Controlled emission rate is computed from the percent reduction derived in Step 1.

EPA chose Model #2 because the regression equations derived using this model explain the data better than those derived using Model #1. Statistically, this is expressed in the higher ''R^2 value'' of Model #2 (R^2=73.1% for wall-fired boilers; R^2=70.7% for tangentially-fired boilers) as compared to Model #1 (R^2=59.7% for wall-fired boilers; R^2=17.0% for tangentially-fired boilers) (see docket item IV–A–6, Tables 4–9a and 4–9b).

Comment/Analysis: A commenter criticized EPA's choice of Model #2, saying that it models the wrong parameter: ''. . . while the key issue in this rulemaking is the level of controlled emissions at Phase II, Group 1 boilers, . . . (EPA's) model is designed to predict NO_X removal efficiency—a related but secondary parameter'' (docket item IV–D–65, p. 45). Consequently, the commenter questioned the meaningfulness of a superior R^2 value from a model that regresses percent reduction on uncontrolled emissions, when the true parameter of interest is not percent emission reduction but controlled emissions: ''. . . just because Model 2 predicts removal efficiency better than Model 1 predicts controlled emissions does *not* mean that Model 2 predicts controlled emissions better than Model 1'' (docket item IV–D–65, pp. 45–46).

Response: While on the surface this criticism appears plausible, on further investigation it is incorrect because the two-step approach of Model #2 is algebraically equivalent to a one-step second order linear regression model that directly regresses controlled

[14] Reference: Smith, L. 1988. Evaluation of Radian/EPA NO_X Reduction Estimation Procedures. ETEC–88–20046. February.

[15] Only 1 wall-fired boiler and 3 tangentially fired boilers in the Phase II boiler data set (representing less than 1% and less than 2%, respectively, of the affected populations) have measured uncontrolled emission rates higher than the range used to construct the regression model and thus fall in this category.

emissions on uncontrolled emissions.[16] Thus, although its two-step formulation makes Model #2 appear not to regress controlled emissions on uncontrolled emissions, in actuality, by simply restating Model #2 in its second-order form, it can be shown to be no different in this regard than Model #1: Both models regress controlled emissions on uncontrolled emissions: Model #1 using a first-order linear expression; and Model 2 using a second-order linear expression.

Interestingly, EPA's calculations indicate that had the Agency adopted Model #1, as advocated by the commenter (a large association of utilities), the resulting achievable annual emission rates at the 90th, 85th, and 80th percentiles, for both wall-fired boilers and tangentially fired boilers, would be approximately one-half to one percentage point lower (i.e., more stringent) than the achievable annual emission rates obtained using Model #2. (See docket item IV–A–6, Tables 4–10a and 4–10b). Thus, although EPA adopted Model #2 on strictly statistical grounds, it turns out that in the analysis for the final rule, Model #2 was more favorable than Model #1 to those commenters seeking less stringent emission limitations.

v. Common Stack Issues in Group 1 Analysis

Background: In the proposed rule analysis, EPA found no strong correlation between boiler operating loads and post-retrofit hourly average controlled emission rates for single-stack boilers in the LNB Application Database and therefore, assumed that two boilers of the same type (i.e., wall-fired or tangentially fired) and NO_X control status (i.e., both had LNBs only) sharing a common stack would have similar post-retrofit controlled emission rates. (EPA notes that some utilities also made this assumption when completing the Acid Rain Cost Form for NO_X Control Costs for their Phase I LNB retrofits and provided ''sister unit'' estimates of emission rates in instances where multiple units were sharing a common stack.) In EPA's analysis, therefore, the rates from similarly situated individual units at a common stack were assumed to be the same, and single boiler and multiple boiler data were analyzed together (i.e., the common stack emission rate was assigned to each constituent unit).

Comment/Analysis: EPA received approximately 4 comment letters (from 3 utilities and a utility association) on considerations for using common stack data when analyzing LNB performance applied to Group 1 boilers. One commenter advised EPA to ''use caution when evaluating NO_X data from combined stacks'' (see docket item IV–G–14, p. 1). Another commenter said EPA should ''either exclude common stack emissions data from its analysis, or revise its analysis based on data collected during periods when only a single unit [to a common stack] is operating'' (see docket item IV–D–65, p. 42).

EPA notes that the decision on how to treat common stack data has important ramifications for both: (1) The amount of post-retrofit CEM data available for analysis; and (2) the number and representativeness of LNB retrofit cases in the LNB Application Database. Sixteen (16) of the 39 wall-fired boilers (41%) and 6 of the 14 tangentially fired boilers (43%) in the LNB Application Database exhaust to common stacks with similarly situated boilers also in the database; collectively, these boilers contribute 242,000 hours to the total of 477,800 hours of post-retrofit CEM data available through the second quarter of 1996 to support the final rule. Twenty-two (22) of the boilers sharing a common stack have post-optimization periods spanning 11 calendar months or longer. EPA does not consider the approach of excluding common stack emissions data, suggested by one commenter, a viable option because disregarding the substantial collective experience of these boilers would clearly reduce statistical confidence in the resulting assessment of LNB performance.

Accordingly, EPA has sought other ways to address the commenters' criticism that EPA did not provide credible support in the proposed rule analysis for its treatment of common stack data. The specific concerns cited are: (1) Using the common stack post-retrofit NO_X emission rate as the emission rate for each individual boiler sharing the common stack in the regression analyses; and (2) developing NO_X/load curves for common stacks by summing the NO_X emissions and loads from the boilers sharing the stack (see docket item IV–D–65, pp. 37–38).

Response: EPA has performed extensive follow-up analysis on whether measured common stack emission rate data over the post-optimization period reflects the combined annual averages of individual boilers sharing the common stack. EPA compared the combined common stack emission rate to the individual-unit emission rates at every common stack in the LNB Application Database for which usable post-retrofit CEM data could be identified for periods when only a single unit was operating. In all, EPA studied 10 common stacks with 22 constituent boilers and over 19,800 hours of individual-unit emission rate data. The analysis included:

(1) Box and whisker plots: The plots present side-by-side displays of the range of emission rates at common stacks when all units were operating compared to when only single units were operating: for each common stack, separate plots were generated using emission rates observed during the low NO_X period and the post-optimization period. In both cases the plots show little difference between multiple-unit common stack emission rates and the individual unit emission rates over the averaging periods.

(2) Percent Difference Calculations: Computing the percent difference between the multiple-unit and single-unit average emission rates for the post-optimization averaging period revealed that, on average, the percent difference for the wall-fired boilers was -0.3%, while for the tangentially fired boilers the percent difference was 1.8%. (See docket item IV–A–6, Tables 4–8a and 4–8b.) This strongly indicates that, contrary to the belief of some commenters, there is not a significant disparity between the common stack and constituent unit NO_X emission rates for the post-optimization averaging period.

(3) Sensitivity Analysis: EPA performed a series of analyses to see how estimates of achievable annual emission limitations were affected by various treatments of common stack emissions. Three scenarios were investigated. In the first, the regression model was built using the constituent unit emission rates instead of the common stack emission rates. In the second, each common stack emission rate was used only once for each stack. In the third, the common stack emission rate was repeated for each unit. The third treatment is the same as that used by EPA in the proposed rule. The regression models fit the load-weighted data over the post-optimization averaging period approximately equally well, as measured by R^2, for the various treatments of common stack emissions data. (The R^2's ranged from 73.1–75.1% for the wall-fired boilers and from 62.8–72.1% for the tangentially fired boilers (see docket item IV–A–6, Tables 4–9a

[16] The two-step version of Model #2 fits a first-order linear model $\hat{p}=\beta_0=\beta_1 U+\varepsilon$ data, where U is the regressor variable ''uncontrolled emissions'' and P is the response variable ''percent reduction.'' Then, in step 2, C, the controlled emission rate, is calculated from P using the equation $C=U(1-P/100)$. However, Model #2 (two step) can be reformulated as a one step second-order linear regression model, $C=\beta'_0+\beta'_1 U+\beta_{11}U^2+\varepsilon'$. Like Model #1 (one-step), Model #2 (one step) regresses C on U.

and 4–9b.) The differences among the achievable annual average emission rates predicted by the regression models under the three scenarios at the 90th, 85th, and 80th percentiles varied by only 0.001–0.003 lb/mmBtu for wall-fired boilers and even less for tangentially fired boilers (see docket item IV–A–6, Tables 4–10a and 4–10b). The alternative scenarios produced estimates of achievable annual emission limitations no less stringent than the third treatment, which is used for today's final rule.

(4) Load Profile Analysis: One of the commenter's arguments against using common stack NO_X emission rates was the contention that the emission rate for the stack could be artificially low because the averaging period occurred during a time when only a single unit just happened to be operating at an untypically low emitting load profile. To respond to this concern, EPA verified that during the post-optimization averaging period the ''load profile'' (i.e., the distribution of load) of every unit exhausting to each common stack analyzed was congruent with the annual load profile for that unit. This analysis verified that no matter what configuration of boilers happened to be operating, the common stack emission rates used to build EPA's regression model could not have resulted from an atypical low emission load profile during the post-optimization averaging period.

With respect to the commenter's argument that EPA developed NO_X/load curves for common stacks by summing the NO_X emissions and loads from the boilers feeding the stack, the commenter appears to have misunderstood EPA's approach.

The commenter wrongly believed that EPA's analysis rests on one of three alternative assumptions: no NO_X/load relationship exists, identical NO_X/load relationships exist among constituent units, or identical loading patterns prevailed for all units during the averaging period (see docket item IV–D–65, p. 38). This misunderstanding led the commenter to offer a hypothetical illustration to show how a single NO_X /load combination at the common stack can be produced by seven different NO_X/load combinations at the constituent boilers. Based on the absence of a unique NO_X/load correlation at the common stack, the commenter concludes that ''common stack NO_X data cannot be used to characterize the NO_X emissions for individual units.''

EPA's analysis in today's final rule does not presuppose any of the three assumptions identified by the commenter. As discussed above, EPA evaluated the load patterns of individual units on each common stack and found that these load patterns for a given stack were very similar. EPA's load-weighted post-optimization approach first calculates the achievable percent emissions reduction without presumption of a NO_X/load relationship or a particular load pattern and then adjusts the achievable percent reduction based on the annual NO_X/load patterns actually encountered. In effect, this approach takes into account any NO_X/load relationship that may be present without assuming ahead of time that the relationship is present, absent, or takes a particular form.

Finally, it should be noted that for compliance purposes, the NO_X emission limits will usually apply to common stacks, not their constituent units. Under § 75.17, a unit that utilizes a common stack with other units, all of which are required to meet a NO_X emission limit, generally may: separately monitor the duct from each unit to the stack and comply on an individual unit basis; or monitor the stack and comply through an averaging plan with the other units, individually with the most stringent limit for the units, or individually based on an approved method of apportioning the stack emissions rate. Most common stack units use the averaging plan option. In fact, all common stack units analyzed in this rulemaking that are subject to NO_X emission limitations in Phase I are complying through averaging their emissions with the other units in the common stack, not individually. Thus, from a regulatory, as well as a strictly technical perspective, it is appropriate to use common stack emission data to build the model employed in establishing the Phase II, Group 1 NO_X emission limits that will apply to boilers and common stacks.

4. Percentile Used to Define Achievability

Background. For the final step of the analysis, EPA arrayed the estimates of controlled NO_X emission rates that the Phase II units could be expected to achieve when retrofit with LNBs. Separate rank orderings were made for wall-fired boilers and for tangentially-fired boilers. Using these rank orderings, EPA tabulated percentile distributions of achievable annual emission rates for each boiler category (see 61 FR 1452, (Tables 10 and 11)). EPA selected values for the proposed annual emission limitations that, according to these tables, about 90% of the affected units could comply with on an individual basis. It was not necessary that 100% or even essentially all of the affected units be able to comply with the applicable performance standard on an individual basis because of the flexibility offered by two compliance options available to Group 1 boilers: (1) emissions averaging and (2) alternative emission limitations (AELs).

Comments/Analyses. EPA received approximately 5 comment letters (from 3 state agencies representing 2 different states, a regional association of state air pollution control agencies, and an environmental organization) on the percentile used to define achievability.

These commenters said that, given the serious and multifaceted threat NO_X poses to the environment and public health, EPA should set the most effective controls possible within existing authority. According to one state agency, ''the reductions in nitrogen oxide anticipated by the proposed regulation . . . are minimal compared to the amount of NO_X reductions necessary to protect the sensitive aquatic resources of the northeastern United States from further degradation'' (see docket item IV–D–25, p. 3). A regional association of state air pollution control agencies said, ''(While) EPA's authority to promulgate emission limits derives in this instance from a section of the CAA chiefly concerned with addressing acid deposition . . . EPA's proposal should be viewed in light of the much more significant emissions reductions needed to rectify other serious air quality and public health problems that are also associated with NO_X emissions, including fine particulate pollution, ozone smog, regional haze, and the eutrophication of aquatic ecosystems.'' (See docket item IV–D–46, p. 2.) They urged EPA to base its revised emission limitations for Phase II, Group 1 boilers on a lower threshold than 90% of the affected population in light of the flexibility afforded by the emissions averaging and AEL compliance options (see docket items IV–D–46, p.6; IV–D–63, p.7; and IV–D–25, pp. 5–6).

The Offices of the Attorney General of two northeastern states and an environmental organization said that EPA's proposal would allow excessive NO_X emissions for Group 1 boilers since, according to the RIA for the proposed rule, ''less than half the potentially affected sources may be required to implement new controls.'' (See docket items IV–D–25, p. 5; IV–D–74 p. 4; IV–D–63, pp. 6–7.) Two of these commenters recommended setting Phase II, Group 1 emission limitations at 0.41 lb/mmBtu for wall-fired boilers and 0.35 lb/mm/Btu for tangentially fired boilers, which would increase NO_X

reductions from the Group 1 emission revisions by 57% and would make the emissions averaging provision environmentally neutral (see docket items IV–D–63, pp. 6–7 and IV–D–74, pp.4–5).

No commenter said that EPA's target of 90% compliance on an individual basis was too low. As discussed in the previous sections, however, some commenters disagreed with the technical methods EPA used to develop the percentile distributions of achievable annual emission limitations for Phase II, Group 1 boilers and, as a result, believe the proposed emission limitations are too low. One commenter said EPA should encourage the optional use of AELs or emission averaging plans for Phase II, Group 1 boilers (see docket item IV–D–57, p. 3). Other commenters (but none of the 15 state agencies or associations who commented on the rule proposal) predicted an increase in the number of AEL applications to be filed with state agencies (see, for example, docket item IV–D–31, p. 2).

On the other hand, a regional association that has provided technical expertise to its 8 member states and served as a forum for coordinating region-wide air quality management practices for over 25 years said, ''Experience from reducing NO_X emissions from coal-fired boilers in the Ozone Transport Region (OTR) * * * solidly support[s] EPA's finding that the revised emission limits for Phase II, Group 1 boilers * * * are highly cost-effective, meet the statutory requirements of Section 407, and can be achieved by the vast majority of affected boilers.'' (See docket item IV–D–46, p. 2.) Corroborating this view is the testimony at the public hearing on EPA's rule proposal by the principal engineer for environmental affairs of the largest utility in New England. Based on his experience in retrofitting six coal-fired units that are achieving the proposed NO_X emission rates, he stated that his utility's initial reaction in 1989–1990 to NO_X control requirements ''was virtually identical to the reaction that we're getting from the midwestern utilities and the southern companies now.'' He added that his utility had believed NO_X control ''was frighteningly expensive, it was far more money than it was worth, and our reaction at that point, knowing that we would certainly have to do some controls, was essentially to turn loose the engineers and operators and let them * * * find better ways to do this. The bottom line was that we found that the harder that we looked, the cheaper the controls got. Our final compliance costs are about a fifth of what we thought they would be going into this * * * and we were very pleasantly surprised.'' (See docket item IV–F–1, pp. 7–9.)

Response. As discussed in section I.B.2 of this preamble, EPA is fully cognizant that recent acid deposition and ozone modeling studies show that substantial additional NO_X reductions, even beyond the levels in the rule proposal, are needed to mitigate against the multiple adverse effects of NO_X on human health and the environment, particularly since national NO_X emissions are projected to begin increasing after 2002. On balance, EPA has decided in the final rule to define a reasonably achievable emission limitation as one that 85 to 90% of the units subject to the limitation are projected to meet on an individual unit basis. On one hand, the Agency recognizes that the ability of units to comply by averaging their emissions will increase further the percentage of units that will be able to comply without seeking an AEL. Because almost six times as many units are subject to NO_X emission limitations in Phase II as in Phase I, the opportunities for compliance through averaging will be generally much greater in Phase II. In adopting the initial NO_X emission limitations for Group 1 boilers under section 407(b)(1), EPA selected limitations that about 90 percent of the units were projected to meet on an individual unit basis. In light of the significantly greater opportunities for averaging in Phase II, EPA maintains that the approach of setting Phase II emission limitations targeting a somewhat lower (85 to 90%) individual-unit achievement level is justified. On the other hand, EPA does not want to select emission limitations that would lead to overuse of the AEL compliance option, which is intended primarily for units with very high uncontrolled emission rates or units that are otherwise unusually difficult to retrofit with LNBs. The RIA for this final rule estimates the average cost to a utility for testing, monitoring, and documentation associated with an AEL application will run about $225,000, but this cost may vary considerably by utility and for different states (see docket item V–B–1, Exhibit 6–6). One commenter estimated each AEL application will cost ''the Company in excess of $300,000 in testing and analytical expenses'' (see docket item IV–D–23, p. 6), although the commenter did not say whether his utility imposes additional internal requirements to justify filing with the permitting authority for a special (higher) emission limitation. As discussed below, the RIA projects that AELs will be used by less than 10% of Phase II boilers.

The Agency has developed Tables 5 and 6 displaying the percentage of Phase II, Group 1 units, by boiler category that are projected to achieve various annual average emission limitations when retrofit with LNBs. The values EPA has selected to promulgate as revisions to the Group 1 emission limitations are in bold print. In response to comments stating that the proposed 90 percent passing threshold in the proposed rule was too conservative, EPA has decided to set the emission limit for Phase II, Group 1 and Group 2 boiler types based on the emission level that 85 to 90 percent of the affected boilers can individually meet. Thus, EPA considers an emission limit to be reasonably achievable if 85 to 90 percent of the units of the particular boiler type are projected to meet the emission limit. Therefore, in the absence of unique, countervailing circumstances, EPA has generally selected as the Phase II, Group 1 or Group 2 emission limit the emission rate with an individual-unit achievement level that is between 85 and 90%. On this basis, EPA adopts revised Phase II, Group 1 emission limits of 0.46 lb/mmBtu for Phase II wall-fired boilers and 0.40 lb/mmBtu for tangentially fired boilers.

TABLE 7.—PERCENTILE OF PHASE II WALL-FIRED BOILERS ACHIEVING EMISSION LIMIT

Emission level (lb/mmBtu)	Percent of boilers meeting emission level
0.48	96.0
0.47	91.9
0.46	88.3
0.45	85.0
0.44	83.2
0.43	78.0

TABLE 8.—PERCENTILE OF PHASE II TANGENTIALLY FIRED BOILERS ACHIEVING LIMIT

Emission level (lb/mmBtu)	Percent of boilers meeting emission level
0.43	98.2
0.42	98.2
0.41	95.7
0.40	91.4
0.39	78.1
0.38	67.6

The RIA for this final rule also projects the number of affected units for

which utilities are apt to select the AEL compliance option. The projection models a scenario where evaluation of emissions averaging opportunities is not a pre-requisite for an AEL (a true assumption). The RIA predicts that, with the annual emission limitations EPA is promulgating in this final rule, AELs are likely to be sought for approximately 42 Phase II, Group 1 boilers, representing 7% of the affected population (see docket item V–B–1, Exhibit 7–5).

B. Group 2 Boiler NO_X Emission Limits

1. Cost Comparability and Its Basis

Section 407(b)(2) the Act requires EPA to set Group 2 boiler NO_X emission limits based

> on a degree of emission reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; and which is comparable to the costs of nitrogen oxide controls set pursuant to (section 407)(b)(1). 42 U.S.C. 7651f(b)(2).

The Act does not define the term ''comparable'' or specify the appropriate method of comparing ''costs''. In the proposal, EPA stated that it believed that the terms ''comparable'' and ''cost'' were ambiguous, and, therefore, EPA consulted the legislative history of section 407(b)(2). Based on the legislative history, EPA's proposal interpreted ''comparable'' to mean ''similar but not necessarily equal'' and used cost-effectiveness ($/ton of NO_X removed) as the basis for conducting cost comparisons. 61 FR 1460. EPA interpreted the comparable-cost provision in section 407(b)(2) to require that the cost-effectiveness of applying NO_X controls to any Group 2 boiler population be comparable to the cost-effectiveness of applying LNBs to the Group 1 boiler population . EPA also took account of the other factors (e.g., ''costs and energy and environmental impacts'') listed in section 407(b)(2) by, *inter alia*, determining whether the cost impact to ratepayers (in mills/kWhr) of Group 2 boiler NO_X controls is similar to the cost impact (in mills/kWhr) of Group 1 boiler LNBs.

Comment/Analyses: EPA received 7 comments (from 3 utilities, 1 State, 1 utility associations, and 2 environmental groups) on the interpretation and implementation of the comparability requirement in section 407(b)(2).

Some utility commenters believe that the term ''comparable'' is not ambiguous as used in the statute because it has a common dictionary meaning of ''equivalent'' or ''similar.'' These commenters argue that, because ''comparable'' has a commonly understood meaning, there is no reason to consult legislative history. Other utility commenters believe that ''comparable'' should be interpreted to mean ''equal to'' or ''less than or equal to.'' Other commenters cite the common dictionary definition of the term ''comparable'' and maintain that the term is inherently vague. These commenters believe that EPA's reliance on the legislative history is proper since the common meaning of the term ''comparable'' is ambiguous, that the legislative history cited by EPA is the only reference in the legislative history addressing what Congress meant by the term ''comparable,'' and that the legislative history supports EPA's interpretation.

EPA notes that, according to the Webster's Third New International Dictionary (Springfield, Massachusetts, 1981), the term ''comparable'' is defined as: (1) ''Capable of being compared''; (2) ''suitable for matching; coordinating; or contrasting: EQUIVALENT, SIMILAR....syn see LIKE.'' Only the second definition appears to be relevant in the context of section 407(b)(2). According to the same dictionary, ''similar'' means ''having characteristics in common: Very much alike: COMPARABLE'' while ''equivalent'' means ''equal in force or amount.'' As further explained (under the dictionary's discussion of ''like''): ''COMPARABLE indicates a likeness on one point or a limited number of points which permits a limited or casual comparison or matching together.'' In short, one set is ''comparable'' to another set if the two are equal *or* if they are ''similar'' to each other without being identical. Therefore, ''comparability'' does not require ''equality,'' and the degree to which ''comparable'' sets must be ''similar'' to each other is unclear under section 407(b)(2) and is a matter of administrative judgment.

Some commenters further believe that section 407(b)(2) of the Act states that what should be compared is the ''cost'' (allegedly mills/kWh) of ''controls'' such as LNBs, not the ''cost-effectiveness'' ($/ton of NO_X removed) of those controls. These commenters argue that cost-effectiveness is only appropriate when the ''cost'' to be measured is the cost of attaining emission reductions and that the plain meaning of section 407(b)(2), supported by the legislative history, is that the Administrator is required to compare ''cost,'' not ''cost-effectiveness,'' as the basis for setting Group 2 emission limitations.

Other commenters state that the plain meaning of section 407(b)(2) requires that the ''degree of reduction'' on which EPA bases Group 2 emission limitations must be comparable to the costs of controls set under section 407(b)(1) for achieving reductions from Group 1 boilers. According to these commenters, the only way to determine and to compare costs for achieving reductions is to use a measure of cost-effectiveness. Commenters also state that the legislative history also clearly indicates that ''cost-effectiveness'' is the appropriate measure of comparing costs in setting Group 2 emission limitations.

EPA notes that in appendix B of the April 13, 1995 NO_X rule (and the March 22, 1994 rule that was remanded to EPA), EPA explained that cost-effectiveness ($/ton of NO_X removed) was to be used as the basis for determining the comparability of Group 2 boiler NO_X controls to Group 1 boiler LNBs. As stated in Appendix B:

> In developing the allowable NO_X emissions limitations for Group 2 boilers pursuant to subsection (b)(2) of section 407 of the Act, the Administrator will consider only those systems of continuous emission reduction that, when applied on a retrofit basis, are comparable in cost to the average cost in constant dollars of low NO_X burner technology applied to Group 1, Phase I boilers, as determined in section 3 below. 60 FR 18776 (1995); *see also* 59 FR 13578 (1994).

Section 3 of Appendix B is titled ''Average Cost-Effectiveness for Low NO_X Burner Technology Applied to Group 1, Phase I Boilers,'' and the only cost-calculation methodology presented in the appendix is one for calculating the average cost-effectiveness of LNBs. Both annualized capital costs and annual operating and maintenance costs are to be reflected in the cost-effectiveness calculations. The commenters now opposing using cost-effectiveness as the basis for applying the comparable-cost requirement for setting Group 2 emission limitations did not challenge this approach in appendix B, either as part of their appeal of the March 22, 1994 rule or with regard to the repromulgation of the appendix (with minor changes) as part of the April 13, 1995 rule. It is difficult to see how these commenters can now argue that the language of section 407(b)(2) ''clearly'' bars the use of cost-effectiveness. Moreover, inconsistent with their claim that EPA must compare ''cost'' not ''cost-effectiveness,'' some of these commenters also argue EPA must follow, and cannot legally change in this rulemaking, the appendix B procedures,

which are grounded on the comparison of cost-effectiveness. (See, for example, docket item IV–D–65, p. 80–95.)

Response: The Agency continues to believe that the statutory terms, ''comparable'' and ''cost'' are ambiguous, and maintains that its interpretation of ''comparable'' as ''similar but not necessarily equal'' and its decision to compare cost-effectiveness are consistent with a reasonable interpretation of the statutory language and the legislative history. Therefore, the final rule uses a cost comparability test similar to that in the proposed rule. However, in response to commenters' concerns, EPA has modified its specific criteria for determining whether control systems have comparable cost-effectiveness. In the proposed rule, EPA considered a control option for Group 2 boiler type to be ''comparable'' in cost-effectiveness to LNBs on Group 1 boilers if: the cost-effectiveness range for the Group 2 control option fell within the range (excluding outliers) for Group 1 LNBs; and the median cost-effectiveness value for the Group 2 control option was within 50% of that for the Group 1 LNBs. As discussed below, in the final rule EPA considers Group 2 control options to be ''comparable'' if the median cost-effectiveness of the Group 2 control option used to meet the Group 2 emission limitation: (1) Does not exceed by more than one-third the median overall cost-effectiveness of Group 1 controls used to meet the Group 1 emission limitations; and (2) does not exceed the median cost-effectiveness of Group 1 controls for either of the two types of Group 1 boilers, i.e., dry bottom wall-fired boilers and tangentially fired boilers regulated pursuant to section 407(b)(1). Additionally, the 90th percentile cost-effectiveness value of the Group 2 control option should not exceed the 90th percentile value cost-effectiveness value of Group 1 LNBs.

EPA believes that the approach used in the analysis to support the final rule is a reasonable interpretation of the term ''comparable'' in the context of section 407(b)(2). Where sets of values are being compared, EPA maintains that it is logical to consider the distributions, not just the medians, of the sets of values. Comparisons based solely on measures of central tendency (e.g., medians) neglect important information (e.g., about the range and shape of the distributions) that is relevant to determining whether the sets of values are comparable. EPA notes, with regard to the cost-effectiveness of NO_X controls under section 407(b)(1), that: the costs reported by utilities for LNB applications to Group 1 boilers ranged from $37 to $2,625 per ton of NO_X removed; the median cost-effectiveness of Group 1 boilers as a whole is $413 per ton of NO_X removed; and the medians of cost-effectiveness of LNBs applied to dry bottom wall-fired boilers and tangentially fired boilers (which boiler types each make up about 50% of the Group 1 boiler population) are $270 and $611 per ton of NO_X removed, respectively. Particularly given this wide disparity in the cost-effectiveness of Group 1 boiler controls, EPA considers the above criteria used in the final rule to be a reasonable interpretation of the meaning of ''comparable'' in the context of evaluating the cost-effectiveness of various Group 2 NO_X control methods.

This approach is consistent not only with the meaning of the statutory term, ''comparable,'' but also with the legislative history of section 407(b)(2). The Conference Report for the bill that became the Clean Air Act Amendments of 1990 did not itself address the meaning of ''comparable'' but the report explicitly ''incorporated'' a portion of the December 20, 1989 Senate committee report for an earlier version of that bill, which discussed comparability. The Conference Report explained :

> Section 407(b)(2) is intended to incorporate a portion of the Senate Environment and Public Works Committee Report of December 20, 1989, S. Report 101–228, that the NO_X emission control technology requirements for cyclone boilers, roof-fired boilers, wet-bottom boilers, stoker boilers and cell burners are to reflect the relative difficulty of controlling NO_X emissions from these boilers. Emission limitations that are promulgated under section 407(b)(2) are to be based on methods that are available for reducing emissions from such boilers that are as cost-effective as the application of low nitrogen oxide burner technology to dry bottom wall-fired and tangentially-fired boilers. House Rep. No. 101–952, 101st Cong., 2d Sess. at 344 (October 26, 1990), A Legislative History of the Clean Air Act Amendments, 103d Congress, 1st Sess. at 1794 (November 1993).

The relevant portion of the Senate report discussed the difficulty and cost-effectiveness of reducing NO_X emissions from cyclone, wet bottom, and stoker boilers, explaining that the Senate bill was intended:

> to compel utilities to do no more than make most cost-effective reductions. While in past years the Committee has reported legislation that differentiated, and eased, the requirements imposed on cyclone boilers, here the provisions also differentiates (sic), and eases (sic), requirements for wet bottom and stoker boilers as well. This reflects the relative difficulty of controlling NO_X for these technologies.
>
> * * * Also favoring the cost-effectiveness of this section is the development of new, lower-expense technologies. Sorbent injection and decreasing costs for selective catalytic reduction (SCR) may lower the expense of initial NO_X reductions even further. For example SCR has long been viewed as prohibitively expensive, but *recent dramatic declines in cost have brought the per-ton-removed price of this technology down to as low as $600,* according to recent Electric Power Research Institute methodology followed by EPA. *This is comparable to the cost of conventional control methods like low-NO_X* burners and thermal de-NO_X. However, the provisions in this section are not intended to mandate use of SCR or any other specific technology. Senate Rep. No. 101–228, 101st Cong., 1st Sess. at 332–33 (December 20, 1989) (emphasis added) , A Legislative History at 8672–73.

Some commenters noted that the Senate report accompanied an earlier version of the bill amending the Clean Air Act Amendments and that version of the bill did not include the ''comparable cost'' language in section 407(b)(2). However, because the Conference Report expressly incorporated the Senate report, which is the only legislative history concerning the term ''comparable'', EPA maintains that the Senate report is relevant. The legislative history also indicates that, at the time, the cost of LNBs was estimated to be about $150 to $200 per ton of NO_X removed. *Id.* at 8810. The fact that a cost-effectiveness value for SCR that was, at $600/ton, 300–400% greater than the cost of LNBs was expressly considered to be ''comparable'' to LNB costs, supports the conclusion that the criteria used in the comparability analysis in today's final rule is a reasonable approach to implementing section 407(b)(2).

The Agency also disagrees with those commenters that argued that ''cost'', rather than ''cost-effectiveness,'' is the appropriate measure of cost under section 407(b)(2). The language of section 407(b)(2) is ambiguous on this point, and EPA maintains that interpreting that section to require that costs be measured in terms of cost-effectiveness is reasonable and consistent with the legislative history.

Section 407(b)(2) states:

> The Administrator shall base (Group 2 emission) rates on a degree of emission reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; *and which is comparable to the costs of nitrogen oxide controls set pursuant to (section 407)(b)(1).* 42 U.S.C. 7651f(b)(2) (emphasis added).

The meaning of the crucial phrase on cost-comparability (i.e., the phrase,

''which is comparable to the costs of nitrogen oxide controls'') is vague because there are two plausible antecedents in section 407(b)(2) for the pronoun, ''which'': (1) The ''degree of reduction'' (i.e., the level of removal of NO_X); or (2) the ''retrofit application of the best system of continuous emission reduction'' (i.e., the Group 2 control method). EPA maintains that the use of the conjunction, ''and'', at the beginning of the phrase suggests that the cost-comparability phrase modifies the ''degree of reduction''. If the phrase instead modifies the ''best system of continuous emission reduction'', the statute could have been written, without the conjunction, to read: ''the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts'', which is ''comparable * * *'' (*id.*). However, because of the general grammatical awkwardness of the entire sentence, EPA does not consider this analysis to be dispositive .

The conclusion that the meaning of ''cost'' is ambiguous is supported by the fact discussed above, that various commenters argued that the ''plain meaning'' of section 407(b)(2) supports two mutually inconsistent interpretations of the cost-comparability provision. On one hand, some commenters argued that the ''plain meaning'' of the provision is that the cost in mills/kwh of Group 2 control methods must be comparable to the mills/kwh cost of Group 1 control methods, i.e, that the cost-comparability phrase modifies ''best system of continuous control reduction'' (see docket item IV-D–65, p. 75, note 172) [17]. On the other hand, some other commenters argued that the cost-comparability phrase clearly modifies ''degree of reduction'' and that the only way to compare the costs of reductions is by analyzing cost-effectiveness, i.e., $/ton of NO_X removed. (See docket item IV-D–63, p. 15–16). In supporting their interpretation, these latter commenters make the plausible claim that the words ''nitrogen oxide controls set (pursuant to [section 407)(b)(1)'' refers to the NO_X emission limitations established under section 407(b)(1), rather than to Group 1 NO_X control methods (i.e. LNBs applied to Group 1 boilers). These commenters argue that it is the emission limitations, not the control methods, that are set under section 407(b)(1). *See National Mining Association* v. *EPA*, 59 F3d 1351, 1362 (D.C. Cir. 1995) (holding that the word ''controls'' refers to ''governmental regulations''); *see also* 42 U.S.C. 7511b(e)(1)(A) (section 183(e)(1)(A) of the Act, which defines ''best available controls'' as the ''degree of emissions reduction'' that the Administrator determines meets certain requirements) and *compare* 42 U.S.C. 7511b(b)(3) and (4) (referring to ''best available control measures'').

However, this latter claim is not essential because, even if NO_X ''controls'' set under section 407 (b)(1) refers to LNBs applied to Group 1 boilers, the cost-effectiveness interpretation of the provision is still reasonable. The only way to determine if the ''degree of reduction'' achieved with a prospective Group 2 NO_X control method is comparable to the costs of LNBs applied to Group 1 boilers is to take into account both the level and the dollar cost of achieving NO_X reductions and, therefore, analyze the cost-effectiveness of Group 1 and Group 2 control methods. If Group 1 and Group 2 control methods were compared only on the basis of capital costs (dollars per kilowatt) or total annualized costs (mills per kilowatt hour), then the ''degree of reduction'' achieved with the NO_X control methods would be ignored. Under that approach, if taken to its logical extreme, section 407(b)(2) could then be interpreted to allow EPA to set emission limits based on specific control systems with little or no regard for the NO_X removal capabilities of the control systems.

In short, the fact that section 407(b)(2) requires ''cost'' to be comparable is not dispositive. Based on the context in which the term is used, ''cost'' can reasonably be interpreted to refer to cost-effectiveness. *See, e.g., API* v. *EPA*, 660 F2d.954, 962–64 (4th Cir. 1981) (interpreting statutory language in 33 U.S.C. 1314(b)(4)(B) requiring consideration of the ''cost and level of reduction'' of pollutants to require EPA to set standards based on comparisons of cost-effectiveness).

Having concluded that the language on cost-comparability in section 407(b)(2) is ambiguous, EPA considered the legislative history. The legislative history is consistent with the use of cost-effectiveness as the measure of cost in determining cost-comparability. As discussed above, the Conference Report for the Clean Air Act Amendments of 1990 explained that the Group 2 emission limitations are

> to be based on methods that are available for reducing emissions from such boilers that are as *cost-effective* as the application of low nitrogen oxide burner technology to dry bottom wall-fired and tangentially-fired boilers. House Rep. No. 101–952 at 344 (emphasis added).

Further, the relevant portion of the Senate report, which is referenced in the Conference Report, specifically discussed ''the decreasing costs for selective catalytic reduction'', one method of NO_X reduction, stating:

> Sorbent injection and decreasing costs for selective catalytic reduction (SCR) may lower the expense of initial NO_X reductions even further. For example SCR has long been viewed as prohibitively expensive, but *recent dramatic declines in cost have brought the per-ton-removed price of this technology down* to as low as $600, according to recent Electric Power Research Institute methodology followed by EPA. *This is comparable to the cost of conventional control methods* like low-NO_X burners and thermal de-NO_X. Senate Rep. No. 101–228 at 332–33 (emphasis added).

In short, both the Conference Report, and the Senate committee report that it incorporated, expressly state that ''cost comparability'' was viewed in terms of costs per ton of NO_X removed. Indeed, in virtually every discussion in the legislative history (including those instances cited by commenters) concerning the cost of NO_X control methods, the data on the cost of any specific control method—whether LNBs, SCR, or any other method—was presented solely in terms of dollar cost per ton of NO_X removed [18]. *See, e.g.*, Senate Rep. No. 101–228 at 332–33 and 470; A Legislative History at 2546–7 (House floor debate, submissions by Congressman Waxman); Senate Rep. No. 1894, 100th Cong., 1st Sess. at 74, (November 20, 1982); A Legislative History at 9512 (report on predecessor legislation).

The Agency notes that, when legislative history is considered, the Conference Report and the Senate committee report are entitled to greater weight than floor statements of individual legislators. EPA examined the floor statements addressing section 407(b)(2) and earlier versions of the section and finds that these statements either support the Agency's use of cost effectiveness under the cost comparability test or are, at most, ambiguous on this point.

For example, in the Senate debate on the Conference Report, Senator Burdick (chairman of the Senate Committee on Environment and Public Works) stated that

> Cyclone and wet-bottom boilers may be required to reduce nitrogen oxide emissions

[17] EPA notes that these same commenters support the Appendix B methodology, which establishes cost-effectiveness as the basis for comparing Group 1 LNBs to Group 2 NO_X control systems.

[18] It appears that the only exception, where dollars rather than dollars per ton of NO_X removed were discussed, was a reference to the total dollar cost of all NO_X control methods. A Legislative History at 977, 989.

only if the *costs of such reductions are as cost-effective as reductions from installation of low NO_X burners* on other types of boilers. . . This provision is carefully worded to make *cost considerations the determinative factor in consideration of NO_X reductions* from cyclone and wet-bottom boilers. A Legislative History of the Clean Air Act Amendments of 1990 at 778 (emphasis added).

In the same debate, Senator Baucus, subcommittee chairman and floor manager for the Act, entered a statement into the record explaining that

> These (section 407(b)(2)) emissions limits must be based on available technology, costs and energy and environmental impacts for the best system of continuous emission reduction and must be *comparable in cost to the limits set for the Phase I units. Id.* at 1039 (emphasis added).

In both of these statements the Senators indicated that what is being compared is the cost of Group 2 reductions or emission limits (i.e. cost-effectiveness of Group 2 NO_X control methods) with the cost of Group 1 reductions or emission limits (i.e. the cost-effectiveness of LNBs used to meet the Group 1 limits).

Other floor statements are more ambiguous, referring both to ''costs'' of control methods and to ''cost-effective'' control methods. For example, an earlier statement by Senator Baucus explained that if the ''costs of SCR were to remain in excess of'' LNB technology, SCR would not be ''required for cyclones'', but he also noted that ''we do not know what the most effective controls will be at the end of the century.'' A Legislative History at 7137. *See also id.* at 6168 (another statement by Senator Baucus). Senator Lott, who introduced the bill amendment that became section 407, stated that under the amendment, ''utilities will not be forced to install unreasonably expensive equipment'' and NO_X emission limits will be based on ''the application of low NO_X burner technology, a much more reasonable and cost-effective method proven to successfully achieve significant NO_X reductions''. *Id.* at 6168. Senator Lott added that the amendment allows flexibility to comply ''in the most cost-effective manner''. *Id.* Similarly, Senator Chafee asserted that the provisions that became section 407 would not force the installation of ''unreasonably expensive equipment'' and added that ''more reasonable and cost-effective methods have proven to be successful in achieving significant NO_X reductions.'' *Id. See also id.* at 7181 (statement of Senator Bumpers that Senate bill allows ''utilities the freedom to choose the most cost-effective strategies to control'' SO_2 and NO_X).

Finally, the Agency notes that some commenters argued that section 407(b)(2) must require measurements of ''cost'' rather than cost effectiveness because the House version of the section 407 NO_X provisions expressly used the term ''cost effective'', which term was not included in the final bill. House Bill 3030, passed May 23, 1990, required the Administrator to set NO_X emission limitations to achieve in 2000 2.5 million tons of reductions below the 1989 projected emissions and authorized adjustment of the limitations to increase total reductions to up to 4.0 million tons if the reductions are, *inter alia*, ''cost effective.'' A Legislative History at 2275–76. The adjustment could apply to cyclone or wet-bottom boilers if the emission reduction methods for such boilers were found to be ''as cost effective'' as the application of low NO_X burners to wall-fired or tangentially-fired boilers. *Id.* at 2277. The Agency does not consider this difference in language between the House bill and the final bill persuasive in interpreting the cost-comparability requirement of section 407(b)(2). As discussed above, the context in which the term ''cost'' is used in the final version of section 407(b)(2) is reasonably interpreted to require the comparison of the cost effectiveness of Group 1 and prospective Group 2 control methods.

In summary, EPA believes that the interpretation in the proposed rule for the meaning of ''comparable'' and ''cost'' is reasonable and consistent with both the language of the statute and the legislative history. EPA therefore applies, in today's final rule, the cost-comparability requirement of section 407(b)(2) by comparing the cost-effectiveness (in $/ton of NO_X removed) of Group 2 control technologies and Group 1 LNB installations, which is the only measure that incorporates both total cost and NO_X reduction performance. The next section discusses EPA's methodology for determining what Group 2 boiler NO_X controls are ''comparable'' in cost-effectiveness to Group 1 LNBs.

EPA notes that in addition to the cost-comparability requirement, section 407(b)(2) requires that, in setting Group 2 emission limitations, the Administrator ''tak[e] into account available technology, costs and energy and environmental impacts.'' 42 U.S.C. 7651f (b)(2). While consideration of these factors is mandated, Congress did not specify—and thus left to the Administrator's interpretation—how to apply and balance these factors. In particular, the Administrator must decide how to evaluate the factors and what relative weight to give each factor. While the Administrator's determination of cost-comparability is based on cost-effectiveness, the Administrator did not ignore cost as measured in mills per kilowatt-hour of generation. In giving meaning to the requirement to take ''account of . . . costs and energy. . . impacts'' (42 U.S.C. 7651f(b)(2)), EPA considered the impact of mills/kWh-of-generation costs of Group 2 NO_X emission limitations on electricity consumers.

2. Cost Comparison Methodology

EPA must develop data on the costs for LNB retrofits of the Group 1 boiler categories (i.e., dry bottom wall-fired and tangentially fired boilers) so that a comparability of retrofit costs between LNBs and NO_X controls for Group 2 boiler categories can be established. The procedures originally to be used in developing these LNB costs were outlined in Appendix B of the Phase I NO_X rule. Appendix B also required that the comparability of retrofit costs between LNBs and NO_X controls for Group 2 boilers be established on the basis of cost-effectiveness of NO_X control technology expressed in $/ton of NO_X removed. For the LNB retrofits in Phase I, appendix B procedures called for developing curves depicting capital cost as a function of boiler size, computing an average capital cost, characterizing operation and maintenance costs, and computing an average cost effectiveness in $/ton of NO_X removed based solely on the population that reported LNB costs to EPA.

In support of the proposed rule, EPA prepared a report (see docket item IV–A–1) that compiled available cost and performance data from the Phase I LNB retrofits, developed curves to explain the dependence of capital cost of these retrofits on boiler capacity, and developed annualized costs for these retrofits. EPA then applied these costs to the whole Group 1 boiler population, developed a distribution of Group 1 cost-effectiveness values, and compared that distribution to the distribution of NO_X control cost-effectiveness for each Group 2 boiler/NO_X control combination. The distribution of NO_X control cost-effectiveness for each Group 2 boiler/NO_X control combination was developed in a similar way to the Group 1 cost-effectiveness distribution. In the proposed rule, EPA considered Group 2 controls comparable if (1) the upper-end of their cost-effectiveness range (in $/ton removed) was within the upper-end of the of cost-effectiveness range of Group 1 boilers with LNBs; and (2) their median cost-

effectiveness value was within 50% of the median cost-effectiveness value for Group 1 boilers with LNBs. The methodology used by EPA has been criticized by commenters because it deviates from the appendix B procedures, which imply a comparison of averages rather than distributions.

Comments/Analyses: Some commenters believed that EPA's approach of comparing distributions is contrary to appendix B and allows for very wide ranges in cost due to boiler-specific influences such as utilization and uncontrolled NO_X emissions. These commenters believed that the comparison should be made using ''typical'' values for utilization and uncontrolled NO_X emissions and deriving a single number for the cost-effectiveness of Group 1 LNBs and each Group 2 boiler/NO_X control combination. The commenters, however, did not provide any insight as to how the cost-effectiveness values will be compared under this alternative approach, stating only that in order for the costs to be comparable they must be equal.

Some commenters believed that EPA's attempt to modify the Appendix B cost comparison methodology is illegal because EPA has failed to meet the legal requirement to justify abandoning it. They also stated that the appendix B analysis is valid (and should be used) because it produces results consistent with earlier estimates of LNB costs. However, EPA notes that these commenters have not supplied information addressing the accuracy of appendix B.

Numerous comments supporting EPA's departure from the appendix B approach have also been received. These comments stated that EPA's improvement of its cost-comparison methodology is legal and justified.

Response: Although appendix B implies that the cost-effectiveness comparisons of Group 2 boiler/NO_X control technology combinations to Group 1 LNBs will be done by single point comparisons, it does not provide a precise methodology for how these comparisons will be conducted. In addition, commenters supporting the appendix B approach provided no insight into how they believe the comparisons should be conducted. Thus, EPA's proposed methodology is the only methodology presented to date that explains how to determine whether Group 2 boiler/NO_X control technology combinations are ''comparable'' to Group 1 boilers with LNBs. However, in light of the negative comments received, EPA has decided to re-evaluate its cost-effectiveness comparison methodology.

Some commenters argued that EPA's departure from the appendix B procedures was illegal and resulted in erroneous conclusions and an overstatement of wall-fired and tangentially fired LNB retrofit costs experienced by the utilities. In order to respond to these comments, it is necessary to review the methodology used by EPA in estimating LNB costs, show the extent to which this methodology adheres to appendix B procedures, and examine the appropriateness of the digressions from appendix B taken in EPA's methodology.

i. Appendix B Methodology

To follow the procedures specified in appendix B, EPA compiled a database of Phase I LNB retrofit costs and NO_X reductions reported by the utilities. (Hereafter this database will be referred to as the ''cost database.'') EPA compiled cost and performance data on 56 Phase I boilers including 35 wall-fired boilers and 21 tangentially fired boilers. These data include boiler-specific details on capital and O&M costs and actual or projected annual NO_X reductions. This database can be found in docket item IV–A–1.

Appendix B required that, using the capital costs in the cost database, capital cost curves or equations be developed for dry bottom wall-fired and tangentially fired boilers. It further required using these curves or equations to develop a weighted average capital cost for the Phase I dry bottom wall-fired and tangentially fired LNB retrofits, with the weighting factor being the unit gross nameplate capacity (in MW) as reported in the NADB.

Following the appendix B requirements, EPA developed capital cost equations. It should be noted that the importance of the derived capital cost equations is that they represent characteristic values of and trends in capital cost that can be anticipated from retrofits of each boiler firing type. The capital cost equations can be applied to the much larger population of wall-fired and tangentially fired boilers to arrive at characteristic capital costs of retrofits for the entire population of Group 1 boilers because: (1) The regressions used are good representations of the averages of reported costs (see docket item IV–A–1); and (2) the ranges in the capacities of boilers currently in the cost database (75 to 816 MW for wall-fired and 100 to 936 MW for tangentially fired) are a good representation of the ranges in boiler capacities found in the much larger Group 1 boiler population (30 to 900 MW for wall-fired and 50 to 1000 MW for tangentially fired).

To compute the appendix B average capital cost for wall-fired and tangentially fired LNB retrofits in the cost database, EPA used all of the data from the cost database. This computation yields an appendix B average capital cost of $19.75/kW (in 1990 $s).

EPA notes that the population ratio of wall-fired boilers to tangentially fired boilers in the current cost database is approximately 63/37 percent on a unit basis, whereas the ratio for the entire Group 1 boiler population ratio is approximately 50/50. In fact, tangentially fired boilers in the entire Group 1 population have a combined generating capacity greater than that of wall-fired boilers. Since the average capital cost calculated by the appendix B method is very much dependent on the boilers represented in the database, strictly following appendix B to calculate an average $/kW from the existing cost database would result in the cost of LNB retrofits being biased toward those on wall fired boilers. Thus, the resulting ''average'' cost would not be consistent with the intent of the appendix B requirement to calculate a ton of NO_X reduced-weighted average representative of Group 1 as a whole.

Following the capital cost determination, the procedures described in appendix B require the development of an average cost-effectiveness by annualizing the capital cost using a constant-dollar capital recovery factor (e.g., 0.115 for a 20 year economic life), adding the annualized capital cost to the annual operation and maintenance (O&M) costs for each retrofit, summing the annualized costs for all retrofits, and dividing this sum by the total tonnage of NO_X estimated to be removed each year following the retrofits.

As suggested by appendix B procedures, EPA used a standard annualization factor of 0.115, based on a remaining useful life of 20 years, and an interest rate of 7 percent on borrowed money. These standard assumptions have been used by the Electric Power Research Institute (EPRI) and EPA in developing cost estimates for the utility industry.

The other element of annualized capital, O&M, is a site-specific cost often dictated by the pre-retrofit operating conditions of the boiler, the type of coal used, and the degree of equipment improvements or upgrades necessary to retrofit the LNBs. In fact, utilities that submitted cost data for inclusion in the cost database reported O&M costs ranging from −10 to 59 percent of annualized capital cost for wall-fired boilers and from 0 to 114 percent of the annualized capital cost for tangentially

fired boilers. A negative O & M number denotes lower O & M costs after the LNB retrofit. The average O&M costs are 13.5 percent of the annualized capital cost for wall-fired boilers and 23.3 percent of the annualized capital cost for tangentially fired boilers [19].

From the information in the cost database, CEM-measured post-retrofit NO_X emissions, and the above assumptions, EPA calculated cost-effectiveness values for each of the boilers in the cost database. Tables 9 and 10 present boiler-by-boiler results.

TABLE 9.—CALCULATED COST-EFFECTIVENESS FOR WALL-FIRED BOILERS IN COST DATABASE

Plant ID	Reported capital cost ($/kW)	Calculated cost effectiveness ($/ton)
COLBERT 1	25.5	251
COLBERT 2	23.1	347
COLBERT 3	25.6	280
COLBERT 4	20.3	163
COLBERT 5	11	141
COLEMAN 1	9.32	37
COLEMAN 2	9.59	41
COOPER 1	44.05	237
COOPER 2	23.21	149
GASTON 1	4.74	61
GASTON 2	6.77	108
GASTON 3	6.55	121
GASTON 4	6.26	100
BROWN 1	18.65	309
RATTS 1 (*)	12.84	110
RATTS 2	13.16	101
JOHNSONVILLE 7	25.8	178
JOHNSONVILLE 8	29.3	222
JOHNSONVILLE 9	27.9	169
JOHNSONVILLE 10	24.8	159
MITCHELL 1	12.86	163
PULLIAM 7	18.54	161
PULLIAM 8	10.84	155
QUINDARO 2	11.31	250
SHAWVILLE 1	36.05	363
SHAWVILLE 2	44.03	382
SITE C	19.76	149
SITE D–1 (*)	20.72	87
SITE D–2 (*)	18.58	77
SITE D–3	15.66	65
SITE D–4	15.44	74
GREEN RIVER 5	15.93	160
WATSON 4	27.89	263
WATSON 5	35.05	248

TABLE 10.—CALCULATED COST-EFFECTIVENESS FOR TANGENTIALLY FIRED BOILERS IN COST DATABASE

Plant ID	Reported capital cost ($/kW)	Calculated cost effectiveness ($/ton)
CONEMAUGH 1 (*)	18.08	1007
CONEMAUGH 2 (*)	17.23	874
BROWN 2	13.65	533
MCDONOUGH 1	54.24	1423
MCDONOUGH 2	34.58	1310
SHAWVILLE 3 (*)	53.91	2436
SHAWVILLE 4 (*)	52.24	2625
YATES 4	16.54	1622
YATES 5	16.54	1391
SITE A–1	[20] 28.69	417
SITE A–2	[20] 28.51	422
SITE A–3	[20] 33.53	500
SITE A–4	[20] 29.56	429
SITE A–5	[20] 28.60	408
SITE A–6	[20] 29.10	423
SITE B–1	16.69	489
SITE B–2	14.73	391
ALLEN 1	8.9	345
ALLEN 3	8.8	312
RIVERBEND 7	10.40	762
RIVERBEND 8	7.78	548

[20] Capital costs have been adjusted to exclude costs associated with major waterwall modifications (see docket item IV–A–9).

Consistent with appendix B, EPA did not consider boilers in Tables 9 and 10 that were not achieving the statutory emission rates (i.e., the boilers marked with (*) in the tables) when determining average cost effectiveness. EPA converted the figures in the tables from 1995 $/ton of NO_X removed to 1990 $/ton of NO_X removed using a cost scaling factor of 0.963. Further, according to appendix B, instead of averaging the individual $/ton to determine an average cost-effectiveness for the population (i.e., Average $/ton = $((\$/ton_{21} + (\$/ton)_2 + . . . + (\$/ton)_n)/n)$, the average cost-effectiveness is determined on a ton-weighted basis, by adding all the dollars and dividing by all the tons (i.e., Average $/ton = $(\$_1 + \$_{22} + . . . + \$_n)/(ton_1 + ton_2 + . . . + ton_1)$). This process yields an appendix B cost-effectiveness of $282/ton of NO_X removed, in 1990 dollars, for the combined wall-fired and tangentially fired LNB retrofits in the cost database. The ranges of cost-effectiveness for the populations of all wall-fired, all tangentially fired boilers as well as the ton weighted average for each boiler type, are shown in Table 11 below.

TABLE 11.—DISTRIBUTION OF COST EFFECTIVENESS FOR THE LNB RETROFITS (1990 DOLLARS)

Population	Average ($/ton)	High ($/ton)	Low ($/ton)
All wall-fired	161	382	37
All tangentially fired	631	2625	312
All boilers	282	2625	37

As shown in the above table, the range in cost-effectiveness for the population of LNB retrofits that reported cost information to EPA is a very wide one which was not anticipated when appendix B was developed or before appendix B was promulgated on April 13, 1995. EPA does not believe that describing this wide distribution by a single number would be appropriate. Doing so, for example, significantly understates the $/ton cost-effectiveness for more than half of the Group 1 population (i.e., the tangentially fired boilers). As illustrated by Tables 8 and 9, the appendix B average of $282/ton does not represent the average cost-effectiveness of controlling Group 1 boilers. The appendix B average is about 50% more than the average for dry bottom wall-fired boilers but almost 60% less than the average for tangentially fired boilers, which account for over half of existing Group 1 capacity.

In fact, the 282 $/ton value determined by appendix B fails to capture any of the reported costs from tangentially fired boilers and falls far short of the average cost-effectiveness of the tangentially fired boiler population, which accounts for over half of the existing Group 1 capacity. This illustrates that the single number approach of appendix B would be inadequate in characterizing the wide distribution of cost-effectiveness of LNB retrofits. A more appropriate Group 1 average cost-effectiveness value is an average derived from the averages of each boiler type in Group 1 weighted by their overall capacities. This approach weighs the $161/ton and $631/ton averages for the wall-fired and tangentially fired boilers by their respective collective capacities in the U.S., resulting in a more representative average Group 1 cost-effectiveness value.

The average cost-effectiveness value, calculated by weighing the boiler type averages by their capacities, is $412/ton and is higher than the median cost-effectiveness determined using EPA's methodology in the proposed rule ($403/ton). The commenters urging EPA to follow the appendix B methodology

[19] Though not used in the appendix B methodology, average O&M costs are used in EPA's final cost comparison methodology.

anticipated that this methodology will yield a lower average cost-effectiveness value (about $200/ton) than EPA's proposed $403/ton. From the above information, their estimate is clearly much lower than the average cost-effectiveness values reported to EPA by utilities. To facilitate comparison, Group 2 boiler NO_X control costs were also developed following the appendix B procedures. Table 12 shows the results of applying the modified appendix B cost-effectiveness calculation methodology to the various boiler and NO_X control technology types.

TABLE 12.—MODIFIED APPENDIX B AVERAGE COST-EFFECTIVENESS OF NO_X CONTROLS

[$/Ton NO_X Removed]

Boiler/NO_X control technology	Average cost-effectiveness ($/ton)
Wall-fired boilers/LNB	161
Tangentially fired boilers/LNB	631
Group 1 boilers/LNB	412
Cell burners/plug-ins	77
Cell burners/non plug-ins	98
Cyclones/gas reburning	480
Cyclones/SCR	544
Cyclones/SNCR	614
Wet bottoms/gas reburning	512
Wet bottoms/SCR	512
Wet bottoms/SNCR	437
Verticals/combustion controls	136
Verticals/SNCR	800

As can be seen from the above table, with the exception of vertically fired boilers applying SNCR, all the average Group 2 boiler cost-effectiveness values are lower than the average tangentially fired boiler cost-effectiveness value. Further, the average cost-effectiveness of each Group 2 boiler/NO_X control technology combination, except SNCR applied to vertically fired and cyclone boilers, is no more than one-third greater than the average cost-effectiveness of all the Group 1 LNB retrofits reported to EPA and is less than the average cost-effectiveness of the tangentially fired LNB retrofits. Therefore, with the exception of SNCR applied to vertically fired and cyclone boilers, all Group 2 boiler/NO_X control technology combinations would be considered comparable in cost-effectiveness to Group 1 LNBs, using the modified appendix B approach. Since the average cost-effectiveness of SNCR applied to vertically fired and cyclone boilers exceeds the average cost-effectiveness of Group 1 LNBs by 80 percent and 39 percent, respectively, these Group 2 boiler/NO_X control technology combinations would not be considered comparable in cost-effectiveness to Group 1 LNBs using the modified appendix B approach.

ii. EPA's Comparison Methodology

Although the modified appendix B approach is presented above, EPA maintains that the methodology used in the proposal, modified in today's final rule, is the better approach. EPA is therefore relying on such final methodology in setting Group 2 emission limitations and adapting, in today's final rule, revisions to appendix B that eliminate the inconsistencies between appendix B and the final methodology. As in the proposal, EPA is taking the approach of removing the inconsistent language in appendix B, rather than restating in appendix B the final methodology described in this preamble.

EPA modified the methodology in the proposed rule due to public comments. These modifications are: (1) Revised capital and O&M costs and NO_X reduction performance for LNBs applied to dry bottom wall-fired and tangentially fired boilers; (2) revised capital and O&M costs and NO_X reduction performance for selective catalytic reduction (SCR) and gas reburning applied to wet bottom boilers; (3) use of year 2000 capacity factors projected by a more sophisticated model (Integrating Planning Model); and (4) use of short-term CEM-recorded uncontrolled NO_X rates in place of NURF emission factors and long-term CEM-recorded NO_X rates. Table 13 reflects the resulting revisions to the cost-effectiveness values presented in the preamble of the proposed rule.

TABLE 13.—DISTRIBUTION OF COST-EFFECTIVENESS OF NO_X CONTROLS

[$/Ton NO_X Removed]

Boiler/NO_X control technology	10th percentile	90th percentile	Median
Wall-fired boilers/LNB	108	1,826	270
Tangentially fired boilers/LNB	286	2,621	611
Group 1/LNBs	142	2,315	413
Group 2/NO_X controls	82	657	407
Cell burners/plug-ins	52	162	91
Cell burners/non plug-ins	69	179	112
Cyclones/gas reburning	357	985	537
Cyclones/SCR	380	1,856	516
Cyclones/SNCR	487	1,193	680
Wet bottoms/SCR	424	657	501
Wet bottoms/gas reburning	413	814	520
Wet bottoms/SNCR	339	733	456
Verticals/combustion controls	95	650	128
Verticals/SNCR	651	1,600	831

The median cost-effectiveness values of each Group 2 boiler/NO_X control technology combination, except SNCR applied to vertically fired and cyclone boilers, are no more than one-third greater than the median cost-effectiveness values of LNBs applied to the Group 1 population and are less than the median values of LNBs applied to tangentially fired boilers. Further, the range in cost-effectiveness observed by the Group 2 boiler/NO_X control technology combinations is within the range in cost-effectiveness of Group 1 LNBs. Therefore, with the exception of SNCR applied to vertically fired and cyclone boilers, all Group 2 boiler/NO_X control technology combinations are considered comparable in cost-effectiveness to Group 1 LNBs.

iii. Conclusions

EPA continues to believe that the original appendix B procedure provides unrepresentative and inappropriate

results for the reasons set forth in the proposal, including the draft report cited therein (61 FR 1459). If appendix B is modified to compute averages of the two types of Group 1 boilers separately, this improves somewhat its ability to represent the wide range of cost-effectiveness of the Group 1 boiler types. However, this modification corrects only one of appendix B's shortcomings, and, so, even as modified, appendix B does not provide the most technically sound procedure for determining cost-effectiveness. In contrast, EPA's final methodology is representative of the wide variations in actual and expected costs and corrects the shortcomings of appendix B. EPA notes, in any event, that applying appendix B with modifications to improve its representativeness of the costs of wall-fired and tangentially fired boilers results in the same conclusions as to which Group 2 NO_X control systems are comparable.

3. Retrofit Nature of Group 2 Controls

In support of the proposed rule, EPA, through a contract with an architectural and engineering contractor (A/E), developed cost projections for NO_X control applications to Group 2 boilers. Because these controls need to be integrated with boiler hardware and unit layout, such applications may be lower in cost when applied to new boilers (where boiler and controls can be optimally designed) than when retrofitted to existing boilers (where some of the existing hardware must be modified or removed). Certain commenters raised issues that generically apply to the EPA's cost estimating methodology for all of the Group 2 boiler NO_X control systems. In general, the emphasis of these comments was on whether EPA's estimates considered all of the cost impacts associated with retrofitting these NO_X controls.

Comment/Analyses: One commenter believed that the EPA's estimates did not fully address the magnitude of work involved in the installation of different NO_X control technologies to existing boilers. This commenter also felt that these estimates relied heavily on the information published by commercially motivated equipment suppliers.

EPA notes that a primary consideration in the evaluation of Group 2 boiler NO_X control systems was to fully address the requirements encountered in installing such control systems into existing plant settings. EPA, therefore, developed estimates only where a control technology had a full scale application in the U.S. so that EPA could evaluate its cost estimates against actual retrofit experience. In addition, EPA's estimates included cost items that account for the retrofit nature of the technology applications, including:

(1) Costs accounting for the impacts of incorporating these NO_X control systems on existing plant equipment so that costs pertaining to modifications to the existing equipment and structures are considered, in addition to costs for new equipment and structures, in calculating the capital costs. The report issued by EPA on the Group 2 boiler NO_X control systems contains a list of major equipment, structures, and modifications required for each technology application (see docket item IV–A–4), referred to in this preamble as the ''Group 2 Boiler Study'').

(2) Cost allowances for dismantling and relocation of existing equipment.

(3) Costs for construction and engineering man-hours that reflect the increased labor necessary to perform installation work in an existing plant environment rather than a green field plant site.

(4) Contingency allowances to cover cost increases associated with uncertain site-specific factors. All capital costs were loaded by factors of 15 percent for project contingency and 5 percent for process contingency. An additional 5 percent contingency factor was applied to cover unexpected costs associated with technologies requiring installation of equipment that may impact the existing general facilities.

(5) Costs for modifications to the existing plant equipment that may be typically encountered at some plants for each technology case.

In addition to the above, the costs developed for the various technology cases were verified against several sources of information. Information was not only obtained from equipment suppliers on major pieces of equipment and specialty items, but also verified with price quotations received on most of this type of equipment on other projects by the A/E. Costs for all bulk quantities were developed based on recent experience by the same A/E.

Other commenters alleged that the cost of particular items including ''scope adders'' should be included in EPA's Group 2 boiler NO_X control cost estimates. EPA has considered these comments and concluded that, in general, the ''scope adders'' are costs that are not expected to be incurred in typical retrofits. Instead, to the extent costs included as ''scope adders'' are typical-retrofit costs, they are added to EPA's costs, and, to the extent scope adder costs are not typical-retrofit costs, they are covered by the 5 percent contingency factor in EPA's estimates (for details, see docket item IV–A–4). Additionally, EPA does not include ''scope adders'' in its estimates of Group 1 LNB costs or in its estimates of Group 2 NO_X control costs. Since the ultimate purpose is to compare Group 1 boiler cost-effectiveness to Group 2 boiler cost-effectiveness, EPA's approach provides for a more consistent cost-effectiveness comparison between the two boiler types. Further, by adding contingencies to the Group 2 costs while not adding contingencies to the Group 1 costs, EPA is being conservative in its cost comparisons.

Additionally, EPA notes that all of the boiler modifications required for the technology retrofits were included in the costs presented in the Group 2 Boiler Study. These, for example, include draft fan replacement and reheat system (economizer bypass) addition for SCR systems. Further, EPA's cost estimating methodology in general complied with the procedures listed in the EPRI Technical Assessment Guide (TAG).

Other commenters supported EPA's cost estimates. Two of these commenters (one of which has performed the only retrofit of an SCR to a cyclone boiler) referred to specific retrofit cases for SCR and cell burner combustion modifications where the costs were within the EPA's cost range. One of the commenters indicated that initial cost estimates for retrofit projects could be substantially higher than the actual costs.

Response: EPA believes that the cost estimating procedures used in the Group 2 Boiler Study adequately address the site-specific factors expected to be encountered at various Group 2 boiler sites. Certain sites may have special requirements, such as ''scope adders.'' However, the contingency allowances that have been included in EPA's cost estimates are likely to cover such situations. Additionally, as noted previously, EPA does not include ''scope adders'' in its estimates of Group 1 LNB costs or in its estimates of Group 2 NO_X control costs. Since the ultimate purpose is to compare Group 1 boiler cost effectiveness to Group 2 boiler cost-effectiveness, EPA's approach provides for a more consistent cost-effectiveness comparison between the two boiler types.

In addition, EPA further evaluated its cost estimates to determine the extent to which they reflect the specific requirements imposed by the retrofit nature of the Group 2 boiler applications (as distinguished from applications to new boilers). Table 14

shows the costs associated with the retrofit-specific items for various NO_X control technologies. The cost data presented in this table represent one specific Group 2 boiler application of each technology considered in EPA's evaluation, including combustion controls (non plug-in burners), coal reburning, gas reburning, SCR, and SNCR.

TABLE 14.—PERCENT OF TOTAL ACCOUNTED CAPITAL COSTS RELATED TO RETROFIT ACTIVITY

NO_X technology	Boiler type	Boiler size, (MWe)	Total capital cost, ($/kW)	Retrofit-specific capital ($/kW)	Percent of total capital costs due to retrofit activity (%)
Non plug-in burners	Cell burner	300	18.6	6.4	34
Coal reburning	Cyclone	400	53.7	15	28
Gas reburning	Cyclone	400	15.5	2.4	16
SNCR	Cyclone	400	7.8	1.5	19
SCR	Cyclone	400	40.9	11.1	27

In the above table, total capital cost is the total capital requirement (without the scope adders) for the technology retrofit at the corresponding boiler installation, as shown in the Group 2 Boiler Study. The major retrofit-specific capital costs include the following items:

(1) Boiler furnace wall modifications, coal pipe modifications, sootblower relocations, electrical and control modifications, and relocation of existing equipment for non-plug-ins.

(2) Boiler furnace wall modifications, enclosure modifications, coal handling system modifications, electrical and controls modifications, and demolition of existing equipment for coal reburning.

(3) Electrical and controls modifications, boiler pressure part modifications, and structural modifications for gas reburning and SNCR.

(4) Draft fan replacements, ductwork modifications, electrical and controls modifications, fan modifications, and fly ash handling system modifications for SCR.

As shown in Table 14, a significant portion of the total capital costs developed by EPA cover retrofit requirements.

Further, it should be noted that the above retrofit-specific capital costs include only those items that can be directly associated with the retrofit requirements. For each of these installations, there are other costs included in the total capital cost column in Table 14 that are retrofit-related costs but are not easily separated from non-retrofit-related costs in total estimated costs. These costs are incurred because the work is performed in an existing plant setting and because of the relatively high amount of on-site equipment assembly work required (rather than maximizing assembly in the vendor's shops). Such costs can add significantly to the percentage of total costs that are retrofit-specific costs, and thus the last column in Table 14 likely understates the percentage of total costs that is retrofit-related in EPA's estimates.

In addition to addressing the comments on SCR costs, EPA has conducted an overall analysis to compare its estimated capital costs to actual costs incurred by retrofit applications of these technologies to assure that EPA's overall cost estimates are valid. Through its A/E contractor, which has extensive experience with SCR installations in the U.S. and abroad, EPA has developed a report comparing EPA's SCR cost estimates to actual retrofit costs (see docket item IV–A–16, SCR model validation study). This report shows that EPA's estimates are conservative. Actual costs presented in this report are approximately 20 percent below EPA's estimated costs.

Further support illustrating that EPA's Group 2 Boiler Study accounted for SCR retrofit costs is presented in section III.B.4.iii of this preamble, which addresses the costs of applying SCR to cyclone boilers. That section presents model validation results that show EPA's costs to be conservative when compared to the actual SCR retrofit at Merrimack Unit 2.

Therefore, as in the proposed rule, the analysis supporting the final rule relies on the Group 2 costs developed by the A/E, with extensive experience on SCR installations in the U.S. and abroad, to compare the cost-effectiveness of Group 2 boiler/NO_X control option combinations to Group 1 boiler LNBs. These Group 2 costs adequately address various retrofit cost considerations and, if anything, may overestimate costs in comparison to actual retrofit projects.

4. Group 2 Boiler Size Exemption

Comments/Analyses: The Agency received several comments favoring the proposed exemption provided for small cyclone boilers. The preamble proposed a size threshold of 80 MW for this exemption. Several commenters noted that the proposed rule did not include explicit language to implement the proposed exemption. Commenters also argued that the exemption should be higher, ranging from 100–180 MW. Certain municipal commenters noted that they operated cyclone boilers that were just slightly larger than the proposed 80 MW threshold. One utility argued that EPA has not provided a rationale for selecting the 80 MW cutoff versus a higher cutoff level for the small cyclone exemption. The commenter noted that a review of the boiler population does not show that this is a logical break point, and the commenter could not see any emissions or economic feasibility distinction between units that fall below this level and units operated in the 80–90 MW range. Other commenters suggested a cost-cutoff as an exemption for cyclones if the final rule includes any limit for cyclones.

Certain commenters opposed any exemption for cyclone boilers. The commenters noted that cyclones have large NO_X emissions and should be controlled either through technology or averaging programs. Gas industry commenters disagreed with the exemption because they disagree with EPA's assumption that gas reburning is unavailable for cyclones under 80 MW.

EPA notes that, as shown in EPA's list of Group 2 boilers (see docket item IV-A–4), there are 14 cyclone boilers with a nameplate capacity of 80 MWe or less. There are an additional 19 units that are

between 80 and 155 MWe, five of which are owned and operated by municipal utilities.

Response: Pursuant to the Unfunded Mandates Act, EPA notified all municipal utilities (and the appropriate elected officials) with units that are potentially subject to the Phase II NO_X Program. Two of the commenters that specifically commented on the NO_X exemption were municipal utilities, one of which requested that the exemption be expanded to include two cyclone units operated by the utility with nameplate capacity of 90.25 MWe each. The final rule includes an exemption for all cyclones of 155 MWe or less nameplate capacity. The overall impact of this exemption on the emission reductions achieved by the rule is acceptable on balance. On one hand, with the exemption, the cyclone boiler NO_X emission reductions in 2000 are approximately 40,000 tons per year (or about 13 percent) less than without the exemption. On the other hand, the exemption ensures that the NO_X emission limitation for cyclones is applied only to that segment of the cyclone boiler population for which NO_X control systems are comparable in cost-effectiveness to Group 1 boiler LNBs. In addition, the exemption reduces the impact of the rule on municipal utilities with relatively small cyclone units.

The Agency does not believe any exemption beyond this for cyclone boilers is warranted. The Agency believes that the 155 MWe threshold is a rational break point because it results in significant NO_X reductions for many cyclone boilers while providing protection for reducing the impact of the Acid Rain Program on a number of municipal utility units.

For similar reasons, EPA is adopting a 65 MWe exemption for wet bottom boilers. Because the proposed rule treated combustion controls as the appropriate control technology for wet bottom boilers, EPA did not consider any exemption for wet bottom boilers necessary. As discussed above, the final rule is based on the use of either gas reburning or SCR for wet bottom boilers. The Agency notes that the two smallest wet bottom boilers, both of which are under 65 MWe nameplate capacity are both owned by municipal utilities, but the municipal owners did not specifically comment on the proposed limit for wet bottom boilers. However, exempting wet bottom boilers of 65 MWe or less ensures that the NO_X emission limitation for such boilers is applied only to that segment of the wet bottom boiler population for which NO_X control systems are comparable in cost-effectiveness to Group 1 boiler LNBs. The exemption will also reduce the impact of the Acid Rain Program on municipal utilities. The NO_X reductions in 2000 will be about 5,000 tons lower with the exemption but the reductions from wet bottom boilers will still be significant.

Further, since this rule affects utility boilers, not generators, a more meaningful measure of the size cutoff is steam flow at 100% load (measured in lb/hr) instead of generator capacity (measured in MWe). DOE's Form EIA–767, Part III (Boiler Information), Section C (Design Parameters), Item 3 lists each boiler's Maximum Continuous Steam Flow (in thousand pounds/hour) at 100% load. Comparing the Maximum Continuous Steam Flow rating found in Form EIA–767, to generator capacity found in EPA's NO_X boiler database, EPA determined that: the 155 MWe cyclone boiler cutoff can be expressed in lb/hr as 1060 lb/hr at 100% boiler load; and the 65 MWe wet bottom boiler cutoff can be expressed in lb/hr as 450 lb/hr at 100% boiler load. Section 76.7 of the final rule establishes cyclone and wet bottom cutoffs based on the Maximum Continuous Steam Flow at 100% Load of the boiler. Thus, cyclone boilers with a Maximum Continuous Steam Flow at 100% of Load of 1060 lb/hr or less are exempt from the cyclone boiler emission limit set in this rule. Similarly, wet bottom boilers with a Maximum Continuous Steam Flow at 100% of Load of 450 lb/hr or less are exempt from the wet bottom boiler emission limit set in this rule (see docket item IV–B–2, listing cyclones and wet bottoms and their respective generator capacities and Maximum Continuous Steam Flow at 100% Load).

5. Cyclone Boiler NO_X Controls

i. Coal Reburning

In the proposed rule, EPA based the limit for cyclone boilers on the assumption that coal reburning (in addition to SCR) was applicable to all cyclone boilers over 80 MWe and that either coal reburning or SCR could achieve a 50% NO_X reduction efficiency.

Comment/Analyses: Several comments were received by EPA on the feasibility of using coal reburning technology on cyclone boilers. The majority of these comments addressed whether a coal reburning retrofit would be feasible given the existing cyclone boiler design parameters. Other comments were directed to the impacts of this technology on boiler performance or on the balance-of-plant equipment. The potential for reduced precipitator performance, furnace waterwall corrosion, and ability to maintain flame stability at reduced loads were included as specific concerns about the potential impacts of coal reburning.

EPA notes that the adverse impacts of coal reburning on the boiler and balance-of-plant equipment are speculative. The corrosion potential of coal reburning was evaluated and reported for the Nelson Dewey demonstration. This experience does not show any appreciable corrosion as a result of retrofitting coal reburning.

The installation at Nelson Dewey also addressed the potential impact of coal reburning on precipitator performance. Based on long-term experience at this installation, the ash loading at the precipitator inlet increased significantly with no adverse impact on the precipitator outlet emissions and opacity; in fact, there was a slight improvement. Based on the Nelson Dewey experience, it is reasonable to assume that higher ash loadings associated with coal reburning should not have an adverse impact on the performance of existing precipitators. Because of this, the EPA study shows the precipitator upgrade as a scope adder item, which is not expected to be required by most Group 2 boiler installations.

Further, turndown to operating loads below 50 percent was demonstrated at Nelson Dewey. One major factor in facilitating turndown is the number of cyclone burners provided with the boiler. For boilers with a large number of cyclone burners, turndown capability is improved because one or more cyclone burners can be taken off-line during low load operation while the cyclones in service operate at closer to full load conditions. The Nelson Dewey cyclone boiler is equipped with only three cyclone burners, rather than the more usual 4 to 23 burners. Since this installation demonstrated the capability to operate at loads less than 50 percent, it appears that the larger units with more cyclones should not experience difficulty in maintaining their pre-retrofit operating load levels.

Commenters questioned EPA's assumption that the experience from the only operating coal reburning installation at the 110 MW Nelson Dewey Station could be applied directly to all candidate cyclone boilers, especially the larger boilers. Inadequate furnace residence time was raised as the key issue that could make this technology unsuitable for many boilers. Some of these commenters quoted an October 1995 letter from Babcock & Wilcox (B&W) (the technology supplier at Nelson Dewey) to EPA stating that

only 30.4 percent of the cyclone boiler population have an adequate residence time for 50 percent NO_X removal, another 15 percent have residence time to support up to 35 percent reduction, and the remaining are mostly unsuitable for coal reburning because of inadequate residence times or expected high unburned carbon levels.

Another commenter, a new supplier of coal reburning that is also a reputable existing supplier of gas reburning, supported the assumptions and results used by EPA in its coal reburning technology evaluation and provided further information on the feasibility of coal reburn. This information is in general agreement with the design basis used in the EPA study. According to this information:

(1) This commenter is in the process of installing coal reburning systems at a 300–MW wet bottom boiler in Ukraine, an industrial 40–MW cyclone boiler in the U.S., and a 240–MW tangentially fired boiler in the U.S. The commenter considers reburning technology commercially viable and is prepared to offer commercial guarantees.

(2) The commenter has conducted and reported a survey of furnace depth for the cyclone boilers in the U.S. The furnace depth is a critical parameter for the reburning feasibility assessment because it affects the mixing of the reburn fuel within the furnace. The commenter reported that there is little increase in the furnace depth for cyclone boilers exceeding a 400 MW rating. The maximum furnace depth for cyclone boilers is reported at 34 feet. There has been successful experience with gas reburning at a furnace depth of 30 feet, and a coal reburning system retrofit on a unit with the same depth is also underway.

(3) The commenter has evaluated reburning feasibility for several large size cyclone boilers and has found sufficient residence time available for reburning application. The typical residence time for these boilers is reported at 0.7 seconds, whereas this commenter's minimum residence time criterion for its coal reburning system is 0.5 seconds.

(4) The residence time criterion may be the main difference between the coal reburning technologies offered by the commenter and B&W. B&W has previously provided a minimum residence time criterion of 1.1 seconds to EPA, which is a far more restrictive requirement than this commenter's criterion of 0.5 seconds.

(5) Based on the above experiences, the commenter does not see boiler size as a limiting factor for the reburning technology.

Response: The coal reburn evaluation presented in EPA's study was based on the experiences with this technology at the Nelson Dewey demonstration project with appropriate adjustments made for the study boiler cases. The results of the Nelson Dewey demonstration were contained in a detailed report by B&W and DOE. In this report, B&W also provided an assessment of the feasibility of this technology, according to which the only feasibility concerns were for the small cyclone boilers (less than 80 MWe).

B&W's October 1995 letter referenced by some commenters was submitted following the completion of EPA's study. This letter appears to be inconsistent with the findings at Nelson Dewey and with the results of analyses B&W reported along with the results of the demonstration. Since B&W did not submit complete details and supporting data regarding its new position, a direct comparison with the information in the original report is not possible.

The concerns raised by some of the commenters are either based on the position taken by one technology supplier (B&W) or are speculative in nature. The information furnished by the new supplier of coal reburning, referenced above, appears to address many concerns regarding coal reburning feasibility on large cyclone boilers. However, because of the inconsistency of the information and experience reported so far with coal reburning, EPA has decided not to rely on this technology to establish emission limitations for cyclone boilers.

Even though there is significant comment supporting the wide availability and proposed achievable reduction performance capability of coal reburning, the main manufacturer of this technology, B&W, raises serious doubts as to its availability for all cyclone boilers and its NO_X reduction performance. At this time, EPA cannot conclude that coal reburning is applicable at 50 percent NO_X reduction on all cyclone boilers. Since SCR and gas reburning have been found to be available control technologies capable of achieving 50% NO_X reduction, EPA does not consider coal reburning technology as one of the best systems of continuous emission reduction for cyclone boilers under section 407(b)(2).

ii. Selective Catalytic Reduction (SCR)

Based on cost analyses conducted by the A/E contractor, EPA proposed an emission limitation for cyclone boilers based on the use of SCR, which was considered comparable to LNB applications on Group 1 boilers, and based the proposed cyclone boiler emission limit on SCR, in addition to coal reburn.

Comment/Analyses: EPA received several comments on the cost of SCR technology applied to cyclone boilers. These comments focused primarily on whether EPA has included all of the new equipment and modifications required for retrofitting SCR to cyclone boilers and whether EPA's cost estimates are comparable to the SCR cost data reported by other stakeholders.

Some commenters believe that EPA underestimated the retrofit cost of SCR by not taking into account some of the necessary SCR system design features, existing plant modifications, and impacts on plant performance. According to the commenters, EPA should have accounted for costs for: (1) Plant modifications listed by EPA as scope adders, (2) initial SCR catalyst, (3) economizer bypass, and (4) proper accounting of annual catalyst costs.

EPA notes that, as described in the Group 2 Boiler Study and in the earlier preamble discussion on the retrofit nature of EPA's control costs, scope adders are items that will not be required for typical NO_X control technology retrofits. Additionally, EPA does not include ''scope adders'' in its estimates of Group 1 LNB costs or in its estimates of Group 2 NO_X control costs. Since the ultimate purpose is to compare Group 1 boiler cost-effectiveness to Group 2 boiler cost-effectiveness, EPA's approach provides for a more consistent cost-effectiveness comparison between the two boiler types. For some special cases, however, scope adders may be required for accommodating the control technology retrofit or may be selected by the owners for other reasons, such as to provide an overall improvement in the plant operations or design. For these reasons EPA's Group 2 Boiler Study presents these costs, though they are not necessary for typical retrofits. The contingency allowances included in all cost estimates in the EPA study will cover any scope adder items that might be required in special cases.

Additionally, EPA's costs include the initial catalyst costs (see docket item IV–A–4, the first item in Table B4–17 and the first direct cost item in Table B4–18) and costs for an economizer bypass (see docket item IV–A–4, the first item of Table B4–17). Further, the approach taken in the EPA study results in a conservative cost estimate for the annual catalyst costs. In the study, it is assumed that one-third of the catalyst would be replaced during each year of operation, starting the very first year, to maintain the performance at the originally specified levels. A less

conservative approach would be to assume catalyst replacement starting only in the fourth year of operation, as suggested by the commenter questioning EPA's costs. EPA's approach was taken to simplify the cost estimation as well as to provide more conservative costs.

Several commenters have cited SCR retrofit costs reported by other stakeholders that are higher than EPA's cost estimates. Two of the cost sources reported include DOE and EPRI. Another utility commenter submitted a study conducted recently on its behalf. EPA reviewed the SCR retrofit cost information cited by the above commenters. EPA's evaluation of the information provided by these sources is provided below:

(1) A direct comparison of the DOE model-generated costs was made with the costs in EPA's study. For a 400 MW boiler with the same design basis as that selected for EPA's study boiler (a NO_X reduction efficiency of 50 percent and an inlet NO_X of approximately 770 ppm), DOE reports a capital cost of approximately $50/kW vs. $41/kW reported by EPA. The DOE costs are based on the use of extremely high project and process contingency factors of approximately 25.6 and 15.8 percent, respectively (compared to 15 and 5 percent in EPA's study). In addition, DOE uses a general facility contingency factor of 10 percent (compared to 5 percent in EPA's study). EPA believes that in light of the extensive worldwide experience with SCR retrofits to coal-fired boilers, (see docket item II–I–37, Selective Catalytic Reduction Controls to Abate NO_X Emissions, prepared by the Institute of Clean Air Companies), use of such high contingency factors as in DOE's estimates are unduly conservative. If these differences are eliminated, the capital costs developed by the DOE model would be slightly lower than EPA capital costs: Using the EPA, in lieu of the DOE, contingency factors, DOE's capital costs would be approximately $40/kW, as compared to the EPA cost of $41/kW. Thus, the DOE model supports the results of the EPA study when the effects of overly conservative contingencies are removed. This is verified by calibrating the predictive power of the two models with the only actual retrofit experience. EPA's cost estimates compare more favorably with the only actual retrofit of SCR on a cyclone boiler (Merrimack), predicting a conservative $68.53/kW [21] compared to the actual $56/kW, while DOE's model would predict a significantly higher cost than EPA's estimate.

(2) EPRI quoted a capital cost range for retrofitting SCR to the Group 2 boilers from $70 to $200/kW in its comments and provided no supporting data. These costs are significantly higher than EPA's costs and completely unrealistic when compared to the capital cost of $56/kW reported for the SCR installation at the cyclone boiler at Merrimack Station. This operating installation has been described by the utility that conducted it as a moderately difficult retrofit. Still, even the lower end of the EPRI's cost range is well above the Merrimack-reported cost. The cost range predicted by EPRI is given little weight since the cost range has no supporting data and is inconsistent with the only actual retrofit of SCR on a cyclone boiler.

(3) One of the commenters submitted a report prepared by an independent architectural & engineering firm and containing costs for specific applications of SCR on cyclone boilers. A review of the report revealed the following:

(A) The report itself notes that the nature of the analyses performed was preliminary and states that further detailed evaluation is needed to provide a reliable assessment of the SCR retrofit to the cyclone boilers that were studied. The report relies on constructability evaluations based on a review of drawings only and cost estimates based on a roughly estimated SCR system design. While EPA's study developed detailed component-level costs, the report does not include any details for the cost estimates.

(B) The report discusses the impact of SCR on existing plant equipment. However, the report is not clear as to what type of modifications have been included for what equipment, while EPA's study presents detailed lists of modifications to equipment. The SCR systems have apparently been designed for a NO_X removal efficiency ranging from 35 to 45 percent. The operating costs are based on very low NO_X removal efficiencies ranging from 29 to 38 percent. Both of these assumptions artificially increase the estimated costs/ton of SCR. EPA costs are based on a NO_X removal efficiency of 50 percent (which is easily achievable by SCR).

EPA concludes that the subject report uses questionable assumptions, is not a detailed analysis, provides inadequate supporting details, compares poorly to the only actual retrofit at Merrimack, and thus provides no basis for revising EPA's cost estimates.

In addition to the above sources, some commenters provided SCR cost information based on their own evaluations and studies. In general, these costs are not supported by actual data. In contrast, EPA's study is heavily corroborated by experience and actual data, and therefore, the comments do not provide a basis for revising EPA's cost estimates.

Other commenters have supported the costing methodology used by EPA. Two commenters (one of which has performed the only retrofit of an SCR to a cyclone boiler, i.e., Merrimack Unit 2) provide data from that SCR retrofit in support of the costs developed by EPA.

Response: EPA's costs are intended to cover the SCR retrofit requirements at typical Group 2 cyclone boiler installations. In EPA's evaluation of these costs, it was recognized that the retrofit requirements at some boiler installations could exceed the norm just as other retrofit requirements could be below the norm. Boiler-specific unique requirements beyond the norm were identified as scope-adders in this evaluation. However, the EPA cost estimates included contingency allowances that will cover the cost of these requirements.

As noted in the previous section addressing the retrofit nature of EPA's costs, the Group 2 Boiler Study includes detailed lists of new equipment and existing plant modifications applicable to each technology retrofit. These lists provide detailed information on the hardware associated with typical retrofits and scope adders. Thus, the EPA costs, developed at the hardware component level, include the retrofit requirements for typical and non-typical control technology installations.

The high estimated capital and levelized costs mentioned by some commenters and their sources (e.g., DOE, EPRI, and an architectural/engineering firm hired by one commenter) are not borne out by the reported experience at the aforementioned Merrimack SCR installation. For this 330 MW cyclone-fired installation, designed for a 65 percent NO_X removal efficiency, the total capital cost was reported to be $56/kW. This cost included the addition of a significant amount of additional ductwork and support steel required for this retrofit because of unusual space limitations. The baseline NO_X emission for this unit was also unusually high (2.66 lb/mmBtu), thus requiring a relatively large and expensive ammonia handling system.

[21] This is the capital cost estimate for a boiler of Merrimack's size under EPA's methodology, after adjusting for this particular boiler's NO_X reduction efficiency of 65 percent versus 50 percent used in EPA's study and the boiler's baseline emission level of 2.66 lb/mmBtu versus 1.3 to 1.4 lb/mmBtu used in EPA's study.

EPA used the information available from Merrimack to corroborate its costing methodology (see docket item IV–A–16, SCR model validation study). A comparison of the Merrimack cost with the EPA-reported costs in the Group 2 Boiler Study (August 1995) is not directly possible because of the differences in the design NO_X reduction efficiency (65 percent at Merrimack versus 50 percent in EPA's study) and the baseline NO_X emission levels (2.66 lb/mmBtu at Merrimack versus 1.3 to 1.4 lb/mmBtu in EPA's study). Thus, to ensure proper comparison, EPA included the design criteria used at Merrimack while employing the Agency's costing methodology. The capital cost developed with this approach could then be compared to the actual Merrimack cost for validation purposes.

Table 15 shows an equipment list for the Merrimack installation. This list has been prepared from published information and information received by EPA from the system supplier. It should be noted that this installation did not require some of the existing plant modifications that were included for the boilers used in the EPA study (e.g., replacement of the existing draft fans and an economizer bypass). However, the SCR installation at Merrimack 2 did require extensive flue gas ductwork to accommodate the SCR within the existing setting; further, in this installation, a bypass around the SCR reactor was also provided. The items in Table 15 were accounted for in the EPA cost estimate to model the retrofit at Merrimack Unit 2.

TABLE 15.—MAJOR EQUIPMENT LIST MERRIMACK SCR ANHYDROUS AMMONIA-BASED BOILER SIZE: 330 MW

No.	Item	Description/size
1	SCR reactor	Vertical flow type, 1,615,350 acfm capacity, equipped with a plate type catalyst with 14,124 ft^3 volume placed in two layers, insulated casing with two empty layers for future catalyst addition, sootblowers, hoppers, and hoisting mechanism for catalyst replacement.
3	Anhydrous ammonia storage	Horizontal tank, 250 psig pressure; 87.5-ton storage capacity.
2	Compressors	Rotary type, rated at 400 scfm and 10 psig pressure.
2	Electric vaporizer	Horizontal vessel, 450 kW capacity.
1	Mixing chamber	Carbon steel vessel.
1 Lot	Ammonia injection grid	Stainless steel construction.
1 Lot	Ammonia supply piping	Piping for ammonia unloading and supply, carbon steel pipe: 4.0 in. diameter, 600 ft long, with valves, and fittings.
1 Lot	Air ductwork	Ductwork between air heater, mixing chamber, and ammonia injection grid, carbon steel, 400 ft long, with two isolation butterfly dampers, and expansion joints.
1 Lot	Sootblowing steam piping	Steam supply piping for the reactor sootblowers, consisting of 200 feet of 2″ diameter pipe with an on-off control valve and drain and vent valved connections.
1 Lot	Flue gas ductwork	Ductwork modifications to install the SCR reactors, consisting of insulated duct, isolation damper, turning vanes, and expansion joints.
1 Lot	SCR bypass	Ductwork consisting of insulated duct, 12′x24′ double-louver isolation damper with air seal, and expansion joints.
1 Lot	Ash handling modifications	Extension of the existing fly ash handling system modifications, consisting of one slide gate valves, one material handling valves, one segregating valve, and ash conveyor piping, 180 ft long with couplings.
1 Lot	Controls and instrumentation	Stand-alone microprocessor based controls for the SCR system with feedback from the plant controls for the unit load, NO_X emissions, etc., including NO_X and ammonia analyzers, air and ammonia flow monitoring devices, and other miscellaneous instrumentation.
1 Lot	Electrical supply	Wiring, raceway, and conduit to connect the new equipment and controls to the existing systems.
1 Lot	Foundations	Foundations for the equipment and ductwork/piping, as required.
1 Lot	Structural steel	Steel for access to and support of the SCR reactors and other equipment, ductwork, and piping.

Table 16 shows the capital cost estimate for the Merrimack retrofit using the same cost model that was used to generate costs for EPA's study. As shown in Table 16, the total plant capital requirement according to EPA's model is $68.53/kW, which is over 20% higher than the actual cost reported for Merrimack of $56/kW. Thus, this comparison confirms the conservatism of the cost methodology used in EPA's study.

TABLE 16.—EPA'S RETROFIT CAPITAL COST ESTIMATE SUMMARY FOR SCR MODIFICATIONS TO A CYCLONE-FIRED BOILER

NO_X Control Technology	SCR
Boiler Size (MW)	330
Cost Year	1994
Direct Costs ($/kW):	
SCR reactors/ammonia storage.	31.3
Piping/ductwork	13.1
Electrical/PLC	3.1
Draft fans	0
Platform/insulation/enclosure.	1.1
Total direct costs ($/kW).	48.6

TABLE 16.—EPA'S RETROFIT CAPITAL COST ESTIMATE SUMMARY FOR SCR MODIFICATIONS TO A CYCLONE-FIRED BOILER—Continued

NO_X Control Technology	SCR
Scope adder costs ($/kW), (Yes/No):.	
Asbestos removal	0
Transformer	0
Air heater modifications.	0
Boiler system structural reinforcement.	0
Total scope adder costs ($/kW).	0
Total direct process capital ($/kW):.	48.6

TABLE 16.—EPA'S RETROFIT CAPITAL COST ESTIMATE SUMMARY FOR SCR MODIFICATIONS TO A CYCLONE-FIRED BOILER—Continued

NO_X Control Technology		SCR
Indirect costs:		
General facilities	5.0%	2.4
Engineering and home office fees.	10.0%	4.9
Process contingency ...	5.0%	2.4
Project contingency	15.0%	8.7
Total Plant Cost (TPC) ($/kW).		67.1
Construction years		0
Allowance for funds during construction.		0
Total plant investment (TPI) ($/kW).	67.1	
Royalty allowance	0.00%	0
Preproduction cost	2.00%	1.3
Inventory capital	Note	0.13
Initial catalyst and chemicals 0.00%.		0
Total plant requirements ($/kW).		68.53

Note: Cost for anhydrous ammonia stored at site.

Based on the record, including the above comments and responses, EPA concludes that SCR can be applied to cyclone boilers greater than 155 MW with at least 50% NO_X reduction at the cost-effectiveness projected by the Agency and that SCR so applied is comparable to Group 1 LNBs.

iii. Gas Reburning

Several comments were received by EPA concerning the use of gas reburning technology on cyclone boilers. These comments primarily focused on the adequacy of the gas reburning system design and cost estimation procedures used in EPA's evaluation of this technology.

Comment/Analyses: In EPA's evaluation, natural gas was assumed to be available within the plant fence of each application. Some commenters did not agree with this assumption and cited specific examples of plants where the nearest gas supply pipeline is several miles from the plant sites. One commenter quoted a pipeline access cost at $750,000 to $1,000,000 per mile of pipeline. Another commenter provided pipeline costs for a specific station well below that range. Yet another commenter suggested adding a cost of a 10 mile access pipeline in EPA's estimates for this technology. This commenter suggests a minimum cost estimate of $10/kW for this pipeline addition.

Another commenter provided detailed information on the available gas pipeline size, pressure, and distance from the plant for all Group 2 cyclone-fired boilers. This commenter also noted that adequate wellhead supplies exist to provide gas needed for gas reburning and that 77 of the 89 cyclones included in EPA's database are located in the Midwest regions with abundant pipeline capacities.

Another issue raised by some commenters is the natural gas to coal price differential used by EPA in evaluating gas reburning. While one commenter felt that the cost differential used by EPA was low, several commenters either agreed with EPA's cost differential or suggested use of lower differentials. One of these commenters cited the results of a detailed study done to evaluate natural gas/coal price differential at 142 stations, which showed a median differential of only $0.41/mmBtu and a mean average differential of only $0.49/mmBtu. Two commenters suggested using the average differential of $0.96/mmBtu as reported in the EIA's Annual Energy Outlook (1996) for the years 2000 to 2005.

Several commenters were in general agreement with EPA's capital cost estimates for the gas reburning technology. Some provided examples of actual retrofits with costs similar to EPA's costs. Other commenters, however, objected to EPA's cost estimates. One commenter believed that EPA should have included the cost of scope adders in the evaluated technology costs. Some commenters provided their own estimates of the gas reburning cost ($/ton NO_X removed or mills/kWhr) that were higher than EPA's estimates. One of these commenters provided details of a specific study conducted by an architectural engineering firm for specific cyclone boilers. EPA notes that, as described in the earlier preamble discussion on the retrofit nature of EPA's control costs, scope adders are items that will not be required for typical NO_X control technology retrofits. Additionally, EPA does not include ''scope adders'' in its estimates of Group 1 LNB costs or in its estimates of Group 2 NO_X control costs. Since the ultimate purpose is to compare Group 1 boiler cost-effectiveness to Group 2 boiler cost-effectiveness, EPA's approach provides for a more consistent cost-effectiveness comparison between the two boiler types.

Response: Through the comments received on the proposed rule, additional information has become available on the availability of natural gas supply at the cyclone boiler installations. Based on this new information, EPA has revised its cost estimates for gas reburning to include costs associated with providing access to gas supply beyond the plant fence (see docket item IV-A–4). Further, EPA chose to use the natural gas to coal price differential for the year 2010 since this year would reflect the midpoint of the expected compliance period for most of the Group 2 boilers. According to DOE's Energy Information Administration (EIA) Annual Energy Outlook for 1996, this differential is § 1.10 per mmBtu, expressed in 1990 dollars. The resulting cost-effectiveness of gas reburning, as shown in section III.B.2 of this preamble, meets the cost comparability criteria.

Based on the record, including the above comments and responses, EPA concludes that gas reburning can be applied to cyclone boilers greater than 155 MW with at least 50% NO_X reduction at the cost-effectiveness projected by EPA and that gas reburning so applied is comparable to Group 1 LNBs. As discussed above, applying the requirements of section 407(b)(2), EPA is establishing a NO_X emission limitation for cyclone boilers based on SCR or gas reburning at 50% NO_X reduction performance. The EPA notes that the reliance on gas reburning in setting emission limitations will encourage gas use in appropriate cases.

6. Wet Bottom Boiler NO_X Controls

At the time the proposed rule was issued, EPA believed that combustion NO_X controls (such as overfire air) would be applicable to all wet bottom boilers. This belief was based on an ongoing demonstration by the American Electric Power Company (AEP). Since overfire air (OFA) seemed to be a very cost-effective way of achieving significant reductions (about 50%), EPA did not rely on any other available NO_X control (i.e., SCR or gas reburning) in setting the wet bottom boiler emission limit. EPA has, however, received comments that the AEP demonstration has not been successful and that EPA should investigate the retrofit of SCR and gas reburning to wet bottom boilers.

Comments/Analyses: The utility (AEP) that is conducting the only combustion NO_X control demonstration on a wet bottom boiler has commented that it is inappropriate to use that utility's engineering estimates of what may be achievable using a two-stage OFA system. According to this utility, actual reductions at their wet bottom boiler, based on the retrofit of a two-stage OFA system, have been 22% at 90–100% of full load, 31% at 70% load, and as small as 10% at minimum (60%) load.

One commenter believes that even for boilers to which the two-stage overfire

air approach may eventually apply, a technology cannot be considered to be available when a single demonstration had just begun at the time the proposal was signed. The same commenter also expressed concerns related to the fact that the various categories of wet-bottom boilers feature significantly different furnace size and firing characteristics and thus would not be able to achieve acceptable carbon burnout or protection of the lower furnace from corrosion. This commenter also feels that the uncertainty over applicability and control performance prevent a thorough cost evaluation.

According to another commenter, SNCR is estimated to have a cost of over $900/ton removed, while SCR is estimated to have a cost of over $830/ton. Allegedly, these technologies may not be cost-effective when applied to wet bottom boilers.

Other commenters have recommended considering gas reburning and SCR as being viable and cost-effective approaches for controlling NO_X from these boilers.

Response: The AEP demonstration of retrofitting a two-stage OFA system to a wet bottom boiler has not proved to be successful as yet. Thus, EPA does not find this technology to be the best system of continuous emission reduction for wet bottom boilers and is not using the technology to establish a NO_X emission limit for wet bottom boilers in this rulemaking.

In light of the comments received, EPA considered the applicability, likely performance, and projected cost of gas reburning and SCR applications on wet bottom boilers. Using information on full-scale installations of gas reburning and SCR on wet bottom boilers and information received through the comments on the availability of natural gas at the wet bottom boilers, EPA has determined that gas reburning and SCR are available to all wet bottom boilers that will need to reduce NO_X emissions. In any event, EPA maintains that, because they are post-combustion control systems in that they are applied downstream of the main combustion process, both gas reburning and SCR are available to any boiler type, (e.g., in this case wet bottom boilers). 61 FR 1457. Again, because these are post-combustion technologies, their application to wet bottom boilers raises the same applicability and performance considerations as those discussed in the context of cyclone boilers, e.g., in the proposal (61 FR 1468 and 1470). For the same reason, the analysis of issues concerning SCR costs and natural gas availability and costs (e.g., in section III.B.6.ii–iii of this preamble) in the context of applying these technologies to cyclone boilers is fully applicable to the application of these technologies to wet bottom boilers. Having fully addressed gas reburning and SCR applicability, performance, and cost-effectiveness-related issues in the cyclone boiler context, EPA finds that these are the best systems of continuous emission reduction for wet bottom boilers. EPA has estimated the cost-effectiveness of gas reburning and SCR as applied to each boiler in the wet bottom boiler population. The same approach as that used for other boiler types—i.e., of using the boilers' usage and uncontrolled emissions to determined the cost-effectiveness distribution—was used here. The resulting cost-effectiveness for gas reburning and SCR applied to wet bottom boilers, as shown in section III.B.2 of this preamble, meet EPA's cost comparability criteria. Based on the record, including the above comments and responses, EPA concludes that gas reburning and SCR can be applied to wet bottom boilers with at least 50 percent NO_X reduction and that gas reburning and SCR so applied are comparable to Group 1 LNBs. As discussed above, applying the requirements of section 407(b)(2), EPA is establishing a NO_X emission limitation for wet bottom boilers based on gas reburning and SCR at 50 percent NO_X reduction performance.

7. Vertically Fired Boiler NO_X Controls

Comments/Analyses: The Agency received comments from approximately 8 commenters (4 utilities, 1 utility association, 1 environmental association, 1 vendor, and 1 vendor association) on the proposed emission limitation for vertically-fired boilers. The utility commenters generally supported the proposed limitation as being achievable and comparable in cost, but raised some concerns about the ability of the broad variety of boilers in this category to achieve the proposed limit. Two commenters raised specific concerns about the ability of arch-fired boilers to achieve the limit. These commenters noted that because of design differences, neither of the combustion control technologies demonstrated on other vertically-fired boilers could be used on arch-fired boilers.

The environmental association argued that stricter limits should apply. The vendor commenter disagreed with excluding SNCR as a control option based on cost because the only SNCR retrofit on a vertically-fired boiler was installed in an atypical manner with numerous non-licensed design changes.

Response: As discussed in the proposed rule, EPA examined SNCR applications to vertically fired boilers and found that SNCR did not meet the cost comparability requirement. Hence, EPA did not base the proposed emission limit for vertically fired boilers on SNCR. Further, as discussed in the Group 2 boiler support document (see docket item IV–A–4), in its examination of SNCR costs, EPA did not include any atypical design features that could affect costs. Upon review of the record, including the above comments, EPA is not revising its SNCR cost estimates and still maintains that these costs do not meet the cost comparability requirement.

Moreover, EPA, based on its analysis in the proposal and section III.B.2 of this preamble and applying the requirements of section 407(b)(2), concludes that an emission limit should be set for vertically fired boilers based on the application of combustion controls with at least 40% NO_X reduction. However, in light of the information received from commenters showing the unavailability of combustion controls for arch-fired boilers, a subset of the vertically fired boiler category, EPA is excluding these boilers from the emission limitation for vertically fired boilers. Because combustion controls are extremely cost-effective (having a median cost-effectiveness lower than the median for either wall-fired or tangentially fired boilers) and can achieve significant NO_X reduction (at least 40 percent), EPA has determined that combustion controls are the best system of continuous emission reduction for vertically fired boilers and that the emission limit should not be based on other available NO_X control technologies (e.g., gas reburning or SCR) whose cost-effectiveness values would be much higher.

8. Cell Burner Boiler NO_X Control

Comments/Analyses: Utility commenters agreed that plug-in controls for 2-cell burner boilers are available and are comparable to LNBs applied to Group 1 boilers. However, some of these commenters asserted that non-plug-in controls, though available for cell burner boilers, are not comparable to Group 1 LNBs.

A commenter stated that plug-in technology is available for 2-cell burner boilers and comparable to Group 1 LNBs but is unavailable for 3-cell burner boilers. The same commenter stated that non-plug-in technology is an available technology for cell burner boilers. Several utility commenters claimed that non-plug-in technology is not comparable to Group 1 LNBs. One

commenter stated that capital costs for non-plug-in retrofits range from $20–27/kW, whereas LNBs average $14/kW. Another commenter estimated non-plug-in retrofit would cost approximately $30/kW as opposed to $6/kW for plug-in retrofit. However, yet another commenter asserted that cost and cost-effectiveness of non-plug-in retrofit at Brayton Point Unit No. 3 are within the cost range for Group 1 LNBs. This commenter used EPA's methodology to determine a cost of $24/kW and cost-effectiveness of $111/ton for the Brayton Point retrofit.

Response: In its proposal, EPA considered plug-in controls to be available for controlling NO_X emissions from 2-cell burner boilers and considered non-plug-in controls to be broadly applicable on cell burner boilers, including those with 3-cell configurations. Further, EPA found both of these controls to be comparable to Group 1 LNBs. The proposed limit of 0.68 lb/mmBtu was then based on achieving 50% NO_X reduction with either of the plug-in or non-plug-in controls.

The comments received support EPA's position with respect to applicability of plug-in and non-plug-in controls and costs of plug-in controls. However, comments express concerns with the costs of non-plug-in controls. EPA continues to believe that non-plug-in controls are comparable to LNBs. EPA's position with respect to cost of non-plug-in controls is supported by the information obtained on the retrofit at Brayton Point Unit 2 by the utility that owns this unit (see docket item IV–D–30). Based on the record, including the above comments and responses, EPA concludes that, as set forth in the proposal and section III.B.2 of this preamble, plug-ins and non-plug-ins applied to cell burner boilers at 50 percent NO_X reduction are comparable in cost-effectiveness to Group 1 LNBs. As discussed above, applying the requirements of section 407(b)(2), EPA is establishing a NO_X emission limitation for cell burner boilers based on plug-ins and non-plug-ins at 50 percent NO_X reduction performance. Because plug-ins and non-plug-ins are extremely cost-effective (having a median cost-effectiveness lower than either wall-fired or tangentially fired boilers) and can achieve significant NO_X reduction (at least 50 percent), EPA has determined that plug-ins and non-plug-ins are the best system of continuous emission reduction for cell burner boilers and that the emission limit should not be based on other available NO_X control technologies (e.g., gas reburning or SCR), whose cost-effectiveness values would be much higher.

9. Revision of Proposed Group 2 Boiler NO_X Emission Limits

In the proposal, EPA chose to set the emission limits for the various Group 2 boiler populations at the emission rates that a target of about 95% of the pertinent populations could meet. In light of the compliance flexibility available due to emissions averaging and AEL, the above approach was considered to be conservative. The Agency, however, requested comment on whether the approach should be consistent with the approach being used in revision of Group 1 boiler limits.[22]

Comments/Analyses: For cell burners, several utility commenters agreed that the proposed emission limit is reasonable. According to one other commenter, experience with cell burner boilers operated by the commenter shows that the proposed limit can be achieved and provides a margin to accommodate uncontrollable variability. However, the commenter believes that any lower limit may be difficult to achieve, especially for boilers owned by other utilities, because the commenter's boilers appear to have below average uncontrolled rates. One other commenter believes that the data from the plug-in retrofit of Muskingum River Unit 5 indicates that the limit can be met. While the design of that unit differs significantly from other cell burner boilers in the AEP system, the commenter supports EPA's proposed limits.

Other commenters support setting more stringent NO_X limits for all Group 2 boilers and cyclones in particular, stating that EPA should set an emission limitation based on the emission rates that 50% of the population can meet, since boilers not meeting the resulting limitation can average their emissions with other, lower emitting boilers, or apply for an AEL.

Response: EPA based the emission limit for Group 2 boilers on the emission rate that 85 percent to 90 percent of the affected boilers could meet on an individual unit basis. Based on the comments, EPA concludes that it should be consistent in its approaches for establishing the emission limits for Phase II, Group 1 boilers and Group 2 boilers. In light of the compliance flexibility available due to emissions averaging and alternative emission limitations (AELs), this approach is reasonable. Since there is no restriction on what boiler types may be included in an averaging plan, Phase II, Group 1 and Group 2 boilers have the same overall opportunities for averaging. Under the NO_X regulations, the availability of AELs is also not different among boiler types.

As explained in the context of Group 1 boilers, in its Group 2 boiler database, EPA replaced long term ETS uncontrolled NO_X rates with short term CREV rates (see docket item IV–A–4). Using short-term CREV data and quality assured short-term emission data, EPA was able to obtain uncontrolled emission data for about 98% of the Group 2 population. This revised database was used in establishing any revised emission limits described below.

i. Cell Burners

As elaborated above, none of the commenters, including utilities with cell-burner NO_X control retrofits claimed that the proposed 0.68 lb/mmBtu was not a reasonable limit to require if plug-ins or non-plug-ins were installed. The only adverse comments were either that the control technology (i.e., non-plug-ins) is not comparable to LNBs on Group 1 boilers or that a more stringent emission limit should be established. EPA's projections show that about 80 percent of the cell burner boilers can achieve the 0.68 lb/mmBtu limit on an individual unit basis. Although EPA's general approach is to set the emission rate at a level that 85 percent to 90 percent of the units are projected to achieve on an individual unit basis, EPA decided, in these unique circumstances where no commenter contests the achievability of 0.68 lb/mmBtu with plug-ins or non-plug-ins, to set that level as the emission limit. With commenters asserting that a more stringent rate may not be achievable, there is no basis for setting a lower limit. For this reason and the reasons set forth in section I.B.1 of this preamble, EPA is setting 0.68 lb/mmBtu as the emission limit for cell burners based on plug-ins and non-plug-ins.

ii. Cyclones

As explained above, EPA is establishing an emission limit for cyclone boilers greater than 155 MW based on gas reburning and SCR at 50% NO_X reduction performance. Applying the projected 50% emission reduction to the uncontrolled emissions of each boiler in the cyclone boiler population for which NO_X limits are to be set under section 407(b)(2), EPA determined the percentage of the boilers that could achieve various NO_X performance levels

[22] For the Group 1 emission limits, EPA based the achievable limit on the point at which approximately 90% of the affected boilers would likely meet the limit.

on an individual unit basis, as shown in the table below.

NO_X level (lb/mmBtu)	% of boilers meeting NO_X level
1.12	100
0.92	95
0.88	90.9
0.86	89
0.82	86

The table indicates that 89% of the cyclone boilers can achieve on an individual unit basis a NO_X controlled emission rate of 0.86 lb/mmBtu. Applying its general approach of setting emission limits based on reasonable achievability, EPA sets that rate as the emission limit based on gas reburning and SCR. EPA recognizes that a rate of 0.87 lb/mmBtu would also yield an 89 percent individual-unit achievability level. However, because of emissions averaging under § 76.10, this would likely reduce the amount of NO_X reductions realized since a cyclone boiler could meet 0.86 lb/mmBtu and other units in an averaging plan could use the excess reduction to reduce less themselves. Taking account of this likely environmental result, EPA adopts the 0.86 lb/mmBtu emission limit.

iii. Wet Bottom Boilers

As explained above, EPA is establishing an emission limit for wet bottom boilers greater than 65 MW based on gas reburning and SCR at 50% NO_X reduction performance. Applying the projected 50% emission reduction to the uncontrolled emissions of each boiler in the wet bottom boiler population for which NO_X limits are to be set under section 407(b)(2), EPA determined the percentage of the boilers that could achieve various NO_X performance levels on an individual unit basis, as shown in the table below.

NO_X level (lb/mmBtu)	% of boilers meeting NO_X level
0.95	100
0.94	91
0.84	87.8
0.8	78.7

The table indicates that 87.8% of the wet bottom boilers can achieve a NO_X controlled emission rate of 0.84 lb/mmBtu. Applying its general approach of setting emission limits based on reasonable achievability, EPA sets that rate as the emission limit based on gas reburning and SCR. EPA recognizes that a rate of up to 0.93 lb/mmBtu would also yield an 87.8 percent individual-unit achievability level. However, because of emissions averaging under § 76.10, this would likely reduce the amount of NO_X reductions realized since a wet bottom boiler could meet 0.84 lb/mmBtu and other units in an averaging plan could use the excess reduction to reduce less themselves. Taking account of this likely environmental result, EPA adopts the 0.84 lb/mmBtu emission limit.

iv. Vertically Fired Boilers

As explained above, EPA is establishing an emission limit for vertically fired boilers, excluding arch fired boilers, based on combustion controls at 50% NO_X reduction performance. Applying the projected 50% emission reduction to the uncontrolled emissions of each boiler in the vertically fired boiler population for which NO_X limits are to be set under section 407(b)(2), EPA determined the percentage of the boilers that could achieve various NO_X performance levels on an individual unit basis, as shown in the table below.

NO_X level (lb/mmBtu)	% of boilers meeting NO_X level
1.00	100
0.85	96.4
0.83	92.9
0.80	89.3
0.74	82.1

The table indicates that 89.3% of the vertically fired boilers can achieve a NO_X controlled emission rate of 0.80 lb/mmBtu. Applying its general approach of setting emission limits based on reasonable achievability, EPA sets that rate as the emission limit based on combustion controls. EPA recognizes that a rate of up to 0.82 lb/mmBtu would also yield an 89.3 percent individual-unit achievability level. However, because of emissions averaging under § 76.10, this would likely reduce the amount of NO_X reductions realized since a vertically fired boiler could meet 0.80 lb/mmBtu and other units in an averaging plan could use the excess reduction to reduce less themselves. Taking account of this likely environmental result, EPA adopts the 0.80 lb/mmBtu emission limit.

C. Compliance Issues

This final rule implements Phase II of the Nitrogen Oxides Reduction Program for which EPA must: (1) Determine if more effective low NO_X burner technology is available to support more stringent standards for Phase II, Group 1 boilers than those established for Phase I; and (2) establish limitations for Group 2 boilers based on NO_X control technologies that are comparable in cost-effectiveness to LNBs.

A utility can choose to comply with the rule in one of three ways: (1) Meet the standard annual emission limitations at each of its units; (2) average the emission rates of two or more units that it owns or operates, which allows utilities to over-control at units where it is technically easier and less expensive to control emissions and under-control at other units; or (3) if the standard emission limit cannot be met at a unit after installing the technology on which the limit is based and which is designed to meet the limit, the utility can apply for a less stringent alternative emission limit (AEL). Phase I units are required to meet the applicable limits by January 1, 1996; under the proposed rule, EPA stated that the statutorily mandated date by which Phase II units must meet the applicable limits is January 1, 2000.

Comment: Utility commenters contend that the language in section 407(b)(2) shows that there is no statutorily required compliance date for Phase II, Group 1 and Group 2 boilers. EPA allegedly has no basis to set any deadline until it provides appropriate justification. They contend that EPA must provide a statement of purpose justifying the reasonableness of the January 1, 2000 deadline or propose an alternative that can be justified. Commenters also express concern that scheduling the design, procurement, and testing of NO_X retrofit technologies will make compliance with the January 1, 2000 deadline difficult, especially since four times as many boilers are subject to NO_X emission limitations in Phase II as were in Phase I. Other commenters contend that EPA does not have the authority to extend the compliance date because, except in cases where the Act requires earlier compliance, it clearly requires compliance by January 1, 2000. Other commenters state general opposition to extending the compliance deadline because of industry awareness of impending emission reductions that would be required and because any delay in the implementation of the rule will only serve to delay the benefits associated with the rule. Many commenters opposed to an extension in the compliance date state that the availability of compliance alternatives (i.e., averaging and AELs) support the establishment of limits more stringent than those proposed.

Response: Some commenters argue that section 407 does not set a specific deadline for compliance by Phase II, Group 1 and Group 2 boilers with Phase II NO_X emission limitations. According

to these commenters, by not setting a specific Phase II deadline, section 407 left the matter to the discretion of the Administrator.

EPA concludes, however, that section 407 sets a Phase II compliance deadline of January 1, 2000 both for Group 1 boilers subject to the Phase II NO_X emission limitations under section 407(b)(2) and Group 2 boilers. Section 407(a), entitled ''Applicability'', states:

On the date that a coal-fired utility unit becomes an affected unit pursuant to section 404, 405, 409, or on the date a unit subject to the provisions of section 404(d) or 409(b), must meet the SO_2 reduction requirements, *each such unit* shall become an affected unit for purposes of this section and *shall be subject to the emission limitation for nitrogen oxides* set forth herein. 42 U.S.C. 7651f(a), (emphasis added).

The provision first establishes a general rule that a coal-fired unit becomes ''subject to'' the applicable NO_X emission limitation on the date that the unit becomes an ''affected unit under sections 404, 405, (or) 409'' (42 U.S.C. 7651f(b)(1)), i.e., on the same date it becomes subject to the SO_2 emissions limitation. The Act defines ''affected unit'' as a unit that is ''subject to the emission reduction requirements or limitations under (title IV)''. 42 U.S.C. 7651a(2). Sections 404 (covering Phase I units in Phase I), 405 (covering Phase I and Phase II units in Phase II), and 409 (covering Phase II repowering extension units) are the sections under which utility units are allocated SO_2 allowances under Phase I and Phase II,[23] which allowances serve as the SO_2 emissions limitation unless the unit buys or sells allowances. EPA concludes that the phrase, ''affected unit under section 404, 405, [or] 409'', refers to a unit that is subject to the SO_2 emissions limitation established in those sections.

EPA maintains that the general rule established in section 407(a) governs and, when applied to specific units, sets a specific NO_X compliance deadline, except to the extent any other provision in section 407 modifies that compliance deadline. There are additional provisions, including a portion of section 407(a) itself, that address the compliance deadline. However, contrary to some commenters, the existence of those provisions does not mean that section 407(a) fails to set a general rule for determining the compliance deadline. On the contrary, these additional provisions modify the general rule for the NO_X compliance deadline but only for specified categories of units.

In particular, section 407(a) itself contains an exception for those units (i.e., Phase I extension units under section 404(d) and Phase II repowering extension units under section 409(b)) that are given extra allowances to extend the date by which they are required to make reductions in SO_2 emissions. The provision similarly extends the deadline for NO_X compliance to coincide with the year in which the extra allowance allocations cease. This provision modifies, for those categories of units, the general rule for the NO_X compliance deadline.

In addition, section 407(b)(1), which requires the Administrator to set NO_X emission limitations for tangentially fired and dry bottom wall fired boilers, states:

After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rate set by the Administrator pursuant to (section 407(b)(1)). 42 U.S.C. 7651f(b)(1) (emphasis added).

This provision modifies the general rule for NO_X compliance deadlines, as applied to Phase I units. Under section 407(a), Phase I units would be subject to the applicable Phase I NO_X emission limitation on the date that they become subject to the Phase I SO_2 emission limitation. However, the section 407(b)(1) provision limits the application of such a NO_X compliance deadline to those Phase I units that, as of January 1, 1995, are subject to the SO_2 emissions limitation. All Table A units are subject to the SO_2 limitation on January 1, 1995, but only substitution units with substitution plans approved and effective as of that date meet that requirement. EPA has interpreted this provision to mean that substitution units with plans approved and effective after January 1, 1995 are not subject to the NO_X emission limitations until January 1, 2000, the date on which they are subject to the SO_2 emission limitation under section 405. 40 CFR 76.1(c). In short, contrary to some commenters, section 407(a) does not make the section 407(b)(1) provision redundant; the section 407(b)(1) provision modifies, for some Phase I units, the general rule established in section 407(a) for determining NO_X compliance deadlines.

In addition, section 407(d) provides for a 15-month extension of the compliance date for Phase I units that are subject to section 407(b)(1) and meet certain requirements. The extension is provided for units whose owner or operator shows that the necessary control technology is not ''in adequate supply to enable its installation and operation at the unit, consistent with system reliability, by January 1, 1995''. 42 U.S.C. 7651f(d).

Despite these modifications of the general compliance deadline provision in section 407(a), that general provision still governs certain categories of units. For example, section 407(b)(2) provides that the Administrator may revise by January 1, 1997 the NO_X emission limitations, set under section 407(b)(1) for tangentially fired and dry bottom wall fired boilers. Under section 407(a), any revised emission limitations apply to units starting on the date on which they become subject to the SO_2 emissions limitation, i.e., January 1, 2000 for Phase II units that are allocated allowances under section 405 and have tangentially fired or dry bottom wall fired boilers. In order to remove any ambiguity as to whether revised emission limitations would apply to Phase I units subject to the original limitations for tangentially fired or dry bottom wall fired units, there is a proviso at the end of section 407(b)(2) stating that such Phase I units are not subject to any revised emission limitation.

Similarly, the general compliance deadline provision applies to Phase II units that are allocated allowances under section 405 and have other types of coal-fired boilers. Under section 407(a), those units are subject to the NO_X emission limitations for their respective boiler types starting on the date on which they are subject to the SO_2 emissions limitation, i.e., January 1, 2000.

Some commenters suggested that section 407(a) merely establishes what units are affected units subject to NO_X emission limits and not the date on which the NO_X emission limits apply. However, it is difficult to see how a section that identifies ''the date'' on which a unit is ''subject to'' the NO_X emission limits could be interpreted as not setting a NO_X compliance deadline. These commenters attempted to circumvent this language in section 407(a) by distinguishing between (1) the date on which a unit is ''an affected unit under section 407'' and is ''subject to'' the NO_X emission limits and (2) the date on which a unit must comply with such emission limits. Allegedly, a unit can be ''subject to'' an emission limit on a given date but not required to comply with such emission limit until a later date.

The commenters' interpretation of section 407(a) renders meaningless the establishment of a specific date on which a unit becomes ''subject to'' the

[23] Section 406, which provides for bonus allowances if elected by a State Governor, changes the bonus allowances for 2000–2009 under section 405 for units located in the State.

NO_X emission limit. If a unit is ''subject to'' a NO_X emission limit on a given date without being required to meet the limit on that date, then the specific date on which the unit becomes ''subject to'' the limit is of no consequence. Other sections of title IV impose the non-emission-limit requirements concerning NO_X (e.g., the requirement to submit a permit application and compliance plan under section 408(f) and the monitoring requirements of section 412) on affected units but specify different dates by which those requirements must be met. The subject-to-the-limit date under section 407(a) is irrelevant to the non-emission-limit requirements; in fact, the compliance dates for the non-emission-limit requirements logically precede the subject-to-the-limit dates under section 407(a). *See, e.g.*, 42 U.S.C. 7651g(c)(1)(A) (deadline for submission of Phase I NO_X compliance plans) and (f) (deadline for submission of Phase II NO_X compliance plans) and 42 U.S.C. 7651k(b) (deadline for submission of Phase I unit monitor installation) and (c) (deadline for Phase II monitor installation). Yet, Congress carefully crafted language in section 407(a) to identify specific dates on which units become ''subject to'' the NO_X emission limits. Because the commenters' interpretation essentially reads this carefully crafted language out of the statute, EPA rejects this interpretation.[24]

In support of their interpretation, the commenters pointed to language in section 405 with regard to SO_2 emissions limitations. While the first sentence of section 405(a) states that each existing unit is ''subject to'' the limitations in the section ''(a)fter January 1, 2000'' (42 U.S.C. 7651d(a)(i)), subsequent provisions of section 405 state that ''after January 1, 2000, it shall be unlawful for'' a given category of units to exceed the applicable SO_2 emissions limitation. *See, e.g.*, 42 U.S.C. 7651d(b)(1). However, despite some similarity in language in sections 405 and 407, the commenters ignore a crucial difference between the sections. On its face, the first sentence of section 405(a)(i), which establishes the January 1, 2000 compliance date for all existing utility units, is a short-hand summary of the long series of subsequent provisions of section 405. Those provisions (section 405(b) through (j)) repeat the January 1, 2000 compliance date[25] and then lay out in detail the formulas for allocating allowances for specific categories of existing utility units. In contrast, as discussed above, section 407(a) sets the general rule for determining a unit's compliance date for the NO_X emission limitations, and the subsequent provisions in section 407(a) and other parts of section 407 modify that compliance date for some, but not all, categories of units.[26]

Regarding concerns expressed by some commenters about retrofitting NO_X control systems to meet the January 1, 2000 compliance deadline, actual experience to date in preparing for Phase I indicates the commenters' anticipated technology shortage may not materialize. Out of 266 Phase I boilers subject to Phase I NO_X emission limitations, EPA received only 9 requests for the 15-month compliance extension under section 407(b)(2) of the Act. Moreover, EPA has already received numerous inquiries and submissions concerning the early election provision in § 76.8 of the NO_X rule, which allows for compliance with the Phase I NO_X emission limitations in 1997 by units subject to NO_X emission limitations starting in Phase II. This suggests that an adequate supply of NO_X control technologies is available.

In any event, Congress, in section 407(a), set a fixed NO_X compliance date for units subject to the revised emission limits under section 407(b)(2) of the Group 1 emission limits. Further, while Congress was obviously aware of the option—which it exercised with regard to Phase I—of providing for 15-month extensions of the statutory compliance deadline for Phase II, Congress did not adopt such a provision. EPA concludes that it therefore lacks the statutory authority to establish such an extension by regulation.

D. Title IV NO_X Program's Relationship to Title I and NO_X Trading Issues

The provisions of title IV, which specify requirements for NO_X reductions in order to control acid deposition, have often been compared to provisions of title I, which specify requirements for attainment and maintenance of national ambient air quality standards. Since NO_X reduction is an integral element in achieving the air quality goals as specified under both titles, general concern has been expressed as to the consistency, compatibility, and necessity of potentially duplicative regulatory burdens for those utilities subject to regulations under both titles.

Further, in the preamble to the proposed rulemaking, EPA solicited comment on the legal basis and workability of a NO_X trading system under title IV. *See* 61 FR 1477. NO_X trading involves giving credit for emission reductions that are achieved beyond the minimum required by applicable emission limitations and allowing credits to be transferred for use by other entities in meeting their emission limitations. In the proposal preamble, EPA noted that regional emissions trading is being considered by the eastern U.S. to address ozone nonattainment problems in that region. The preamble discussed the efforts of the Ozone Transport Commission (OTC) to develop a NO_X cap and trade program, which is similar to the Acid Rain SO_2 cap and trade program, for the northeast and of the Ozone Transport Assessment Group (OTAG) to consider a corresponding NO_X program for the eastern half of the U.S. EPA's guidance on open market trading was also discussed.

Comment: Utilities commented on the legal necessity to coordinate compliance deadlines of title IV with other NO_X initiatives, referencing the requirements of Executive Order 12866. The same commenters encouraged the Agency to tailor its regulations to impose the least burden on society. Other utility commenters recommended that EPA establish compliance deadlines by accounting for other regulatory initiatives. Some commenters favored a title IV NO_X compliance extension option for those boilers also obligated to meet more stringent title I requirements.

A number of commenters favored the implementation of a NO_X trading program, agreeing that such a program would result in increased flexibility and allow NO_X reduction strategies at least

[24] While the compliance-date provisions of section 407 are not well written and are difficult to parse, EPA does not conclude that the provisions are ambiguous. However, if they were considered ambiguous, the Agency maintains that its interpretation is reasonable.

[25] The repetition of only the January 1, 2000 date in this context is not a basis for rejecting this interpretation of section 405.

[26] The commenters also cite language in sections 404 and 412. The first sentence of section 404(a)(1) states that ''(a)fter January 1, 1995, each source that includes one or more units listed in Table A is an affected source under this section'', and the second sentence adds that ''(a)fter January 1, 1995, it shall be unlawful for any affected unit'' to exceed the SO2 emissions limitation. 42 U.S.C. 7651c(a)(1). EPA's approach to interpreting section 407(a) does not render superfluous the second sentence of section 404(a)(1). The first sentence addresses only Table A units and explains that a source that includes any such unit is an affected source. The second sentence addresses all affected units in Phase I, which includes substitution units under section 404(b) and (c) and compensating units under section 408(c)(1)(b), and sets forth in detail their SO2 emissions limitation. Similarly, the cited language in section 412(e) (i.e., ''(i)t shall be unlawful'' tooperate without complying with section 412) is irrelevant to the interpretation of section 407. The section 412 language does not relate at all to emission limitations and refers, in general terms, to the requirements specified in the other provisions of section 412.

cost. At issue is the legality of implementing such a program under title IV, the possibility for increased emissions as a result of such a program, and the administrative actions necessary to develop and implement a successful program. Most commenters recommended a cap and trade program instead of an ''open market'' trading program.

Response: EPA believes that the NO_X reduction requirements under titles I and IV are not fundamentally inconsistent. As discussed in section I.B.2 of this preamble, each of the goals of achieving ozone attainment, reducing acid deposition, and reducing eutrofication will likely require significant, additional regional reductions in NO_X. The level of needed reductions will likely be much greater than those achievable under the title IV NO_X emission limitations established under today's final rule. Further, there is no record evidence that the NO_X control technologies on which the title IV NO_X emission limitations are based are incompatible with more advanced technologies that may be needed to comply with title I. On the contrary, to the extent title I requires the addition of post-combustion controls on units with combustion controls under title IV or requires more intensive use of post-combustion controls installed under title IV, the requirements of the titles are compatible.

However, EPA believes that NO_X reduction initiatives under title I and title IV should be coordinated, consistent with statutory requirements, in a way that promotes the goal of achieving necessary NO_X reductions in a cost effective manner. In particular, today's final rule promotes this goal by including provisions that address the interaction of efforts under title I to reduce NO_X emissions through cap and trade programs and the establishment of above-discussed title IV NO_X emission limits for Phase II.

With regard to title I, EPA actively supports, with the Department of Energy, OTAG's efforts to develop a consensus approach for regulation of NO_X emissions in the eastern half of the country in order to achieve ozone attainment throughout that region. Achievement of ozone attainment is likely to require additional NO_X emission reductions significantly exceeding the reductions called for under today's final rule. EPA supports OTAG's goal of reaching consensus among the States on an approach and having the States voluntarily implement the approach. However, EPA has indicated that if the States fail to implement through State Implementation Plans an OTAG-developed approach for accomplishing ozone attainment throughout the region, EPA will take action to ensure that State Implementation Plans or Federal Implementation Plans are put in place to address ozone attainment.

Among the approaches under consideration by OTAG is a region-wide cap and trade program for NO_X emissions. As has been demonstrated by the Acid Rain Program with regard to SO_2 emissions, a cap on total annual NO_X emissions for the region will assure achievement of the necessary overall NO_X emission reductions while trading of NO_X emission authorizations or allowances will enable sources to reduce the costs of making reductions. EPA therefore believes that a region-wide cap and trade program is the best method for achieving necessary NO_X reductions.

Utility boilers subject to the NO_X emission limitations established by today's final rule are likely to face significant, additional NO_X reduction requirements (e.g., under an OTAG-developed approach to achieve regional ozone attainment). If, as EPA supports, the ozone attainment requirements are implemented in the form of a cap and trade program and the program results in utility NO_X emission reductions exceeding those that would be required by utilities complying with today's final rule, EPA maintains that the cap and trade system should be relied on, in lieu of this rule, to the fullest extent permissible under the Clean Air Act. Under such an approach, the reductions achievable under the rule will still be realized but in a manner that allows utilities to take advantage of the cost savings that result from flexibility within a cap to trade allowances among utilities, as well as among boilers owned by a single utility. Relief from the emission limits set by the rule is appropriately limited to utility boilers in the State or States covered by the cap and trade regime.

Under § 76.16 of the final rule, the Administrator retains the authority to relieve boilers subject to a cap and trade program under title I from the emission limitations established in today's final rule under section 407(b)(2) if the Administrator finds that alternative compliance through the cap and trade program will achieve more overall NO_X reductions from those boilers than will the section 407(b)(2) emission limitations. Section 76.16 sets forth the criteria that the cap and trade program must meet in order to ensure that the program will yield the necessary NO_X reductions. Since alternative compliance will be allowed only if the necessary NO_X reductions will still be made, this approach is consistent with the purposes of title IV and the Clean Air Act in general.

EPA maintains that it has the authority under section 407(b)(2) to provide relief from the revised Group 1 limits and the Group 2 limits where the cap and trade program, replacing those limits, provides for greater NO_X emission reductions and thus greater environmental protection. With regard to Group 1 boilers not subject to the existing Group 1 limits until 2000, section 407(b)(2) provides that the Administrator ''may'' establish more stringent emission limitations if more effective low NO_X burner technology is available. 42 U.S.C. 7651f(b)(2). As discussed above, the Administrator is exercising her discretion to revise the Group 1 limits because more effective low NO_X burner technology is available and the resulting additional reductions are cost-effective, represent a reasonable step toward achieving significant, regional NO_X reductions that are likely to be needed, and are consistent with section 401(b). If it is determined that, for boilers in certain States, NO_X emissions will be lower under a cap and trade program than under the revised Group 1 limits (and the Group 2 limits), it is reasonable to conclude that, for those boilers, it is not necessary to revise the Group 1 limits.

Imposing the revised Group 1 limits on boilers subject to such a cap and trade program could limit the flexibility of utilities under the cap and trade program and thereby limit the potential cost savings from trading. While emissions averaging under section 407(e) provides some flexibility for a utility to overcontrol at its cheaper-to-control boilers and undercontrol at its expensive-to-control boilers, averaging is limited by statute to boilers with the same owner or operator. In contrast, under a cap and trade program, utilities may overcontrol at some of their units and sell NO_X allowances to other utilities that may undercontrol at some of their units. It is this greater flexibility, within a total annual emissions cap, that provides the opportunity to reduce compliance costs. If boilers subject to a cap and trade program are relieved of compliance with the revised Group 1 limits, this will likely result in achievement of reductions in a more cost effective manner than if the revised Group 1 limits continued to be imposed on these boilers.

Section 407(b)(2) gives the Administrator discretion to make the existing Group 1 limits more stringent, but not to relax the existing limits. Thus, the existing Group 1 limits,

established by the April 13, 1995 regulations, will apply to Group 1 boilers covered by a cap and trade program. While retaining the existing Group 1 limits means that there may be less flexibility than if there were no section 407 limits on these boilers, relieving the boilers of the revised Group 1 limits still results in some increased flexibility and therefore is likely to yield cost savings.

Similarly, with regard to Group 2 boilers, section 407(b)(2) requires that the Administrator, taking account of environmental and energy impacts, set emission limits that are based on the reductions achievable using available control technologies with cost effectiveness comparable to LNBs on Group 1 boilers. In setting the Group 2 limits, the Administrator relied in part on the additional NO_X reductions that will result and determined that these reductions are cost-effective, are a reasonable step toward achieving necessary regional NO_X reductions, and are consistent with section 401(b). Again, if greater reductions from boilers in a State or group of States can be achieved through a cap and trade program in a more cost effective manner than through imposition of Group 2 limits (and revised Group 1 limits) on the boilers, it is reasonable to relieve those units of the Group 2 limits. Taking account of these environmental and cost impacts, the Administrator can, in such circumstances, allow the cap and trade program to apply in lieu of the Group 2 limits.

Section 76.16 of the final rule establishes the procedural and substantive requirements for relieving boilers of the revised Group 1 limits and the Group 2 limits. The rule itself does not grant or require such relief. Under this section, the Administrator has the discretion to act, on a case-by-case basis consistent with the established procedures, to provide such relief if he or she determines that the substantive requirements are met. As noted above, EPA supports the cap and trade approach for achieving necessary reductions of regional NO_X emissions.

Consideration of whether to relieve boilers under a cap and trade program of the section 407(b)(2) limits may be initiated either by a petition by a State or group of States or on the Administrator's own motion. Because of the large number of utility companies and coal-fired boilers and the complexities that would result if relief from the section 407(b)(2) limits were considered on a boiler-by-boiler or utility-by-utility basis, the rule requires that any request for, and any determination whether to grant, such relief be made for an entire State or entire group of States. The cap and trade program involved must therefore cover, for an entire State or group of States, all the units for which relief is sought or considered. This approach has the added benefit of making it more likely that the cap and trade program involved will be broad enough to provide a robust NO_X allowance market.

Further, the cap and trade program may be established through State Implementation Plans or Federal Implementation Plans covering the States involved. The relief from section 407(b)(2) limits is potentially available whether the cap and trade program is adopted voluntarily by the OTAG States or imposed by EPA under title I. State petitions for such relief may be submitted, and the Administrator's consideration of whether to grant relief may commence, before the State Implementation Plans or Federal Implementation Plans or revised Plans establishing the cap and trade program are final and federally enforceable. This allows the process of deciding whether to grant relief from the section 407(b)(2) limits to be coordinated with the processing of these Plans. However, relief may not be granted until the Plans establishing the cap and trade program are actually in place, i.e., are final and federally enforceable.

The substantive requirements that must be met by the cap and trade program are essentially the same whether the program is implemented through a State Implementation Plan or a Federal Implementation Plan and whether the consideration of relief from section 407(b)(2) limits is initiated by petition or on the Administrator's own motion. The Administrator has discretion to grant relief only if the cap and trade program meets certain requirements aimed at ensuring that the necessary NO_X reductions will still be achieved and that the program creates an opportunity for cost savings. First, each unit that is in the State or group of States and that would otherwise be subject to title IV NO_X emission limits must be subject to a cap on total annual NO_X emissions or two or more seasonal caps that together limit total annual NO_X emissions. This allows for a cap and trade program with different caps during different seasons, e.g. a summer cap aimed primarily at ozone attainment and a cap for the rest of the year.

Second, the units must be allowed to trade authorizations to emit NO_X within the cap. This element is what provides utilities the flexibility to reduce the costs of making the reductions necessary for achievement of the cap.

Third, the units must surrender authorizations to emit NO_X (i.e., NO_X allowances) to account for their NO_X emissions during the period covered by the cap. In addition, the units must be required to surrender allowances to account for the NO_X emission consequences of reducing utilization at the generation facilities covered by the cap and shifting utilization to generation facilities not covered by the cap. This addresses a problem that potentially arises whenever a cap and trade program covers some but not all generation facilities. If a utility can reduce the use of a unit covered by the cap and offset the resulting reduced generation with generation at a unit not covered by the cap, circumvention of the cap may result. Because of the offsetting utilization changes at the two units, the atmosphere may receive the same total amount of NO_X emissions from the units. In addition, if allowances are used only to account for emissions by the unit subject to the cap, the unused allowances are available for use by other units subject to the cap. The net result is that the total emissions in the atmosphere (including emissions by the reduced-utilization unit, the increased-utilization unit, and the units acquiring and using the unused allowances) may exceed the cap. This is analogous to the reduced utilization problem in the SO_2 cap and trade program in Phase I, during which most units in the U.S. are not covered by the requirement to hold allowances for their SO_2 emissions. *See* 58 FR 60950, 60951 (November 18, 1993). Section 408(c)(1)(B) of the Act and §§ 72.91 and 72.92 of the regulations require SO_2 allowance surrender to account for the emissions consequences of reduced utilization. *See* 60 FR 18462–63 (April 11, 1995).

The NO_X cap and trade program must include appropriate allowance surrender provisions to address this problem by requiring NO_X allowance surrender to the extent necessary to account for the increased NO_X emissions, if any, at generation facilities (i.e., combustion devices serving generators that produce electricity for sale) not covered by the cap. EPA recognizes that any allowance surrender provisions can only approximate the emissions consequences of shifting utilization from within-the-cap facilities to outside-the-cap facilities. *See* 60 FR 18466. EPA will evaluate NO_X allowance surrender provisions in light of this limitation and of the importance of adopting provisions that are workable and not overly complicated. Moreover, EPA believes that effective NO_X

allowance surrender provisions can be developed that are less complex than those in place for reduced utilization in the SO_2 allowance trading program. EPA also notes that the larger the group of States covered by the cap and the more comprehensive the coverage by the cap of generation facilities in such States, the smaller the potential for shifting utilization from units under the cap to units outside the cap. For example, the problem of shifting utilization, and therefore the associated allowance surrender, will be significantly smaller for a cap and trade program covering the generation facilities in the entire 37–State OTAG area.

Fourth, the total annual emissions by all units that are subject to the cap and that would otherwise be subject to the section 407(b) limits must be less than the total annual emissions of such units if they were subject to the section 407(b) limits (without adjusting for alternative emission limitations and averaging). In determining the units' total annual emissions under the section 407(b) limits, the effect of alternative emission limitations—which reduce the amount of NO_X reductions achieved and whose precise levels for individual units would be difficult if not impossible to project—will not be considered. Requiring the cap and trade program to yield fewer total annual emissions than the section 407(b) limits without considering alternative emission limitations will help ensure that the environmental benefits of the section 407(b)(2) are preserved under the cap and trade program. *See* Economic Incentive Program Rules, 59 FR 16690, 16694 (April 7, 1994).

In addition, the effect of averaging will not be considered because of the following reasons. If averaging is limited to units that are also subject to the cap and trade program, averaging is unnecessary to separately consider because it would not affect the total emissions of the averaging units under the section 407(b) limits. *See* 60 FR 18756 (explaining that average emission rate of units in averaging plan cannot exceed average emission rate if they had operated in compliance with §§ 76.5, 76.6, or 76.7 limits). If averaging includes units not subject to the cap and trade program and those units select emission rates under the plan that exceed the standard limits, this could have the effect of understating the reductions achieved under the title IV limits.

In order to avoid disputes over what year to use in comparing total annual emissions under the cap and trade program and the section 407(b) limits, the rule specifies how to select the year. The approach in the rule ensures that actual data is available for such year.

In addition to the substantive requirements for relieving units of the section 407(b)(2) limits, the rule addresses the procedures that the Administrator must follow in determining whether to exercise his or her discretion to grant relief. The Administrator must make this determination in a draft decision, subject to notice and comment, and then in a final decision. The draft decision must set forth not only the determination and its basis but also the specific procedures that will govern the issuance and any appeal of the final decision. The rule imposes certain minimum procedural provisions that must be set forth in the draft decision These procedural requirements are closely modeled after the procedures in part 72 of the Acid Rain regulations for the issuance of Acid Rain permits.

Notice of the draft decision must be provided by service on interested persons and on the air pollution control agencies in States that may be affected by the draft decision. This includes not only the States in which the units involved are located, but also neighboring States. The description in the rule of the neighboring States (and neighboring, federally recognized Indian Tribes) on which notice must be served is based on the definition of ''affected States'' in the recently issued part 71 regulations, which govern federal issuance of title V operating permits. *See* 61 FR 34202, 34229 (July 1, 1996). Notice must also be provided in the Federal Register and equivalent State publications. Notice in newspapers in general circulation in the areas in which the units involved are located is not required. EPA maintains that newspaper notice in these circumstances is unnecessary, particularly since any NO_X cap and trade program being evaluated will have to go through notice and comment in order to be included in a State Implementation Plan or Federal Implementation Plan. Newspaper notice would also be unworkable in light of the number of units and States (e.g., all Phase II, Group 1 and Group 2 units in the 37–State OTAG area) that could be involved.

The provisions for public comment period and public hearing are essentially the same as those in part 72. Notice must be given of the final decision in the same manner as notice of the draft decision. Any appeals of the final decision are governed by part 78, which governs other Acid-Rain-related decisions of the Administrator.

Finally, after the Administrator decides to relieve units of the section 407(b)(2) limits in light of a given cap and trade program, the State Implementation Plan or Federal Implementation Plan could potentially be revised in a way that may affect the cap and trade program and the basis for the Administrator's decision. In such circumstances, the Administrator may reconsider the decision to grant relief from the section 407(b)(2) limits. The ability to reconsider is explicitly preserved in the rule in order to ensure that the environmental benefit of the section 407(b)(2) limits that would otherwise apply to the units involved continues to be realized.

A number of commenters addressed whether NO_X trading should be established, along with the emission limits and other provisions of part 76, as part of the title IV NO_X program itself. Although many commenters supported NO_X trading and urged generally that EPA has legal authority to implement a title IV NO_X trading program, only limited specific legal justification was provided. One commenter argued that EPA lacks such title IV legal authority while another suggested that means of accounting for reductions below the title IV emission limits be established so that credit for such excess reductions could be used in NO_X trading under title I. Further, some commenters supported title IV NO_X trading following the Open Market Trading approach with discrete emission reduction credits while other commenters supported a title IV NO_X cap and trade program similar to the SO_2 cap and trade program and opposed the Open Market Trading approach. One commenter suggested that credits be given for excess reductions below some target emission rate levels (lower than the title IV emission limits) and that utilities be allowed to use those credits to meet the title IV emission limits.

In light of the comments, EPA has decided to address—through the above-discussed § 76.16—the coordination of cap and trade programs established under title I with the emission limits established under title IV and not to address NO_X trading under title IV itself at this time. Substantial questions have been raised concerning the authority to establish NO_X trading under title IV because of specific language in, and the legislative history of, section 407. *See, e.g.*, 59 FR 13561–62. These concerns do not apply to title I, under which significant progress has been made toward establishing NO_X cap and trade programs, *e.g.*, by the OTC and OTAG. The approach under § 76.16 will build on and encourage these efforts by integrating title I cap and trade programs with the title IV emission

limit program in a way that achieves necessary NO_X reductions in a cost effective manner. Further, the approach in § 76.16 avoids creating multiple, potentially overlapping NO_X cap and trade programs under different sections of the Clean Air Act. As already noted, EPA recognizes that, in cases where the Administrator exercises his or her full discretion under § 76.16, Group 1 boilers subject to a title I cap and trade program will still be subject to the existing Group 1 limits under title IV. To the extent that this significantly limits the benefits of cap and trade, the Agency may consider additional actions, consistent with the Clean Air Act, that will enable affected units to meet NO_X emission limitation requirements by using cap and trade programs that provide at least equivalent environmental benefits.

IV. Administrative Requirements

A. Docket

A docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the preamble of the proposed and final rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review to the extent provided in section 307(d)(7)(A).

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it will have an annual effect on the economy of approximately $204 million. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA and any written EPA response to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble. A detailed breakdown of the total cost and the corresponding NO_X reductions is presented in Table 17.

TABLE 17.—APPROX. PHASE II NO_X RULE COST AND REDUCTIONS BY BOILER TYPE

[Including Averaging and AELs]

Boiler type	NO_X reduction (tons/year) [27]	Total cost (annualized $)	Cost-effectiveness ($/ton)
Dry Bottom Wall-Fired	90,000	22,000,000	244
Tangentially Fired	30,000	18,000,000	600
Cell Burner	420,000	33,000,000	79
Cyclone (>155MWe)	225,000	89,000,000	396
Wet Bottom (>65MWe)	80,000	35,000,000	438
Vertically Fired	45,000	7,000,000	156
Total	890,000	204,000,000	229

[27] Reductions projected, not true contribution of the emission limitations for each boiler type to total reductions. With averaging, the more cost-effective boiler types to control will reduce more than required to meet their individual emission limits and the less cost-effective boiler types will reduce less than required by their individual limits.

EPA does not anticipate major increases in prices, costs, or other significant adverse effects on competition, investment, productivity, or innovation or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets due to the final regulations.

Commenters have expressed general concern regarding certain aspects of the Regulatory Impact Analysis to the proposed rule. Issues raised include the concern that: (1) The RIA failed to examine the costs and impacts of a wider variety of options; (2) EPA underestimated the number and costs of AEL applications; (3) costs for the proposed revised Group 1 limits are less than costs specified in the April 13, 1995 rule; and (4) the RIA does not adequately address the risks of decreased marketability of flyash.

In the RIA for the final rule, EPA analyzed two additional options which considered economic and environmental impacts of the final rule, totaling five options. These two additional options include: (1) No revisions to the Phase I, Group 1 emission limits; and (2) no emission limits for wet bottom or cyclone boilers. The inclusion of these two options addresses comments that more options should be investigated in the RIA.

In all the options considered, EPA assigned a cost to the AEL process of $225,000. This cost is consistent with utility projections and projections made during the April 13, 1995 NO_X rule. The cost of controls used in the RIA were developed in reports presented in docket items IV–A–1, IV–A–2, IV–A–4, IVA–6, and V–B–1. These reports were produced from previous EPA studies and comments received during the comment period of the proposed rule. EPA's model projects an additional 50 AELs for Group 1 and Group 2, as a result of today's final rule.

The RIA does not attribute a cost to flyash marketability because: (1) The revision of the Group 1 limits is based on the same basic technology (i.e., low NO_X burner technology) already considered in the April 13, 1995 rule and does not impose any additional NO_X control technology requirements

relevant to flyash; (2) the impacts to flyash marketability from Group 2 boiler limits are minimal since the majority of these boilers sell bottom ash, not flyash; and (3) as discussed in the proposed rule (61 F.R. 1467), there are currently low cost technologies that minimize, or in some cases eliminate, unburned carbon (the main by-product affecting flyash marketability) from flyash.

In assessing the impacts of a regulation, it is important to examine (1) the costs to the regulated community, (2) the costs that are passed on to customers of the regulated community, and (3) the impact of these cost increases on the financial health and competitiveness of both the regulated community and their customers. The costs of this regulation to electric utilities are generally very small relative to their annual revenues. (However, the relative amount of the costs will definitely vary in individual cases.) Moreover, EPA expects that most or all utility expenses from meeting NO_X requirements will be passed along to ratepayers. When fully implemented in the year 2000, consumer electric utility rates are expected to rise by 0.20 percent on average due to this rulemaking. Consequently, the regulations are not likely to have an impact on utility profits or competitiveness.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency must prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (1) Identification of the federal law under which the rule is promulgated; (2) a qualitative and quantitative assessment of anticipated costs and benefits of the federal mandate and an analysis of the extent to which such costs to State, local, and tribal governments may be paid with federal financial assistance; (3) if feasible, estimates of the future compliance costs and any disproportionate budgetary effects of the mandate; (4) if feasible, estimates of the effect on the national economy; and (5) a description of the Agency's prior consultation with elected representatives of State, local, and tribal governments and a summary and evaluation of the comments and concerns presented. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely impacted by the rule.

Many utilities have expressed concern that EPA did not consider for the proposed rule all possible options, including the option of ''no revision'' for Group 1 boilers. Concern was also expressed regarding the discrepancy between the budgetary impact statement which is based on the proposed rule's preferred Option 2–80 (which excludes cyclones with a generating capacity below 80 megawatts), and the proposed rule language which did not explicitly exempt cyclone boilers below 80 megawatts. Others questioned the appropriateness of cost data and whether EPA properly addressed State and local government issues.

For the final rule, EPA investigated new ways to minimize the impact of the final rule on State, local government, and privately owned utilities while carrying out the requirements of section 407. These investigations, prompted by comments received during the public comment period and by consultations with affected entities include: (1) Investigation of what, if any, requirements of the rule imposed an inordinately high burden on any specific utility; and (2) investigation of incremental environmental and economic impacts of varying the size cutoff for wet bottom and cyclone boilers affected by this rulemaking. The results of these investigations were used in developing the emission limits and applicability requirements that are now being promulgated.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law. In the final rule, the Agency discusses several regulatory options and their associated costs. As discussed above, the Agency has considered other regulatory options beyond the options discussed in the proposal.

In the final rule, EPA expands the number of regulatory options that are considered and selects the one that is the least cost, most cost-effective, or least burdensome alternative that is consistent with the objectives of the rule. Option 1 is the revision of the Group 1 emission limits and no establishment of Group 2 emission limits. Option 2 is no revision of Group 1 limits and the establishment of limits for all Group 2 boilers, except stokers and fluidized bed combustion (FBC) boilers. Option 3 is the revision of the Group 1 limits and the establishment of limits for all Group 2 boilers, except stokers and FBC boilers. Option 4 is the revision of the Group 1 limits and the establishment of limits for all Group 2 boilers except cyclones with capacity of 155 MWe or less, wet bottoms with capacity of 65 MWe of less, stokers, and FBC boilers. Option 5 is the revision of the Group 1 limits and the establishment of limits for all Group 2 boilers except cyclones, wet bottoms, stokers, and FBCs.

EPA has determined that of these options, only Option 4 is consistent with the purposes of the rule. Under section 407(b)(2) of the Act, the Administrator may revise the Group 1 limits if more effective low NO_X burner technology is available for Group 1 boilers. If EPA determines that more effective low NO_X burner technology is available, section 407(b)(2) does not specify the criteria to be used in determining whether to adopt more stringent Group 1 limits. However, consistent with the environmental purposes of title IV and the Clean Air Act in general and in light of the likely need to make significant, regional NO_X reductions, EPA has decided that it should exercise its discretion and that the objective of the rule should be to adopt more stringent Group 1 limits. Consequently, regulatory options under which the Group 1 limits would not be revised (i.e., Option 2) are inconsistent with the objectives of the rule. Further, under section 407(b)(2), the Administrator must set emission limits for all Group 2 boilers based on degree of reduction achievable using the best system of continuous emission reduction and with comparable cost to low NO_X burner technology on Group 1 boilers. In setting the limits, available technology, costs, and energy and environmental impacts must be considered. EPA has determined that there are available control technologies of comparable cost-effectiveness to that of low NO_X burner technology on Group 1 boilers for cell burners, cyclones greater than 155 MWe, wet bottoms greater than 65 MWe, and vertically fired boilers (except for arch-fired boilers) and that the objective of the rule is to set limits for such boilers. Consequently, regulatory options that do not set limits for each of these Group 2 boiler categories (e.g., Options 1 and 5) or that set limits for all cyclones and

wet bottoms (e.g., Options 2 and 3) are not consistent with the objectives of the rule.

EPA concludes, for the reasons discussed above, that Option 4 is the only option that is consistent with the objectives of the rule. EPA also notes that the size cutoffs for cyclones and wet bottoms were established both to limit the boilers covered to the group for which the applicable control technologies were of comparable cost effectiveness to LNBs on Group 1 boilers and to limit the number of municipally owned boilers covered by the emission limits. While the cutoffs could have been set at lower levels if only comparability of cost effectiveness were considered, the cutoffs were adjusted in order to exempt certain municipally owned boilers that were close to the potential cutoff points, while having only a minimal impact on the total amount of NO_X reductions that would be realized. Adopting lower cutoffs would increase the impact of the rule on municipal utilities and result in limited additions in NO_X reductions. Under these circumstances, EPA maintains that, in selecting Option 4, the Agency is choosing the least costly, most cost effective, or least burdensome alternative that is consistent with the objectives of the rule.

In addition, EPA notes that, considering the alternative approaches under the Clean Air Act for reducing NO_X emissions by utility and non-utility sources, Option 4 represents the most cost effective alternative. Having determined that significant, regional reductions of NO_X emissions are likely to be needed, EPA compared the cost effectiveness of alternative approaches for reducing NO_X emissions, i.e., the cost effectiveness of achieving reductions by coal-fired utility boilers under Option 4, by coal-, oil-, or gas-fired utility boilers using more advanced control technologies than under Option 4, by non-utility stationary sources, and by mobile sources. The reductions under Option 4 are the most cost effective of these alternative approaches and represent a reasonable step toward achieving necessary, regional NO_X reductions.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments and the private sector, in aggregate, of over $100 million per year starting in 2000, EPA has addressed budgetary impacts in the Regulatory Impact Analysis, as summarized below.

The final rule is promulgated under section 407(b)(2) of the Clean Air Act. Total expenditures resulting from the rule are estimated at approximately $204 million per year starting in 2000. There are no federal funds available to assist State, local, and tribal governments in meeting these costs. However, title V of the Act authorizes State, local, and tribal permitting authorities to collect permitting fees from utilities to cover all costs of developing and issuing title V operating permits, including Acid Rain provisions reflecting standard NO_X emission limits, AELs, and emissions averaging. Prudent costs incurred in complying with this rule may be recovered by utilities by passing them on to ratepayers. There are important benefits from NO_X emission reductions because atmospheric emissions of NO_X have significant adverse impacts on human health and welfare and on the environment.

The final rule does not have any disproportionate budgetary effects on any particular region of the nation, any State, local, or tribal government, or urban or rural or other type of community [28]. Further, the rule will result in only a minimal increase in average electricity rates. Moreover, the rule will not have a material effect on the national economy.

In developing the final rule, EPA evaluated the public comments and concerns, and to the extent consistent with section 407 of the Clean Air Act, those comments and concerns are reflected in the final rule. These procedures ensured State and local governments an opportunity to give meaningful and timely input and to obtain information, education, and advice regarding compliance. Additionally, EPA solicited comments from the 25 State and municipality owned utilities, as well as elected officials of their respective State and local governments. They were provided a summary of the EPA proposal and the estimated impacts.

As described in EPA's analysis (see docket item V–B–1 (RIA, Unfunded Mandates Reform Act Analysis for the Nitrogen Oxides Emission Reduction Program Under the Clean Air Act Amendments Title IV)), the costs to some small municipally-owned or State-owned utilities, are somewhat higher than for large utilities, which tend to be privately held. However, the analysis indicates that the cost increase is relatively small even for utilities owned by municipalities and States.

[28] As shown in EPA's Unfunded Mandates Act Analysis, as a result of this proposal, State and municipality owned boilers experience average control costs of 0.024 mills/kWh while the national average control costs are 0.125 mills/kWh.

D. Paperwork Reduction Act

This final rule does not impose any information collection requirements subject to the Paperwork Reduction Act, (44 U.S.C. 3501, et seq.) not already required under the current provisions of part 75 and part 76 over the next three years. Before the year 2000, the year in which these emission limits take effect, EPA will submit an Information Collection Request renewal to OMB. The additional burden hours, if any, will reflect the compliance of the Group 2 boilers subject to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires EPA to consider potential impacts of proposed regulations on small entities. It has been determined that this is a major rulemaking because it will have an annual effect on the economy of approximately $204 million.

Some commenters question the accuracy of cost and impact data, as well as whether EPA should exempt, or moderate the burden on, certain units that would have difficulty complying with the proposed limits, such as older or smaller units. As elaborated in the Small Entity Screening Analysis for the final rule, (see docket item V–B–1), EPA investigated new ways to minimize the impact of the final rule on State, local government, and privately owned utilities while carrying out the requirements of section 407. These investigations, prompted by comments received during the public comment period and by consultations with the affected industries, included investigation of what, if any, requirements of the rule imposed an inordinately high burden on any specific small business entity. The results of this investigation were used in developing the emission limits and applicability requirements that are now being promulgated.

Under the Regulatory Flexibility Act, a small business is any ''small business concern'' as identified by the Small Business Administration under section 3 of the Small Business Act. As of January 1, 1991, the Small Business Administration had established the size threshold for small electric services companies at 4 million megawatt hours per year.

Of the estimated 700 small utilities (including small investor-owned, cooperative, or municipally owned utilities) in the U.S., 64 are subject to part 76, and of these, only 15 are expected to incur any compliance costs as a result of this final rule. For this reason alone, this rule will not have

significant adverse impact on a substantial number of small entities. EPA notes that it also analyzed in detail the potential impact of the final rule on various financial measures of the 15 adversely impacted small utilities' profitability and short- and long-term solvency. The results show that, though the financial impact of compliance with this rule for the 15 small utilities is greater than that for medium and large utilities, the impact of the rule, as reflected in changes in various financial measures (such as return on equity and return on assets), is not significant (see docket item V–B–1 (RIA, EPA's Small Entity Screening Analysis)).

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has determined that this rule will have no significant adverse effect on a substantial number of small entities.

F. 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 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 a ''major rule'' as defined by 5 U.S.C. 804(2).

G. Miscellaneous

In accordance with section 117 of the Act, publication of this rule was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

List of Subjects in 40 CFR Part 76

Environmental protection, Acid rain program, Air pollution control, Nitrogen oxide, Reporting and recordkeeping requirements.

Dated: December 10, 1996.

Carol M. Browner,

Administrator.

PART 76—[AMENDED]

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

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 76.2 is amended by revising the definition of ''coal-fired utility unit'' and ''wet bottom'' and adding, in alphabetical order, definitions for ''arch-fired boiler'', ''boiler capacity'', ''coal-fired utility boiler'', ''combustion controls'', ''fluidized bed combustor boiler'', ''maximum continuous steam flow at 100% of load'' ''non-plug-in combustion controls'', ''plug-in combustion controls'', and ''vertically fired boiler'', to read as follows:

§ 76.2 Definitions.

* * * * *

Arch-fired boiler means a dry bottom boiler with circular burners, or coal and air pipes, oriented downward and mounted on waterwalls that are at an angle significantly different from the horizontal axis and the vertical axis. This definition shall include only the following units: Holtwood unit 17, Hunlock unit 6, and Sunbury units 1A, 1B, 2A, and 2B. This definition shall exclude dry bottom turbo fired boilers.

* * * * *

Coal-fired utility unit means a utility unit in which the combustion of coal (or any coal-derived fuel) on a Btu basis exceeds 50.0 percent of its annual heat input during the following calendar year: for Phase I units, in calendar year 1990; and, for Phase II units, in calendar year 1995 or, for a Phase II unit that did not combust any fuel that resulted in the generation of electricity in calendar year 1995, in any calendar year during the period 1990–1995. For the purposes of this part, this definition shall apply notwithstanding the definition in § 72.2 of this chapter.

* * * * *

Combustion controls means technology that minimizes NO_X formation by staging fuel and combustion air flows in a boiler. This definition shall include low NO_X burners, overfire air, or low NO_X burners with overfire air.

* * * * *

Maximum Continuous Steam Flow at 100% of Load means the maximum capacity of a boiler as reported in item 3 (Maximum Continuous Steam Flow at 100% Load in thousand pounds per hour), Section C (design parameters), Part III (boiler information) of the Department of Energy's Form EIA–767 for 1995.

* * * * *

Non-plug-in combustion controls means the replacement, in a cell burner boiler, of the portions of the waterwalls containing the cell burners by new portions of the waterwalls containing low NO_X burners or low NO_X burners with overfire air.

* * * * *

Plug-in combustion controls means the replacement, in a cell burner boiler, of existing cell burners by low NO_X burners or low NO_X burners with overfire air.

* * * * *

Vertically fired boiler means a dry bottom boiler with circular burners, or coal and air pipes, oriented downward and mounted on waterwalls that are horizontal or at an angle. This definition shall include dry bottom roof-fired boilers and dry bottom top-fired boilers, and shall exclude dry bottom arch-fired boilers and dry bottom turbo-fired boilers.

* * * * *

Wet bottom means that the ash is removed from the furnace in a molten state. The term ''wet bottom boiler'' shall include: wet bottom wall-fired boilers, including wet bottom turbo-fired boilers; and wet bottom boilers otherwise meeting the definition of vertically fired boilers, including wet bottom arch-fired boilers, wet bottom roof-fired boilers, and wet bottom top-fired boilers. The term ''wet bottom boiler'' shall exclude cyclone boilers and tangentially fired boilers.

§ 76.5 [Amended]

3. Section 76.5 is amended by remaing paragraph (g).

4. Section 76.6 is revised to read as follows:

§ 76.6 NO_X emission limitations for Group 2 boilers.

(a) Beginning January 1, 2000 or, for a unit subject to section 409(b) of the Act, the date on which the unit is required to meet Acid Rain emission reduction requirements for SO_2, the owner or operator of a Group 2, Phase II coal-fired boiler with a cell burner boiler, cyclone boiler, a wet bottom boiler, or a vertically fired boiler shall not discharge, or allow to be discharged, emissions of NO_X to the atmosphere in excess of the following limits, except as provided in §§ 76.10 or 76.11:

(1) 0.68 lb/mmBtu of heat input on an annual average basis for cell burner boilers. The NO_X emission control technology on which the emission limitation is based is plug-in combustion controls or non-plug-in combustion controls. Except as provided in § 76.5(d), the owner or operator of a unit with a cell burner boiler that installs non-plug-in combustion controls after November 15, 1990 shall comply with the emission limitation applicable to cell burner boilers. The owner or operator of a unit with a cell burner that installs non-plug-in combustion controls on or before November 15, 1990 shall comply with the applicable emission limitation for dry bottom wall-fired boilers.

(2) 0.86 lb/mmBtu of heat input on an annual average basis for cyclone boilers with a Maximum Continuous Steam Flow at 100% of Load of greater than 1060 lb/hr. The NO_X emission control technology on which the emission limitation is based is natural gas reburning or selective catalytic reduction.

(3) 0.84 lb/mmBtu of heat input on an annual average basis for wet bottom boilers, with a Maximum Continuous Steam Flow at 100% of Load of greater than 450 lb/hr. The NO_X emission control technology on which the emission limitation is based is natural gas reburning or selective catalytic reduction.

(4) 0.80 lb/mmBtu of heat input on an annual average basis for vertically fired boilers. The NO_X emission control technology on which the emission limitation is based is combustion controls.

(b) The owner or operator shall determine the annual average NO_X emission rate, in lb/mmBtu, using the methods and procedures specified in part 75 of this chapter. 5. Section 76.7 is amended by adding paragraphs (a) and (b) to read as follows:

§ 76.7 Revised NO_X emission limitations for Group 1, Phase II boilers.

(a) Beginning January 1, 2000, the owner or operator of a Group 1, Phase II coal-fired utility unit with a tangentially fired boiler or a dry bottom wall-fired boiler shall not discharge, or allow to be discharged, emissions of NO_X to the atmosphere in excess of the following limits, except as provided in §§ 76.8, 76.10, or 76.11:

(1) 0.40 lb/mmBtu of heat input on an annual average basis for tangentially fired boilers.

(2) 0.46 lb/ mmBtu of heat input on an annual average basis for dry bottom wall-fired boilers (other than units applying cell burner technology).

(b) The owner or operator shall determine the annual average NO_X emission rate, in lb/mmBtu, using the methods and procedures specified in part 75 of this chapter.

6. Section 76.8 is amended by: removing from paragraph (a)(2) the words ''any revised NO_X emission limitation for Group 1 boilers that the Administrator may issue pursuant to section 407(b)(2) of the Act'' and adding, in their place, the words ''§ 76.7''; removing from paragraph (a)(5) the words ''§§ 76.5(g) and if revised emission limitations are issued for Group 1 boilers pursuant to section 407(b)(2) of the Act,''; and removing from paragraphs (e)(3)(iii)(A) and (B) the words ''§ 76.5(g) and, if revised emission limitations are issued for Group 1 boilers pursuant to section 407(b)(2) of the Act,''.

§ 76.10 [Amended]

7. Section 76.10 is amended by removing from paragraph (f)(1)(iii) the words ''§§ 76.5(g) or 76.6'' and adding, in their place, the words ''§§ 76.6 or 76.7''.

8. Section 76.16 is added to read as follows:

§ 76.16 Alternative compliance.

(a)(1) A State or group of States may submit a petition requesting that the Administrator, or the Administrator, on his or her own motion, may:

(i) Require the owners or operators of the Group 1, Phase II coal-fired utility units with a tangentially fired boiler or a dry bottom wall fired boiler in the State or the group of States to be subject to the applicable emission limitations for NO_X in § 76.5, in lieu of the applicable emission limitations for NO_X in § 76.7; and

(ii) Provide that the owners or operators of the Group 2 coal-fired utility units with a cell burner boiler, cyclone boiler, wet bottom boiler, or vertically fired boiler in the State or the group of States are not subject to the applicable emission limitations for NO_X in § 76.6.

(2) A petition under paragraph (a)(1) of this section must demonstrate that the requirements in paragraphs (b)(1) and (2) of this section are met.

(3) A petition under paragraph (a)(1) of this section may be submitted, but may not be approved by the Administrator, before the State Implementation Plan or Federal Implementation Plan covering the entire State or the State Implementation Plans or Federal Implementation Plans covering the entire group of States become final and federally enforceable.

(b) The Administrator may take the actions set forth in paragraphs (a)(1)(i) and (ii) of this section if he or she finds that, under the State Implementation Plan or Federal Implementation Plan covering the entire State or the State Implementation Plans or Federal Implementation Plans covering the entire group of States:

(1) Each unit that is in the State or the group of States and that, but for the provisions of this section, would be subject to emission limitations under this part

(i) Is subject to a cap on total annual NO_X emissions or two or more seasonal caps that together limit total annual NO_X emissions;

(ii) May trade authorizations to emit NO_X within each such cap; and

(iii) Must use NO_X emission authorizations to account for the NO_X emissions by such unit and to account for the NO_X emissions resulting from reducing utilization of such unit below its baseline utilization (adjusted for changes in demand for electricity) and shifting utilization to any other unit, or combustion device serving a generator that produces electricity for sale, that is not subject to each such cap; and

(2)(i) Total annual NO_X emissions by all units that are in the State or the group of States and that, but for the provisions of this section, would be subject to emission limitations under this part will be lower than total annual NO_X emissions by such units if each such unit is treated as subject to the applicable emission limitation in §§ 76.5, 76.6, or 76.7 that would apply but for the provisions of this section.

(ii) In the case of a petition under paragraph (a) of this section, total annual NO_X emissions by the units will be determined using the actual utilizations of the units for the last full calendar year prior to submission of the petition but, in any event, for no later than 1999. In the case of action by the Administrator on his or her own motion under paragraph (a) of this section, total annual NO_X emissions by the units will be determined using the actual utilizations of the units for the last full calendar year prior to issuance of the draft decision under paragraph (c) of this section, but, in any event, for no later than 1999.

(c) In acting on a petition or on his or her own motion under paragraph (a) of this section, the Administrator will issue for public comment a draft decision on the petition or a draft decision to act on his or her own motion and then a final decision. The Administrator may issue a draft decision, but not final decision, on a petition or on his or her own motion before the State Implementation Plan or Federal Implementation Plan covering the entire State or the State Implementation Plans or Federal Implementation Plans covering the entire group of States become final and federally enforceable. The draft decision will set forth procedures that will govern issuance of the final decision and will provide for:

(1) Service of notice of issuance of the draft decision on.

(i) Any interested person;

(ii) The air pollution control agencies that have jurisdiction over a unit covered by the draft decision, are in a State whose air quality may be affected by the draft decision and that is contiguous to a State in which such a unit is located, or are in a State that is

within 50 miles of a unit covered by the draft decision; and

(iii) On any federally recognized Indian Tribe in an area in which a unit covered by the draft decision is located, whose air quality may be affected by the draft decision and that is in an area that is contiguous to a State in which such a unit is located, or that is in an area that is within 50 miles of a unit covered by the draft decision;

(2) Publication of notice of issuance of the draft decision in the Federal Register and in any State publication designed to give general public notice in the States in which the units covered by the draft decision are located;

(3) A 30-day public comment period and extension or reopening of the comment period by the Administrator for good cause;

(4) A public hearing, upon request or on the Administrator's own motion, to the extent the Administrator determines that a public hearing will contribute to the decision-making process by clarifying one or more significant issues affecting the draft decision;

(5) Consideration by the Administrator of the comments on the draft decision received during the public comment period or any public hearing and written response by the Administrator to any such relevant comments;

(6) Notice of issuance of a final decision using the methods set forth in paragraphs (c)(1) and (2) of this section for providing notice of the draft decision; and

(7) Appeals, governed by part 78 of this chapter, of the final decision.

(d) If, after the Administrator issues a final decision under paragraph (c) of this section and takes the actions set forth in paragraphs (a)(1)(i) and (ii) of this section with regard to a State or group of States, a State Implementation Plan or Federal Implementation Plan covering the entire State or entire group of States is revised in a way that may affect the basis for the findings on which such decision is based, the Administrator may, upon petition or on his or her own motion, reconsider such decision.

(e) For purposes of this section, the term ''State'' shall mean one of the 48 contiguous States or the District of Columbia.

Appendix B to Part 76 [Amended]

9. Appendix B is amended by: removing from the heading the words ''Group 1, Phase I'' and adding, in their place, the words ''Group 1''; removing from section 1 the words ''average cost'' and adding, in their place, the word ''cost''; removing from section 1 the words ''average capital costs and cost-effectiveness'' and adding, in their place, the words ''capital costs and cost effectiveness''; removing from section 1 the words ''as determined in section 3 below''; removing from section 1 the words ''only overfire air'' and adding, in their place, the words ''overfire air''; removing from section 1 the words ''only separated overfire air'' and adding, in their place, the words ''separated overfire air''; removing from, the heading section 1 and the introductory text of section 2 the words ''Group 1, Phase I'' in each place that the words appear and adding, in their place, the words ''Group 1''; removing section 2.4; and removing and reserving section 3.

[FR Doc. 96–31839 Filed 12–18–96; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday
December 19, 1996

Part III

Department of Transportation

Federal Highway Administration
Federal Transit Administration

23 CFR Part 450, et al.
49 CFR Parts 613 and 614
Management and Monitoring Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450, 500, and 626

[FHWA/FTA Docket No. 92–14]

RIN 2125–AC97

Federal Transit Administration

49 CFR Parts 613 and 614

RIN 2132–AA47

Management and Monitoring Systems

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration and the Federal Transit Administration are issuing regulations for State development, establishment, and implementation of systems for managing: Highway pavement of Federal-aid highways; bridges on and off Federal-aid highways; highway safety; traffic congestion; public transportation facilities and equipment; and intermodal transportation facilities and systems; and a system for monitoring highway and public transportation facilities and equipment.

This rule will remove the management system certification and sanction requirements and allow the States to elect to not implement the management systems in whole or in part.

DATES: This final rule is effective on January 21, 1997.

FOR FURTHER INFORMATION CONTACT: For information on the general provisions: Mr. Tony Solury, 202–366–5003. For information on a specific system: Highway pavement—Mr. Frank Botelho, 202–366–1336; Bridge—Mr. Charles Chambers, 202–366–4618; Highway safety—Mr. Fred Small, 202–366–9212; Traffic congestion—Mr. Charles Goodman, 202–366–8070; Public transportation facilities and equipment—Mr. Sean Libberton, 202–366–0055; Intermodal transportation facilities and systems—Mr. Dane Ismart, 202–366–4071; Traffic monitoring—Mr. Tony Esteve, 202–366–5051. For information on legal issues: Mr. Wilbert Baccus, FHWA Office of the Chief Counsel, 202–366–0780. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 1034 of the ISTEA (Pub. L. 102–240, 105 Stat. 1914, 1977) amended Title 23, United States Code, Highways (23 U.S.C.), by adding section 303, Management Systems (23 U.S.C. 303), which requires the Secretary of Transportation to issue regulations for State development, establishment, and implementation of a system for managing each of the following:

(1) Highway pavement of Federal-aid highways (PMS),

(2) Bridges on and off Federal-aid highways (BMS),

(3) Highway safety (SMS),

(4) Traffic congestion (CMS),

(5) Public transportation facilities and equipment (PTMS), and

(6) Intermodal transportation facilities and systems (IMS).

The systems must be developed and implemented in cooperation with metropolitan planning organizations (MPOs), in metropolitan areas, and with affected agencies receiving assistance under the Federal Transit Act, Public Law 88–365, 78 Stat. 302, as amended.

Section 303 also requires the Secretary to issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system (TMS) for highways and public transportation facilities and equipment.

Both the metropolitan (23 U.S.C. 134 and 49 U.S.C. 5303–5305) and statewide (23 U.S.C. 135) transportation planning provisions require consideration of the needs identified through use of the management systems in the respective planning processes.

The legislative history reflects the Congress' concerns about placing potentially burdensome requirements on States. Accordingly, it amended 23 U.S.C. 303(c) through section 205(a) of the NHS Act, to allow States the flexibility to choose which management systems to implement under 23 U.S.C. 303. This final rule reflects this State option and contains only minimum requirements for those systems that a State chooses to implement under the provisions of section 303. The Secretary may not impose any penalty on a State for such election. This option does not apply to the separate legislative requirements that the planning process in Transportation Management Areas (TMAs) include a CMS (23 U.S.C. 134(i)(3) and 49 U.S.C. 5305(c)) and that Federal funds not be programmed in a carbon monoxide and/or ozone nonattainment TMA for any highway project that will result in a significant increase in single-occupant-vehicle capacity unless the project is based on an approved congestion management system (23 U.S.C. 134(l) and 49 U.S.C. 5305(c)). It also does not apply to the TMS.

An advance notice of proposed rulemaking (ANPRM) was published in the June 3, 1992, Federal Register (57 FR 23460) to solicit early input for development of these regulations. Public workshops for the SMS were announced in the April 28, 1992, Federal Register (57 FR 17868) and were conducted in Washington, DC, on May 29, 1992, in San Francisco, CA, on June 1, 1992, and in Kansas City, MO, on June 10, 1992. Four public workshops for the CMS, PTMS, and IMS were announced in the May 26, 1992, Federal Register (57 FR 21915) and were conducted in Los Angeles, CA, on June 18, 1992, in New York, NY, on June 29, 1992, in Chicago, IL, on July 14, 1992, and in Houston, TX, on July 21, 1992. The purpose of the workshops was to obtain input to the rulemaking process to supplement the comments to the ANPRM docket. The ANPRM was issued with two docket numbers, FHWA 92–14 and FTA 92–B.

Approximately 125 individuals attended the workshops for the SMS and over 320 attended the workshops for the CMS, PTMS, and IMS. Summaries of comments presented and documents submitted at the public workshops are available for review in FHWA docket number 92–14.

Approximately 162 sets of comments on the ANPRM were submitted to docket numbers FHWA 92–14 and FTA 92–B. Approximately 48 percent of the comments to the dockets were from State agencies (transportation/highway departments, motor vehicle departments, State police, etc.), 13 percent from National interest groups/associations, 10 percent from regional planning agencies/MPOs, 10 percent from local agencies (cities, counties), 8 percent from private businesses or individuals, 7 percent from transit operators, and 4 percent from miscellaneous agencies. Since approximately two-thirds of the comments submitted to the FTA docket number 92–B were duplicates of those submitted to the FHWA docket number 92–14, the FTA docket was closed and those comments submitted to FTA Docket 92–B that were not duplicates were placed in FHWA/FTA docket number 92–14.

The testimony from the ANPRM workshops and comments submitted to the ANPRM dockets were reviewed and used to prepare a notice of proposed rulemaking (NPRM) which was published in the March 2, 1993, Federal Register (58 FR 12096). The NPRM was issued under FHWA/FTA docket number 92–14 only. Four public meetings for the CMS, PTMS, and IMS were announced in the March 24, 1993, Federal Register (58 FR 15816) and were conducted during the NPRM

comment period in San Francisco, CA, on April 1, 1993, in Atlanta, GA, on April 8, 1993, in Philadelphia, PA, on April 15, 1993, and in Kansas City, MO, on April 21, 1993. The purpose of the NPRM meetings was to obtain input to the rulemaking process to supplement the comments to the NPRM docket. Approximately 220 individuals attended the NPRM public meetings for the CMS, PTMS, and IMS. Transcripts of comments presented and copies of documents submitted at the public meetings are available for review in docket number 92–14.

After considering the comments submitted to the docket and the testimony presented at the four public meetings, the FHWA and the FTA revised the proposed regulation and published an interim final rule (IFR) in the December 1, 1993, Federal Register (58 FR 63442). The regulation was issued as an IFR in response to concerns regarding the anticipated data collection burden. Subsequent to issuance of the IFR, the FHWA and the FTA visited 10 States to obtain additional information to refine the data collection burden estimates. This information was used to prepare the information in the section below titled Paperwork Reduction Act.

Fifty six sets of comments were submitted to FHWA/FTA docket number 92–14 in response to the IFR. Approximately 64 percent of the comments to the docket were from State agencies (transportation/highway, safety, environmental), 14 percent from National/regional interest groups/associations, 11 percent from regional planning agencies/MPOs, 5 percent from local agencies (cities, counties), 4 percent from transit operators/railroad companies, and 2 percent from universities.

The overwhelming majority of comments expressed continuing concern over the potential data burden of the regulation. This was not unexpected since the preamble to the IFR specifically solicited comment on the data burden to assist the FHWA and the FTA in developing an estimate of the data burden for submission to the Office of Management and Budget (OMB). Three commenters suggested that additional data or that standardized data be required. In addition, several commenters expressed concern over the extent of coverage of the systems and the perceived prescriptiveness of the IFR. Many commenters suggested editorial changes. In spite of these data and coverage concerns, many of the commenters supported the concept of the management systems. With the elimination of detailed technical requirements and since compliance is optional, except for the CMS in TMAs and the TMS as noted above, the basis for most of these comments should be eliminated.

As part of the government-wide regulatory streamlining effort that was announced by the President in March 1995, the FHWA and the FTA reviewed the interim final rule for the ISTEA management and monitoring systems. During this same time period, pending legislation for designation of the National Highway System (NHS) which included a provision that would remove the management system certification and sanction requirements and make implementation of the six management systems optional had passed in the Senate. Many States, MPOs, and other involved agencies were aware of these developments and were concerned about proceeding with significant financial and manpower commitments necessary to carry out the work plans for the systems in view of the uncertainty surrounding the management systems.

On July 20, 1995, the FHWA and the FTA issued guidance on the continued development of the systems in a memorandum (copy available for review in docket 92–14) to their regional offices. The memorandum indicated that, until the uncertainty surrounding the management systems was resolved, continued development of the systems could be limited to the NHS for the PMS, BMS, and SMS and to TMAs for the CMS and PTMS, and to intermodal facilities connected to the NHS for the IMS. The compliance dates were also extended except for the BMS. Any necessary data collection related to the management systems would be limited and tailored to support development and implementation of the management systems in accordance with the guidance above. The National Highway System Designation Act of 1995 (NHS Act) included amendments to 23 U.S.C. 303 that allow a State to elect to not implement, in whole or in part, any one or more of the management systems required under 23 U.S.C. 303. In addition, the certification requirement was removed and the Secretary may not impose any sanction on, or withhold any benefit from a State that elects to take this approach. The FHWA and the FTA issued guidance on these changes in a March 7, 1996, memorandum (copy available for review in FHWA/FTA docket 92–14) to their regional offices. The guidance indicated that, effective immediately, certifications were no longer required and sanctions could not be imposed.

The NHS Act does not affect the requirement in 23 U.S.C. 134(i)(3) and 49 U.S.C. 5305(c) that the planning process in all TMAs include a CMS. As with all planning process requirements, compliance with this requirement will be addressed during metropolitan planning process certification reviews for all TMAs.

The NHS Act also does not affect the requirement in 23 U.S.C. 134(l) and 49 U.S.C. 5305(f) that Federal funds may not be programmed in a carbon monoxide and/or ozone nonattainment TMA for any project that will result in a significant increase in single-occupant-vehicle (SOV) capacity unless the project is based on an approved CMS. The March 7, 1996, memorandum indicated that until September 30, 1997, the interim CMS procedures in 23 CFR 450.336(b) may be used to meet this requirement. After this date, such projects must be based on a fully operational CMS.

All of the language in the NHS Act and conference report (H.R. Conf. Rep. No. 345, 104th Cong., 1st Sess. (1995)) refers to management systems. There are no references to the traffic monitoring system. Therefore, the requirements for the traffic monitoring system for highways and public transportation are unchanged.

The FHWA and the FTA believe that the primary purpose of transportation management systems is to provide system performance information to the public, local officials, and those having responsibility for the operation of the transportation system. These systems provide critical information for transportation investment decisions so that limited resources can be programmed effectively to improve the efficiency and safety of and protect our investment in the nation's transportation infrastructure. To this end, the FHWA and the FTA endorse continued implementation of the transportation management systems specified in 23 U.S.C. 303, whether under a State's, MPO's, or transit operator's own procedures or under the provisions of this regulation. The FHWA and the FTA believe that development and use of existing or new transportation management systems will support decision-making that emphasizes enhanced service at minimum public and private life-cycle cost. Funding for the development and implementation of any of the systems, in whole or in part, continues to be eligible for the funding categories identified in 23 CFR 500.105. The FHWA and the FTA will continue to provide technical assistance in the management of the transportation system in these critical areas.

This final regulation is being issued as part 500 of subchapter F of title 23,

Code of Federal Regulations (23 CFR). Subpart A of part 500 includes definitions and requirements applicable to the six management systems. Subpart B includes requirements for the traffic monitoring system. The requirements in 23 CFR Part 500 are incorporated by cross reference into the FTA's regulations as part 614 of chapter VI of title 49, Code of Federal Regulations.

A discussion of revisions to the rule follows.

Subpart A—Management Systems

In view of the optional nature of the six management systems, most of the technical requirements in former subparts A through G, except for requirements for the CMS, have been removed. Sections 500.107, Compliance, and 500.109, Sanctions, have been deleted in their entirety because of the above noted legislative changes. Similarly, the provisions of former § 500.113, Acceptance of Existing Systems, are no longer needed since any systems in existence when the ISTEA was enacted that a State wanted to use would already have been submitted for acceptance. Except for the CMS in non-attainment TMAs and the TMS, the compliance schedules have been removed. Those provisions of former subparts A through G that have been retained are in revised subpart A.

Section-by-Section Analysis

Section 500.101 Purpose

This section states the purpose of this regulation.

Section 500.102 Policy

This section is new. Paragraph (a) emphasizes the value that the FHWA and the FTA believe that management systems can provide to make cost-effective investment decisions and that the FHWA and the FTA will continue to support development of the systems whether they are developed under State or local procedures or under this regulation.

Paragraph (b) was § 500.111, ''Funds for development, establishment, and implementation of the systems,'' in the IFR. Language has been added to indicate that the specified categories of funds may be used for any of the systems whether or not the systems are developed under the provisions of this part or under a State's, MPO's, or transit operator's own procedures. The references to the Federal Transit Act have been updated to refer to the corresponding sections of title 49, U.S.C., since the Federal Transit Act is now codified as Chapter 53 of that title.

Section 500.103 Definitions

Since many of the terms defined in the IFR are no longer used in the final rule, they have been deleted. The remaining definitions are unchanged from the IFR.

Section 500.104 State Option

This section reflects the NHS Act provision that allows a State to elect, at any time, not to implement any of the six management systems under 23 U.S.C. 303, in whole or in part except as specified in § 105(a) and (b).

Section 500.105 Requirements

This section was titled ''Development, Establishment, and Implementation of the Systems'' in the IFR.

Paragraph (a) specifies that, in accordance with 23 U.S.C. 134 and 49 U.S.C. 303–5307, the metropolitan planning process in TMAs include a CMS that meets the requirements of § 500.109 of this final rule.

Paragraph (b) indicates that the State option also does not apply to the requirements for the TMS in subpart B.

Paragraph (c) is former § 500.105(c) which includes the requirement that any of the management systems that a State chooses to develop under 23 U.S.C., be developed in cooperation with MPOs in metropolitan areas, transit operators, local officials, and other affected agencies.

Paragraph (d) is former § 500.105(g). This paragraph includes the legislative requirement that the results from management systems be considered in the development of statewide and metropolitan transportation plans and programs and in making project selection decisions under title 23, U.S.C., and title 49 U.S.C., Chapter 53 (the Federal Transit Act).

The provisions in §§ 500.105(e), (f), (h), (i), and (j) of the IFR regarding incorporation of certain systems into the metropolitan planning processes, coordination among MPOs, identification of roles and responsibilities, the relationship to the 23 U.S.C. 303 management systems to those required under 23 U.S.C. 204 for Federal lands highways, and periodic evaluation of the effectiveness of the systems have been eliminated.

Section 500.106 PMS

This section identifies the minimum criteria for an effective PMS for Federal-aid highways which may be based on the ''AASHTO Guidelines for Pavement Management Systems.'' [1] All other specific requirements of subpart B of the IFR have been removed.

Section 500.107 BMS

This section identifies the minimum criteria for an effective BMS for bridges on and off Federal-aid highways which may be based on the ''AASHTO Guidelines for Bridge Management Systems.'' [2] All other specific requirements of subpart C of the IFR have been removed.

Section 500.108 SMS

This section identifies the minimum criteria for an effective SMS which may be based on the guidance in ''Safety Management Systems: Good Practices for Development and Implementation.'' [3] All other specific requirements of subpart D of the IFR have been removed.

Section 500.109 CMS

Paragraph (a) identifies the general criteria for a CMS in all areas of a State. The provisions of this paragraph are optional for all areas of a State except TMAs. The definitions of ''congestion'' and ''congestion management system'' in § 500.503 of the IFR have been incorporated into this paragraph. The flexibility in the former definitions for State and local officials to determine performance measures and levels of performance has been retained. The emphasis on consideration of actions to reduce SOV travel in § 500.505(b) of the IFR has been incorporated into paragraph (a). The remainder of § 500.109 applies to CMSs in TMAs but is recommended for CMSs in all areas of a State.

Paragraph (b) includes additional requirements for the CMS in TMAs. The requirement in § 500.505(d) of the IFR that the metropolitan planning process in TMAs include a CMS has been moved to this paragraph. The remainder of this paragraph is a consolidation and rewording of provisions of § 500.507 CMS components of the IFR. The sample list of 12 categories of strategies that should be considered in § 500.507(c) of the IFR has been

[1] AASHTO Guidelines for Pavement Management Systems, July 1990, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 249, Washington, D.C. 20001. Available for inspection as prescribed in 49 CFR part 7, appendix D.

[2] AASHTO Guidelines for Bridge Management Systems, 1992, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 249, Washington, D.C. 20001. Available for inspection as prescribed in 49 CFR part 7, appendix D.

[3] Safety Management Systems: Good Practices for Development and Implementation, FHWA and NHTSA, May 1996. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

consolidated into five broader categories in § 500.109(b)(4) of the final rule.

The requirements in § 500.505(c) of the IFR regarding programming of Federal funds for projects that will result in a significant increase in SOV capacity in TMAs that are non-attainment for carbon monoxide and/or ozone are in § 500.109(c) of the final rule.

Paragraph (d) of this section includes compliance requirements for the CMS in TMAs. Compliance with the requirement that the planning process include a CMS will be addressed during metropolitan planning process certification reviews for all TMAs. If the planning process in TMAs does not include a CMS that meets the requirements of this section, deficiencies and corrective actions will be identified in the certification review. Until September 30, 1997, the interim CMS procedures in 23 CFR 450.336(b) may be used to meet the requirement that programming of Federal funds for SOV projects in non-attainment TMAs be based on an approved CMS. After this date, such projects will need to be based on a CMS that meets the requirements of this part.

Section 500.110 PTMS

This section identifies general criteria for an effective PTMS for development by the States in cooperation with recipients and subrecipients under Chapter 53 of title 49, U.S.C. The provisions of § 500.607(b)(2) of the IFR regarding vehicle and ridership data have been moved to subpart B, Traffic Monitoring System, of this final rule. All other specific requirements of subpart F of the IFR have been removed.

Section 500.111 IMS

This section identifies the minimum criteria for an effective IMS. All other specific requirements of subpart G of the IFR have been removed.

Subpart B—Traffic Monitoring System

Subpart H, Traffic Monitoring System for Highways (TMS/H), has been moved to subpart B of the final rule and has been retitled Traffic Monitoring System (TMS) since the traffic monitoring requirements for public transportation facilities and equipment have been moved from subpart F of the IFR to this subpart. Except as noted below, only minor editorial changes have been made to this subpart.

The traffic monitoring data requirements for public transportation facilities and equipment specified in § 500.607(b)(2) of the IFR have been moved to a definition of ''transit traffic data'' in § 500.203. Section 500.203(g) of the final rule specifies that transit traffic data is to be collected in cooperation with MPOs and transit operators.

The compliance schedule in § 500.809 of the IFR has been revised and moved to paragraph § 500.203(h) of the final rule. The TMS for highways and public transportation facilities and equipment is to be fully operational by October 1, 1997.

For ease of reference, the following table is provided to assist the user in locating section and paragraph changes made in this rulemaking:

Old section	New section
500.101	500.101.
None	500.102(a).
500.103	500.103.
None	500.104.
None	500.105(a), (b).
500.105(b)	Removed.
500.105(c)	500.105(c).
500.105(d)	500.109(b).
500.105(e),(f)	Removed.
500.105(g)	500.105(d).
500.105(h), through (j).	Removed.
500.107	Removed.
500.109	Removed.
500.111	500.102(b).
500.113	Removed.
500.201 through 209	500.106.
500.301 through 309	500.107.
500.401 through 409	500.108.
500.501	Removed.
500.503	500.109(a).
500.505(a),(b)	500.109(a).
500.505(c)	Removed.
500.505(d)	500.109(b).
500.505(e)	500.109(c).
500.505(f)	Removed.
500.505(g)	Removed.
500.507	500.109(b).
500.509	500.109(d).
500.601 through 609, except 500.607(b)(2).	500.110.
500.607(b)(2)	500.202, 500.203(g).
500.701 through 709	500.111.
500.801	500.201.
500.803	500.202.
500.805	500.203(a) through (f).
500.807	500.204.
500.809	500.203(h).

23 CFR Part 450 and 49 CFR Part 613

As a result of the changes in 23 CFR Part 500, technical amendments have been made in the metropolitan transportation planning regulation in 23 CFR Part 450 and 49 CFR Part 613. These technical amendments in wording and references are necessary to reflect the revisions to the provisions in Part 500 for CMSs in TMAs.

In addition, a technical amendment has been made to § 450.316, Metropolitan transportation planning process: Elements, to add recreational travel and tourism as a factor to be considered in the development of metropolitan transportation plans and programs. This element was added to 23 U.S.C. 134(f) by section 317 of the NHS Act.

23 CFR Part 626

With the issuance of 23 CFR Part 500 in the December 1, 1993, Federal Register (58 FR 63442), the FHWA incorporated previous PMS and pavement design requirements in former 23 CFR Part 626 into 23 CFR Part 500 and removed Part 626 to eliminate redundancy. With publication of this final rule for the management systems, the FHWA is separating pavement design requirements from Part 500 and placing them into a reestablished Part 626.

Rulemaking Analyses and Notices
Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Pocedures

This rulemaking is considered to be a significant regulatory action under Executive Order 12866 and is considered to be significant under the regulatory policies and procedures of the DOT because of substantial State, local government, congressional and public interest. This final rule implements 23 U.S.C. 303 which requires the Secretary of Transportation to issue regulations for State development, establishment, and implementation of six identified management systems and guidelines and requirements for a traffic monitoring system for highways and public transportation facilities and equipment. These management systems are intended to assist State transportation decision makers in maintaining and improving the condition and performance of their transportation systems. As amended by the NHS Act, section 303 indicates that States may elect not to implement any of the six management systems under section 303 in whole or in part.

In compliance with the final rule is optional, except for the CMS in TMAs and the TMS, the only ''mandatory'' burden for compliance would be that associated with these provisions. Since the CMS in TMAs is part of the planning process required by 23 U.S.C. 134 and most States already have TMSs that meet the requirements of the final rule, any additional costs to State and local governments to develop and implement these systems will be so minimal that no further analysis will be necessary.

Regulatory Flexibility Act

Since compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA and the FTA have evaluated the effects of this rule on small entities, such as local governments and businesses. While compliance with most parts of this final rule is optional, several categories of available Federal funds identified in the rule can be used to develop and implement the systems, whether or not they are developed under the rule or under State or local procedures. The FHWA and the FTA believe that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the FHWA and the FTA certify that this rulemaking would not have a significant economic impact on a substantial number of such entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Section 303 of title 23, U.S.C., requires the Secretary to issue regulations and requirements/guidelines to implement the management and traffic monitoring system provisions. The rule recognizes the role of States, MPOs, local governments, and operators of transportation systems and facilities in implementing these systems and allows them not to implement the systems in whole or in part. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order. It has been determined that this rule does not have sufficient Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction, 20.505, FTA Technical Studies Grants, and 20.507, Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

Paperwork Reduction Act

Except for the CMS in TMAs and the TMS, implementation of the management systems identified in this rule by the States and other agencies is optional. The CMS in TMAs is a requirement of the metropolitan planning provisions of 23 U.S.C. 134 and 49 U.S.C. 5303–5305. OMB control number 2132–0529 for the statewide and metropolitan planning regulations (23 CFR Part 450) includes the information collection burden for all planning process requirements including the CMS in TMAs. With respect to the TMS, the technical procedures in subpart B of 23 CFR Part 500, are only applicable when traffic data is needed for the purposes specified in § 500.203. Any information collection burden or reporting requirements associated with subpart B are covered by the respective programs specified in § 500.203 that require traffic data. Since the management systems are optional, any traffic data needed for the management systems are also optional.

The regulation does not require any reporting to the Federal government. Therefore, there is no information collection or reporting burden for this regulation. Elimination of the requirements for workplans, certification statements, and status reports removes an annual average reporting burden of 22,180 person hours. Estimation of the annual information collection burden that would have occurred under the IFR for each of the management systems varied significantly by system, status of preexisting efforts by the States, and extent of transportation facilities that would have needed to be included, as well as by the level of sophistication that a State chose to implement. Based on the information provided by the 10 States visited by the FHWA and the FTA it is estimated that the annual person hours of information collection burden by system per State would have ranged from: 250 to 23,000 for the PMS; 0 to 8,000 for the BMS; 1000 to 41,000 for the SMS; 0 to 60,000 for the CMS; 200 to 3,200 for the PTMS; 1,300 to 31,000 for the IMS; and 0 to 3,120 for the TMS. This burden estimate for the CMS does not include the CMS in TMAs which is a planning process requirement. The estimate for the TMS includes only the additional traffic data needed for the management systems.

National Environmental Policy Act

The FHWA and the FTA have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 450

Grant programs—transportation, Highways and roads, Mass transportation, Metropolitan planning, Statewide planning, Project selection, Metropolitan transportation improvement program, Statewide transportation improvement program.

23 CFR Part 500

Bridges, Grant programs—transportation, Highway traffic safety, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

23 CFR Part 626

Design standards, Grant programs—transportation, Highways and roads.

49 CFR Part 613

Grant programs—transportation, Mass transportation.

49 CFR Part 614

Grant programs—transportation, Mass transportation.

Issued on: December 9, 1996.

Rodney E. Slater,

Federal Highway Administrator.

Gordon J. Linton,

Federal Transit Administrator.

In consideration of the foregoing, Chapter I of title 23, CFR, and Chapter VI of title 49, CFR, are amended as set forth below.

23 CFR Chapter I

SUBCHAPTER F—TRANSPORTATION INFRASTRUCTURE MANAGEMENT

PART 500—MANAGEMENT AND MONITORING SYSTEMS

1. Part 500 of subchapter F is revised to read as follows:

Subpart A—Management systems

Sec.

Subpart B—Traffic Monitoring System

Authority: 23 U.S.C. 134, 135, 303 and 315; 49 U.S.C. 5303–5305; 23 CFR 1.32; and 49 CFR 1.48 and 1.51.

Subpart A—Management Systems

§ 500.101 Purpose.

The purpose of this part is to implement the requirements of 23 U.S.C. 303(a) which directs the Secretary of Transportation (the Secretary) to issue regulations for State development, establishment, and implementation of systems for managing highway pavement of Federal-aid highways (PMS), bridges on and off Federal-aid highways (BMS), highway safety (SMS), traffic congestion (CMS), public transportation facilities and equipment (PTMS), and intermodal transportation facilities and systems (IMS). This regulation also implements 23 U.S.C. 303(b) which directs the Secretary to issue guidelines and requirements for State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment (TMS).

§ 500.102 Policy.

(a) Federal, State, and local governments are under increasing pressure to balance their budgets and, at the same time, respond to public demands for quality services. Along with the need to invest in America's future, this leaves transportation agencies with the task of trying to manage current transportation systems as cost-effectively as possible to meet evolving, as well as backlog needs. The use of existing or new transportation management systems provides a framework for cost-effective decision making that emphasizes enhanced service at reduced public and private life-cycle cost. The primary outcome of transportation management systems is improved system performance and safety. The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) strongly encourage implementation of transportation management systems consistent with State, metropolitan planning organization, transit operator, or local government needs.

(b) Whether the systems are developed under the provisions of this part or under a State's own procedures, the following categories of FHWA administered funds may be used for development, establishment, and implementation of any of the management systems and the traffic monitoring system: National highway system; surface transportation program; State planning and research and metropolitan planning funds (including the optional use of minimum allocation funds authorized under 23 U.S.C. 157(c) and restoration funds authorized under § 202(f) of the National Highway System Designation Act of 1995 (Pub.L. 104–59) for carrying out the provisions of 23 U.S.C. 307(c)(1) and 23 U.S.C. 134(a)); congestion mitigation and air quality improvement program funds for those management systems that can be shown to contribute to the attainment of a national ambient air quality standard; and apportioned bridge funds for development and establishment of the bridge management system. The following categories of FTA administered funds may be used for development, establishment, and implementation of the CMS, PTMS, IMS, and TMS: Metropolitan planning; State planning and research, and formula transit funds.

§ 500.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Federal-aid highways means those highways eligible for assistance under title 23, U.S.C., except those functionally classified as local or rural minor collectors.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decision making for a metropolitan planning area.

National Highway System (NHS) means the system of highways designated and approved in accordance with the provisions of 23 U.S.C. 103(b).

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

Transportation management area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the FTA. The TMA designation applies to the entire metropolitan planning area(s).

§ 500.104 State option.

Except as specified in § 500.105 (a) and (b), a State may elect at any time not to implement any one or more of the management systems required under 23 U.S.C. 303, in whole or in part.

§ 500.105 Requirements.

(a) The metropolitan transportation planning process (23 U.S.C. 134 and 49 U.S.C. 5303–5005) in TMAs shall include a CMS that meets the requirements of § 500.109 of this regulation.

(b) States shall develop, establish, and implement a TMS that meets the requirements of subpart B of this regulation.

(c) Any of the management systems that the State chooses to implement under 23 U.S.C. 303 and this regulation shall be developed in cooperation with MPOs in metropolitan areas, affected agencies receiving assistance under the Federal Transit Act (49 U.S.C., Chapter 53), and other agencies (including private owners and operators) that have responsibility for operation of the affected transportation systems or facilities.

(d) The results (e.g., policies, programs, projects, etc.) of any of the management systems that a State chooses to develop under 23 U.S.C. 303 and this regulation shall be considered in the development of metropolitan and statewide transportation plans and improvement programs and in making project selection decisions under title 23, U.S.C., and under the Federal Transit Act. Plans and programs adopted after September 30, 1997, shall demonstrate compliance with this requirement.

§ 500.106 PMS.

An effective PMS for Federal-aid highways is a systematic process that provides information for use in implementing cost-effective pavement reconstruction, rehabilitation, and preventative maintenance programs and that results in pavements designed to accommodate current and forecasted traffic in a safe, durable, and cost-effective manner. The PMS should be based on the ''AASHTO Guidelines for Pavement Management Systems.'' [1]

§ 500.107 BMS.

An effective BMS for bridges on and off Federal-aid highways that should be based on the ''AASHTO Guidelines for Bridge Management Systems'' [2] and that

[1] 1 *AASHTO Guidelines for Pavement Management Systems,* July 1990, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 249, Washington, D.C. 20001. Available for inspection as prescribed in 49 CFR part 7, appendix D.

[2] *AASHTO Guidelines for Bridge Management Systems,* 1992, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 249, Washington, D.C. 20001. Available for inspection as prescribed in 49 CFR part 7, appendix D.

supplies analyses and summaries of data, uses mathematical models to make forecasts and recommendations, and provides the means by which alternative policies and programs may be efficiently considered. An effective BMS should include, as a minimum, formal procedures for:

(a) Collecting, processing, and updating data;

(b) Predicting deterioration;

(c) Identifying alternative actions;

(d) Predicting costs;

(e) Determining optimal policies;

(f) Performing short- and long-term budget forecasting; and

(g) Recommending programs and schedules for implementation within policy and budget constraints.

§ 500.108 SMS.

An SMS is a systematic process with the goal of reducing the number and severity of traffic crashes by ensuring that all opportunities to improve highway safety are identified, considered, implemented as appropriate, and evaluated in all phases of highway planning, design, construction, maintenance, and operation and by providing information for selecting and implementing effective highway safety strategies and projects. The development of the SMS may be based on the guidance in ''Safety Management Systems: Good Practices for Development and Implementation.'' [3] An effective SMS should include, at a minimum:

(a) Communication, coordination, and cooperation among the organizations responsible for the roadway, human, and vehicle safety elements;

(b) A focal point for coordination of the development, establishment, and implementation of the SMS among the agencies responsible for these major safety elements;

(c) Establishment of short- and long-term highway safety goals to address identified safety problems;

(d) Collection, analysis, and linkage of highway safety data;

(e) Identification of the safety responsibilities of units and positions;

(f) Public information and education activities; and

(g) Identification of skills, resources, and training needs to implement highway safety programs.

§ 500.109 CMS.

(a) For purposes of this regulation, congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. The level of system performance deemed acceptable by State and local officials may vary by type of transportation facility, geographic location (metropolitan area or subarea, rural area), and/or time of day. An effective CMS is a systematic process for managing congestion that provides information on transportation system performance and on alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet State and local needs. The CMS results in serious consideration of implementation of strategies that provide the most efficient and effective use of existing and future transportation facilities. In both metropolitan and non-metropolitan areas, consideration needs to be given to strategies that reduce SOV travel and improve existing transportation system efficiency. Where the addition of general purpose lanes is determined to be an appropriate strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management and operational improvement strategies that will maintain the functional integrity of those lanes.

(b) In addition to the criteria in paragraph (a) of this section, in all TMAs, the CMS shall be developed, established and implemented as part of the metropolitan planning process in accordance with 23 CFR 450.320(c) and shall include:

(1) Methods to monitor and evaluate the performance of the multimodal transportation system, identify the causes of congestion, identify and evaluate alternative actions, provide information supporting the implementation of actions, and evaluate the efficiency and effectiveness of implemented actions;

(2) Definition of parameters for measuring the extent of congestion and for supporting the evaluation of the effectiveness of congestion reduction and mobility enhancement strategies for the movement of people and goods. Since levels of acceptable system performance may vary among local communities, performance measures and service thresholds should be tailored to the specific needs of the area and established cooperatively by the State, affected MPO(s), and local officials in consultation with the operators of major modes of transportation in the coverage area;

(3) Establishment of a program for data collection and system performance monitoring to define the extent and duration of congestion, to help determine the causes of congestion, and to evaluate the efficiency and effectiveness of implemented actions. To the extent possible, existing data sources should be used, as well as appropriate application of the real-time system performance monitoring capabilities available through Intelligent Transportation Systems (ITS) technologies;

(4) Identification and evaluation of the anticipated performance and expected benefits of appropriate traditional and nontraditional congestion management strategies that will contribute to the more efficient use of existing and future transportation systems based on the established performance measures. The following categories of strategies, or combinations of strategies, should be appropriately considered for each area: Transportation demand management measures, including growth management and congestion pricing; traffic operational improvements; public transportation improvements; ITS technologies; and, where necessary, additional system capacity.

(5) Identification of an implementation schedule, implementation responsibilities, and possible funding sources for each strategy (or combination of strategies) proposed for implementation; and

(6) Implementation of a process for periodic assessment of the efficiency and effectiveness of implemented strategies, in terms of the area's established performance measures. The results of this evaluation shall be provided to decision makers to provide guidance on selection of effective strategies for future implementation.

(c) In a TMA designated as nonattainment for carbon monoxide and/or ozone, the CMS shall provide an appropriate analysis of all reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in capacity for SOVs (adding general purpose lanes to an existing highway or constructing a new highway) is proposed. If the analysis demonstrates that travel demand reduction and operational management strategies cannot fully satisfy the need for additional capacity in the corridor and additional SOV capacity is warranted, then the CMS shall identify all reasonable strategies to manage the SOV facility effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies appropriate for the corridor, but not

[3] *Safety Management Systems: Good Practices for Development and Implementation*, FHWA and NHTSA, May 1996. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

appropriate for incorporation into the SOV facility itself shall also be identified through the CMS. All identified reasonable travel demand reduction and operational management strategies shall be incorporated into the SOV project or committed to by the State and MPO for implementation.

(d)(1) Compliance with the requirement that the planning process in all TMAs include a CMS will be addressed during metropolitan planning process certification reviews for all TMAs specified in 23 CFR 450.334. If the metropolitan planning process in a TMA does not include a CMS that meets the requirements of this section, deficiencies will be noted and corrections will need to be made in accordance with the schedule established in the certification review.

(2) Until October 1, 1997, the interim CMS procedures in 23 CFR 450.336(b) may be used to meet the requirement in 23 U.S.C. 134(l) that Federal funds may not be programmed in a carbon monoxide and/or ozone nonattainment TMA for any highway project that will result in a significant increase in single-occupant-vehicle capacity unless the project is based on an approved CMS. After September 30, 1997, such projects must be based on a CMS that meets the requirements of this part.

§ 500.110 PTMS.

An effective PTMS for public transportation facilities (e.g., maintenance facilities, stations, terminals, transit related structures), equipment, and rolling stock is a systematic process that collects and analyzes information on the condition and cost of transit assets on a continual basis, identifies needs, and enables decision makers to select cost-effective strategies for providing and maintaining transit assets in serviceable condition. The PTMS should cover public transportation systems operated by the State, local jurisdictions, public transportation agencies and authorities, and private (for profit and non-profit) transit operators receiving funds under the Federal Transit Act and include, at a minimum:

(a) Development of transit asset condition measures and standards;

(b) An inventory of the transit assets including age, condition, remaining useful life, and replacement cost; and

(c) Identification, evaluation, and implementation of appropriate strategies and projects.

§ 500.111 IMS.

An effective IMS for intermodal facilities and systems provides efficient, safe, and convenient movement of people and goods through integration of transportation facilities and systems and improvement in the coordination in planning, and implementation of air, water, and the various land-based transportation facilities and systems. An IMS should include, at a minimum:

(a) Establishment of performance measures;

(b) Identification of key linkages between one or more modes of transportation, where the performance or use of one mode will affect another;

(c) Definition of strategies for improving the effectiveness of these modal interactions; and

(d) Evaluation and implementation of these strategies to enhance the overall performance of the transportation system.

Subpart B—Traffic Monitoring System

§ 500.201 Purpose.

The purpose of this subpart is to set forth requirements for development, establishment, implementation, and continued operation of a traffic monitoring system for highways and public transportation facilities and equipment (TMS) in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part.

§ 500.202 TMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Highway traffic data means data used to develop estimates of the amount of person or vehicular travel, vehicle usage, or vehicle characteristics associated with a system of highways or with a particular location on a highway. These types of data support the estimation of the number of vehicles traversing a section of highway or system of highways during a prescribed time period (traffic volume), the portion of such vehicles that may be of a particular type (vehicle classification), the weights of such vehicles including the weight of each axle and associated distances between axles on a vehicle (vehicle weight), or the average number of persons being transported in a vehicle (vehicle occupancy).

Traffic monitoring system means a systematic process for the collection, analysis, summary, and retention of highway and transit related person and vehicular traffic data.

Transit traffic data means person and vehicular data for public transportation on public highways and streets and the number of vehicles and ridership for dedicated transit rights-of-way (e.g., rail and busways), at the maximum load points for the peak period in the peak direction and for the daily time period.

§ 500.203 TMS general requirements.

(a) Each State shall develop, establish, and implement, on a continuing basis, a TMS to be used for obtaining highway traffic data when:

(1) The data are supplied to the U.S. Department of Transportation (U.S. DOT);

(2) The data are used in support of transportation management systems;

(3) The data are used in support of studies or systems which are the responsibility of the U.S. DOT;

(4) The collection of the data is supported by the use of Federal funds provided from programs of the U.S. DOT;

(5) The data are used in the apportionment or allocation of Federal funds by the U.S. DOT;

(6) The data are used in the design or construction of an FHWA funded project; or

(7) The data are required as part of a federally mandated program of the U.S. DOT.

(b) The TMS for highway traffic data should be based on the concepts described in the American Association of State Highway and Transportation Officials (AASHTO) ''AASHTO Guidelines for Traffic Data Programs'' [4] and the FHWA ''Traffic Monitoring Guide (TMG),'' [5] and shall be consistent with the FHWA ''Highway Performance Monitoring System Field Manual.'' [6]

(c) The TMS shall cover all public roads except those functionally classified as local or rural minor collector or those that are federally owned. Coverage of federally owned public roads shall be determined cooperatively by the State, the FHWA, and the agencies that own the roads.

(d) The State's TMS shall apply to the activities of local governments and other public or private non-State government entities collecting highway traffic data within the State if the collected data are to be used for any of the purposes enumerated in § 500.203(a) of this subpart.

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[4] AASHTO Guidelines for Traffic Data Programs, 1992, ISBN 1–56051–054–4, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 249, Washington, D.C. 20001. Available for inspection as prescribed in 49 CFR part 7, appendix D.

[5] Traffic Monitoring Guide, DOT/FHWA, publication No. FHWA–PL–95–031, February 1995. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

[6] Highway Performance Monitoring System (HPMS) Field Manual for the Continuing Analytical and Statistical Data Base, DOT/FHWA, August 30, 1993 (FHWA Order M5600.1B). Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

(e) Procedures other than those referenced in this subpart may be used if the alternative procedures are documented by the State to furnish the precision levels as defined for the various purposes enumerated in § 500.203(a) of this subpart and are found acceptable by the FHWA.

(f) Nothing in this subpart shall prohibit the collection of additional highway traffic data if such data are needed in the administration or management of a highway activity or are needed in the design of a highway project.

(g) Transit traffic data shall be collected in cooperation with MPOs and transit operators.

(h) The TMS for highways and public transportation facilities and equipment shall be fully operational and in use by October 1, 1997.

§ 500.204 TMS components for highway traffic data.

(a) *General.* Each State's TMS, including those using alternative procedures, shall address the components in paragraphs (b) through (h) of this section.

(b) *Precision of reported data.* Traffic data supplied for the purposes identified in § 500.203(a) of this subpart shall be to the statistical precision applicable at the time of the data's collection as specified by the data users at various levels of government. A State's TMS shall meet the statistical precisions established by FHWA for the HPMS.

(c) *Continuous counter operations.* Within each State, there shall be sufficient continuous counters of traffic volumes, vehicle classification, and vehicle weight to provide estimates of changes in highway travel patterns and to provide for the development of day-of-week, seasonal, axle correction, growth factors, or other comparable factors approved by the FHWA that support the development of traffic estimates to meet the statistical precision requirements of the data uses identified in § 500.203(a) of this subpart. As appropriate, sufficient continuous counts of vehicle classification and vehicle weight should be available to address traffic data program needs.

(d) *Short term traffic monitoring.* (1) Count data for traffic volumes collected in the field shall be adjusted to reflect annual average conditions. The estimation of annual average daily traffic will be through the appropriate application of only the following: Seasonal factors, day-of-week factors, and, when necessary, axle correction and growth factors or other comparable factors approved by the FHWA. Count data that have not been adjusted to represent annual average conditions will be noted as being unadjusted when they are reported. The duration and frequency of such monitoring shall comply to the data needs identified in § 500.203(a) of this subpart.

(2) Vehicle classification activities on the National Highway System (NHS), shall be sufficient to assure that, on a cycle of no greater than three years, every major system segment (i.e., segments between interchanges or intersections of principal arterials of the NHS with other principal arterials of the NHS) will be monitored to provide information on the numbers of single-trailer combination trucks, multiple-trailer combination trucks, two-axle four-tire vehicles, buses and the total number of vehicles operating on an average day. If it is determined that two or more continuous major system segments have both similar traffic volumes and distributions of the vehicle types identified above, a single monitoring session will be sufficient to monitor these segments.

(e) *Vehicle occupancy monitoring.* As deemed appropriate to support the data uses identified in § 500.203(a) of this subpart, data will be collected on the average number of persons per automobile, light two-axle truck, and bus. The duration, geographic extent, and level of detail shall be consistent with the intended use of the data, as cooperatively agreed to by the organizations that will use the data and the organizations that will collect the data. Such vehicle occupancy data shall be reviewed at least every three years and updated as necessary. Acceptable data collection methods include roadside monitoring, traveler surveys, the use of administrative records (e.g., accident reports or reports developed in support of public transportation programs), or any other method mutually acceptable to the responsible organizations and the FHWA.

(f) *Field operations.* (1) Each State's TMS for highway traffic data shall include the testing of equipment used in the collection of the data. This testing shall be based on documented procedures developed by the State. This documentation will describe the test procedure as well as the frequency of testing. Standards of the American Society for Testing and Materials or guidance from the AASHTO may be used. Only equipment passing the test procedures will be used for the collection of data for the purposes identified in § 500.203(a) of this subpart.

(2) Documentation of field operations shall include the number of counts, the period of monitoring, the cycle of monitoring, and the spatial and temporal distribution of count sites. Copies of the State's documentation shall be provided to the FHWA Division Administrator when it is initially developed and after each revision.

(g) *Source data retention.* For estimates of traffic or travel, the value or values collected during a monitoring session, as well as information on the date(s) and hour(s) of monitoring, will remain available until the traffic or travel estimates based on the count session are updated. Data shall be available in formats that conform to those in the version of the TMG current at the time of data collection or as then amended by the FHWA.

(h) *Office factoring procedures.* (1) Factors to adjust data from short term monitoring sessions to estimates of average daily conditions shall be used to adjust for month, day of week, axle correction, and growth or other comparable factors approved by the FHWA. These factors will be reviewed annually and updated at least every three years.

(2) The procedures used by a State to edit and adjust highway traffic data collected from short term counts at field locations to estimates of average traffic volume shall be documented. The documentation shall include the factors discussed in paragraph (d)(1) of this section. The documentation shall remain available as long as the traffic or travel estimates discussed in paragraph (g) of this section remain current. Copies of the State's documentation shall be provided to the FHWA Division Administrator when it is initially developed and after each revision.

2. Subchapter G is amended by adding Part 626 to read as follows:

PART 626—PAVEMENT POLICY

Sec.
626.1 Purpose.
626.2 Definitions.
626.3 Policy.

Authority: 23 U.S.C. 101(e), 109, and 315; 49 CFR 1.48(b)

§ 626.1 Purpose.

To set forth pavement design policy for Federal-aid highway projects.

§ 626.2 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Pavement design means a project level activity where detailed engineering and economic considerations are given to alternative combinations of subbase, base, and surface materials which will provide adequate load carrying capacity. Factors

which are considered include: Materials, traffic, climate, maintenance, drainage, and life-cycle costs.

§ 626.3 Policy.

Pavement shall be designed to accommodate current and predicted traffic needs in a safe, durable, and cost effective manner.

SUBCHAPTER E—PLANNING AND RESEARCH

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart C—Metropolitan Transportation Planning and Programming

3. The authority citation for part 450 is revised to read as follows:

Authority: 23 U.S.C. 134, 135, 217(g), and 315; 42 U.S.C. 7410 et seq.; 49 U.S.C. 5303–5306; 49 CFR 1.48(b) and 1.51.

4. Section 450.316 is amended by removing the word ''and'' after the semicolon in paragraph (a)(14); by adding the word ''and'' at the end of paragraph (a)(15); and by adding paragraph (a)(16) to read as follows:

§ 450.316 Metropolitan transportation planning process: Elements.

(a) * * *

(16) Recreational travel and tourism.

* * * * *

§ 450.318 [Amended]

5. Section 450.318 paragraph (e), is amended by replacing the reference ''23 CFR 500.509'' with ''23 CFR 500.109(b)''.

6. Section 450.320 is amended by revising paragraph (a); in paragraph (b) by removing the words '', subpart E'' and the words ''identified under 23 CFR 500.505(e)''; and in paragraph (c) by removing the words '', subpart E''. As revised, paragraph (a) reads as follows:

§ 450.320 Metropolitan transportation planning process: Relationship to management systems.

(a) Within all metropolitan areas, congestion, public transportation, and intermodal management systems, to the extent appropriate, shall be part of the metropolitan transportation planning process required under the provisions of 23 U.S.C. 134 and 49 U.S.C. 5303–5305.

* * * * *

7. Section 450.322 is amended in paragraph (b)(4) by removing the words '', subpart E''.

8. Section 450.336 is amended by removing paragraph (b)(6).

49 CFR CHAPTER VI

PART 613—PLANNING ASSISTANCE AND STANDARDS

9. The authority citation for part 613 is revised to read as follows:

Authority: 23 U.S.C 134, 135, and 217(g); 42 U.S.C. 3334, 4233, 4332, 7410 et seq; 49 U.S.C. 5303–5306, 5323(k); and 49 CFR 1.48(b), 1.51(f) and 21.7(a).

10. Part 614 is revised to read as follows:

PART 614—TRANSPORTATION INFRASTRUCTURE MANAGEMENT

Sec.

614.101 Cross-reference to management systems.

Authority: 23 U.S.C. 303; 49 U.S.C. 5303–5305; and 49 CFR 1.48 and 1.51.

§ 614.101 Cross-reference to management systems.

The regulations in 23 CFR Part 500, subparts A and B shall be followed in complying with the requirements of this part. Part 500, subparts A and B implement 23 U.S.C. 303 for State development, establishment, and implementation of systems for managing traffic congestion (CMS), public transportation facilities and equipment (PTMS), intermodal transportation facilities and systems (IMS), and traffic monitoring for highways and public transportation facilities and equipment.

[FR Doc. 96–32112 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–22–P

Federal Register

Thursday
December 19, 1996

Part IV

Department of Education

Indian Education Formula Grants to Local Education Agencies; Inviting Applications for New Awards for Fiscal Year (FY) 1997; Notice

DEPARTMENT OF EDUCATION

[CFDA 84.060A]

Indian Education Formula Grants to Local Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose: Provides grants to support local educational agencies in their efforts to reform elementary and secondary school programs that serve Indian students in order to ensure that those programs are based on challenging State content standards and State student performance standards used for all students, and are designed to assist Indian students to meet those standards.

Eligible Applicants: Local educational agencies (LEAs) and certain schools funded by the Bureau of Indian Affairs, and Indian tribes under certain conditions.

Deadline for Transmittal of Applications: March 10, 1997. Applications not meeting the deadline will not be considered for funding in the initial allocation of awards. Applications not meeting the deadline *may* be considered for funding if the Secretary determines, under section 9117(d), Part A of Title IX of the 1994 amendments of the Elementary and Secondary Act of 1965 (the Act) that funds are available and that reallocation of those funds to those applicants would best assist in advancing the purposes of the program. However, the amount and date of an individual award, if any, made under section 9117(d) of the Act may not be the same to which the applicant would have been entitled if the application had been submitted on time.

Deadline for Intergovernmental Review: May 10, 1997.

Applications Available: December 20, 1996.

Available Funds: The appropriation for this program for fiscal year 1997 is $58,000,000, which should be sufficient to fund all eligible applicants.

Estimated Range of Awards: $3,000 to $1,110,000.

Estimated Average Size of Awards: $40,000.

Estimated Number of Awards: 1,270.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86.

FOR APPLICATIONS OR INFORMATION CONTACT: Cathie Martin, Office of Indian Education, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building—Room 4300, Washington, D.C. 20202–6335. Telephone: (202) 260–1683. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, D.C. 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 7811.

Dated: December 16, 1996.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 96–32269 Filed 12–18–96; 8:45 am]

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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.

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  - Local competition provisions; interconnection between local exchange carriers and commercial mobile radio service providers; published 12-19-96

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  - 3,9-bis[2-[3-(3-tert-butyl-4-hydroxy-5-methyl phenyl)propionyloxy]-1,1-dimethylethyl]-2,4,8, 10-tetraoxaspiro [5.5]undecane; published 12-19-96

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Single family housing; reengineering and reinvention of direct section 502 and 504 programs; comments due by 12-23-96; published 11-22-96

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  - New Mexico; comments due by 12-26-96; published 11-26-96

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- Florida; comments due by 12-25-96; published 10-18-96
- Kentucky; comments due by 12-23-96; published 11-14-96
- New York; comments due by 12-23-96; published 11-14-96
- Texas; comments due by 12-23-96; published 11-14-96

FEDERAL EMERGENCY MANAGEMENT AGENCY
Disaster assistance:
- Appeals procedures; comments due by 12-23-96; published 10-24-96
- Restoration of damaged facilities; eligible costs limitation to standards in place at time of disaster declaration date; comments due by 12-24-96; published 10-25-96

FEDERAL HOUSING FINANCE BOARD
Financing Corporation:
- Operations; Federal regulatory reform; comments due by 12-23-96; published 11-22-96

FEDERAL RESERVE SYSTEM
Freedom of Information Act; implementation:
- Fee schedule; comments due by 12-26-96; published 11-26-96

Securities credit transactions (Regulations G, T, and U); comments due by 12-26-96; published 11-26-96

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift savings plan:
- Continuation of eligibility--
  - District of Columbia Financial Responsibility and Management Assistance Authority; participation for certain employees; comments due by 12-24-96; published 10-25-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
- Dietary ingredients; premarket notification; comments due by 12-26-96; published 9-27-96
- Food labeling--
  - Dietary supplements; nutritional support