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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV96–905–4 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; and Import Regulations (Grapefruit); Relaxation of the Minimum Size Requirement for Red Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule changing regulations under the Florida citrus marketing order and grapefruit import regulations. This rule relaxes the minimum size requirement for red seedless grapefruit from 3$^{9}/_{16}$ inches in diameter (size 48) to 3$^{5}/_{16}$ inches in diameter (size 56). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended this change. This change will enable handlers and importers to continue to ship size 56 red seedless grapefruit for the entire 1996–97 season.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5127, Fax # (202) 720–5698; or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax # (941) 299–5169. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905 (7 CFR Part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

The Committee met October 8, 1996, and unanimously recommended relaxing the red seedless grapefruit minimum size requirement from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) for the period November 11, 1996, through November 9, 1997. This relaxation was effectuated by an interim final rule issued on November 27, 1996 (61 FR 64251). Absent this change, the size would have reverted back to size 48 (3$^{9}/_{16}$ inches diameter), on November 11, 1996.

Section 905.52 of the order authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in Section 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under Section 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). Export requirements are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and current shipments. According to both the National Agricultural Statistics Service and the Committee, production of red seedless grapefruit is expected to increase in comparison to last year

(1995–96). Both sources estimate an increase in production for this season (1996–97) of about 10 percent to 31.5 million boxes and about 3 percent to 29 million boxes, respectively. The Committee reports that it expects that fresh market demand will be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1996–97 season. The Committee believes that markets have been developed for size 56 and that they should continue to supply those markets.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand in those markets for the 1996–97 season, and will provide for the maximization of shipments to fresh market channels.

There are some exemptions to these regulations provided under the order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day. Handlers may also ship unlimited gift packages of up to 2 standard packed cartons of fruit per day, which are individually addressed and not for resale. Fruit shipped for animal feed is also exempt under specific conditions. Fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base is not subject to the handling requirements.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule continues a relaxation in the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under Section 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). This final rule continues a relaxation the minimum size requirements for imported red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56) for the period November 11, 1996, through November 9, 1997, which reflects the relaxation being made under the order for grapefruit grown in Florida. The minimum grade and size requirements for Florida grapefruit are specified in Section 905.306 (7 CFR 905.306) under Marketing Order No. 905.

During the last 5 years (1991–1995) imports to the United States of fresh grapefruit averaged less than 2 percent of total domestic consumption or less than 15,000 tons per year. Based on Departmental data, domestic consumption averaged 766,000 tons per year for that period. The major exporter of grapefruit to the United States was the Bahamas. The Bahamas shipped an average of 95 percent of all grapefruit imports to the United States during that time period. Other exporters of grapefruit to the United States included Mexico, Jamaica, Dominican Republic, Israel, and Thailand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 100 handlers of Florida citrus who are subject to regulation under the marketing order, approximately 11,000 producers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of Florida citrus producers and grapefruit importers may be classified as small entities. The majority of Florida citrus handlers are estimated to be large entities.

Based on Committee shipping data and estimates for 1994–95, approximately 60 percent of all handlers handled 83 percent of Florida fresh domestic and export citrus shipments. The handlers included in this figure shipped 500,000 or more boxes of fresh citrus. The average price for Florida citrus was $7.00 per $^{4}/_{5}$ bushel box for all domestic shipments. The actual receipts of these handlers is estimated to be higher as most of these handlers also ship to processing markets, which are not included in Committee data but would contribute to total handler receipts.

Section 905.52 of the order authorizes the establishment of minimum size regulations for Florida citrus, and section 8e of the Act requires that when such regulations are in effect for grapefruit, the same or comparable requirements be applied to imports.

This action continues a relaxation in the minimum size requirement established for Florida and imported red seedless grapefruit from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) for the period November 11, 1996, through November 9, 1997. Absent this change, the size would have reverted back to size 48 (3$^{9}/_{16}$ inches diameter), on November 11, 1996.

This rule is expected to have a positive impact on growers, handlers and importers, as it will permit the shipment of smaller size grapefruit, allowing the industry to meet market needs. There is a small established market for size 56 red seedless grapefruit and elimination of all shipments of this size would cause a hardship on the industry. The relaxed minimum size requirement will be applied to both small and large handlers and importers in the same way.

Based on shipment data from the Committee, total fresh Florida citrus shipments for interstate and export markets averaged 65,935 million $^{4}/_{5}$ bushel boxes during the last 5 seasons (1991–1995). During this period, size 56 red seedless grapefruit comprised approximately 3 to 5 percent of total fresh shipments, or 2 to 3 million $^{4}/_{5}$ bushel boxes. The average price for the last 5 seasons ranged from $5.54 to $5.68 per $^{4}/_{5}$ bushel box for size 56 red seedless grapefruit. Thus, potential revenue from the sale of this fruit would range from $11 million to $17 million.

This relaxation is consistent with current and anticipated market demand for the 1996–97 season, and will provide for the maximization of shipments to fresh market channels. The benefits of this rule are not expected to be disproportionately greater or less for small handlers, growers or importers than for larger entities.

The Committee discussed an alternative to this change, which was to not relax the minimum size requirement. This alternative would have prevented the industry from shipping fruit to current viable markets. While only a small amount of the crop is expected to be affected by relaxing the minimum size, the Committee believes that this relaxation will benefit

producers and handlers with smaller fruit this season. Thus, the Committee unanimously recommended this action.

This rule relaxes size requirements under the order and the grapefruit import regulations. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Florida citrus handlers or grapefruit importers. As with all Federal marketing order programs and companion import regulations, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. In addition to minimum size requirements, Florida and imported grapefruit is required to meet minimum grade requirements that are based on the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784) which are issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Additionally, the Department of Citrus for the State of Florida regulates citrus through the Citrus Fruit Laws, Chapter 601, Florida Citrus Code of 1949.

The Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 8, 1996, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of 18 members, of which 9 are producers, 8 are handlers and 1 is a public member. The majority of Committee members represent small entities.

The interim final rule was issued on November 27, 1996, and published in the Federal Register (61 FR 64251, December 4, 1996), with an effective date of November 11, 1996. That rule amended §§ 905.306 and 944.106 of the rules and regulations in effect. That rule provided a 30-day comment period which ended January 3, 1997. No comments were received.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (61 FR 64251, December 4, 1996) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 905 and 944 are amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR parts 905 and 944 which was published at 61 FR 64251 on December 4, 1996, is adopted as a final rule without change.

Dated: February 13, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–4113 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 966

[Docket No. FV96–966–2 FIR]

Tomatoes Grown in Florida; Partial Exemption From the Handling Regulation for Single Layer and Two Layer Place Packed Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule providing an exemption to the pack and container requirements currently prescribed under the Florida tomato marketing order. The marketing order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (Committee). This rule exempts shipments of single layer and two layer place packed tomatoes from the container net weight requirements under the marketing order. This rule facilitates the movement of single layer and two layer place packed tomatoes and should improve returns to producers of Florida tomatoes.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, or FAX: (941) 299–5169; or Mark Slupek, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 205–2830, or FAX: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS)

has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 handlers of tomatoes who are subject to regulation under the order and approximately 90 producers of tomatoes in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule finalizes an exemption for shipments of single layer and two layer place packed tomatoes from container net weight requirements currently specified under the order. Place packing requires a certain number of tomatoes to fill a container, making it difficult to meet established weight requirements. Tomatoes are packed in one or two layers, which some industry members believe is superior to the bulk container pack. Place packing is labor intensive, with most of the packing being done by hand, but it allows handlers to ship higher colored, more mature tomatoes. Place packed tomatoes, which are shipped from many domestic and foreign growing areas, currently maintain a strong market share.

This exemption is the same as granted for specialty packed red ripe tomatoes and yellow meated tomatoes. This exemption appears to be the most viable alternative to present requirements because it facilitates the use of place packing in Florida, and provides handlers an additional shipping option. Also, while we lack sufficient information necessary to quantify these benefits at this time, we believe that this exemption will be beneficial to the industry. After the industry operates under the relaxed requirements for a time, additional information will be available. Because the exemption and the packing techniques required affect both small and large handlers equally, both will benefit proportionally from the exemption. Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule was issued on October 29, 1996, and published in the Federal Register (61 FR 55729, October 29, 1996), with an effective date of October 30, 1996. That rule amended § 966.323 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended November 29, 1996. No comments were received.

Under the Florida tomato marketing order, tomatoes produced in the production area and shipped to fresh market channels are required to meet certain handling requirements. These requirements include minimum grade, size, and pack and container specifications.

This final rule revises § 966.323 paragraph (d) of the rules and regulations to make single layer and two layer place packed tomatoes exempt from the current net weight requirements. This exemption is the same as granted for specialty packed red ripe tomatoes and yellow meated tomatoes. The exemption is from net weight only. The tomatoes are still subject to all other provisions of the handling regulation, including established grade, size, pack, and inspection requirements. The Committee met September 5, 1996, and unanimously recommended this change.

Section 966.52 of the Florida tomato marketing order provides authority for the modification, suspension, and termination of regulations. Section 966.323(a)(3)(i) of the order's rules and regulations defines the net weight container requirements. These requirements specify that all tomatoes be packed in containers of 10, 20, and 25 pound designated net weights. The net weight cannot be less than the designated weight or exceed the designated weight by more than two pounds.

Most tomatoes from Florida are shipped at the mature green stage, and are packed in volume fill containers. When volume fill containers are packed, the tomatoes are placed by hand or machine into the container until the required net weight is reached. This procedure, by design, works well when packing to meet a specified weight.

In contrast, it is very difficult to pack to a specified weight when place packing in a single layer or two layer pack. Place packing a container requires a fixed number of tomatoes to fill the container. In place packing, the tomatoes are packed in layers, with the fill determined by the size of the tomato, dimensions of the container, and the way the tomatoes are positioned in the box. To facilitate this type of pack, most handlers use plastic cells, cardboard partitions, or trays to position the tomatoes. The majority of place packed tomatoes are sold by count per container rather than by weight.

Throughout the harvesting season, the weight of equal size tomatoes may vary dramatically. When tomatoes are place packed into a container, the handler cannot add extra tomatoes if the container's net weight is light. Because the tomatoes are packed in layers, when a layer is complete there are no spaces for adding additional tomatoes. Similarly, when the tomatoes are heavy, the handler cannot remove a tomato to meet a maximum weight requirement. Buyers expect a full pack with no spaces, and a missing tomato could result in a loose pack which could allow shifting or bruising during transport.

The Committee made this recommendation to overcome this problem and allow the industry to develop this market. This change allows the industry to place pack single layer and two layer packs exempt from the current net weight requirements. However, all other packs must continue to meet the requirements.

Single layer and two layer place packed tomatoes are common in today's markets. Many tomato growing areas within the United States utilize them, as do most shippers of Mexican tomatoes. Buyer demand for this type of container is well established. Tomatoes packed in single layer and two layer containers have a strong market share. Some Committee members stated that this pack provides a superior presentation of the tomatoes when compared to the bulk net weight container. Committee members believe that Florida tomato shippers can compete well in this market.

Another advantage of the place pack is that a more mature tomato can be shipped if desired. The Committee expressed interest in beginning to ship a higher colored, more mature tomato. Volume packing such a tomato could cause bruising or other damage. Place packing in single layer or two layer packs would prevent damage and help a mature tomato arrive at market in good condition.

The Committee is focusing on ways to continue to be competitive, develop new markets, and increase grower returns. The Committee believes this change will provide the industry with more flexibility and additional marketing opportunities.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic

marketing order, including tomatoes, imports of that commodity must meet the same or comparable requirements. Since the Act does not authorize the imposition of pack or container requirements on imports, even when such requirements are in effect under a domestic marketing order, no change is necessary in the tomato import regulations as a result of this action.

After consideration of all relevant material presented, the information and recommendations submitted by the Committee, and other available information, it is found that finalizing, without change, the interim final rule as published in the Federal Register (61 FR 55729, October 29, 1996) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 966 which was published at 61 FR 55729 on October 29, 1996, is adopted as a final rule without change.

Dated: February 12, 1997.

Robert C. Kenney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–4110 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 979

[Docket No. FV97–979–1 IFR]

Melons Grown in South Texas; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the South Texas Melon Committee (Committee) under Marketing Order No. 979 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess Texas melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on October 1, 1996. Comments received by March 24, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Marketing Specialist, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833, FAX 210–682–5942, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone 202–720–9918; FAX 202–720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979, both as amended (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning October 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 32 producers of South Texas melons in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The melon marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting.

Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee, in a telephone vote on September 25, 1996, unanimously recommended 1996–97 administrative expenses of $100,000 for personnel, office and the travel portion of the compliance budget. These expenses were approved by the Department in October 1996. The assessment rate and funding for the research projects and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on December 17, 1996, and unanimously recommended 1996–97 expenditures of $308,000 and an assessment rate of $0.07 per carton of melons. In comparison, last year's budgeted expenditures were $395,159. The assessment rate of $0.07 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 fiscal period include $84,500 for personnel and administrative expenses, $115,500 for compliance, $64,000 for a melon disease management program, $33,125 for breeding and variety development, and $10,875 for melon variety evaluation. Budgeted expenses for these items in 1995–96 were $95,544, $139,500, $86,716, $32,674, and $10,875, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Melon shipments for the year are estimated at 3,870,000 cartons, which should provide $270,900 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budget expenses. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on October 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart titled ''Assessment Rates'' consisting of a new § 979.219 and a new subpart heading titled ''Handling Regulations'' are added immediately preceding § 979.304, to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 979.219 Assessment rate.

On and after October 1, 1996, an assessment rate of $0.07 per carton is established for South Texas melons.

Dated: February 13, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–4112 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 987

[Docket No. FV–96–987–3 FR]

Domestic Dates Produced or Packed in Riverside County, California; Temporary Relaxation of Size Requirements for Deglet Noor Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the size requirements currently prescribed for the Deglet Noor variety of dates under the California date marketing order. The marketing order regulates the handling of domestic dates produced or packed in Riverside County, California, and is administered locally by the California Date Administrative Committee (committee). This rule will increase the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent and will be in effect through October 31, 1997. The relaxation is necessary because dates from the 1996–97 crop are smaller in size and weight than normal. The decrease in size and weight is due to extremely high temperatures experienced last spring in the production area. This relaxation was recommended by the committee to make a larger quantity of the 1996–97 crop

available for sale domestically and in Canada and is expected to benefit producers, handlers, and consumers.

EFFECTIVE DATE: This final rule becomes effective February 21, 1997.

FOR FURTHER INFORMATION CONTACT: Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906; or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2536-S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 205–2829, Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456: telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 987 (7 CFR part 987), both as amended, regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This final rule revises the size requirements currently prescribed for the Deglet Noor variety of dates under the California date marketing order. This rule will increase the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent. The rule will be in effect through October 31, 1997, and was recommended by the committee.

Section 987.39 of the date marketing order provides authority for the establishment of minimum quality requirements for varieties of California dates to be handled in designated outlets. Section 987.40 of the order also provides authority for the committee to recommend to the Secretary additional grade or size requirements for any variety of dates to be handled in any designated outlet when it deems advisable. Pursuant to § 987.12, there are four designated outlet categories for California dates—''DAC'' dates, ''dates for further processing'' (FP dates), ''export'' dates, and ''product'' dates.

Section 987.112a of the order's administrative rules prescribes grade, size, and container requirements for each of the four outlet categories of dates. Paragraph (b)(2) of that section prescribes such requirements for DAC dates. DAC dates are marketable whole or pitted dates that are inspected and certified as meeting the grade, size, container, and applicable identification requirements for handling in the United States and Canada. Currently, DAC dates must meet the requirements for U.S. Grade B, as specified in the U.S. Standards for Grades of Dates (Standards) issued by the Department. In addition, with respect to whole dates of the Deglet Noor variety, the individual dates in a sample from a lot must weigh at least 6.5 grams, with a tolerance of 10 percent per lot for dates weighing less than 6.5 grams.

Paragraph (c)(2) of § 987.112a provides similar requirements for FP dates. FP dates are marketable whole dates acquired by one handler from another handler that are certified as meeting the same grade and size requirements as for DAC dates, with the exception of moisture requirements and applicable identification requirements. Currently, FP dates must also meet the requirements for U.S. Grade B as specified in the Standards, except for moisture.

Section 987.112a also specifies requirements for the remaining two outlet categories of dates—export and product. Except for some minor differences stated in the section, export and product dates must meet the requirements for U.S. Grade C as specified in the Standards.

At its meeting on October 31, 1996, the committee recommended increasing the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams from 10 to 15 percent to be handled in the DAC and FP outlet categories. The committee also recommended that this relaxation be in effect through October 31, 1997. This will allow the rule to be in effect for the remainder of the 1996–97 season, which ends on September 30, plus an additional month. By the end of October 1997, as prescribed under the order, the committee is required to meet and review its marketing policy for the next season. Five committee members voted for this change, three voted against, and one abstained.

In its deliberations, the committee commented that the average fruit size for the 1996–97 crop is expected to be much smaller this season than in recent years, primarily due to the hot, dry spring. Increasing the tolerance from 10 to 15 percent for dates weighing less than 6.5 grams should allow a greater quantity of Deglet Noor dates which are of good quality but weigh less than 6.5 grams to meet the requirements for DAC and FP dates. Currently, the industry average of the number of dates packed per pound is 60. The additional five percent tolerance for undersize dates will allow handlers to include approximately two additional smaller dates per pound. Thus, more of the crop would be utilized as whole dates domestically and in Canada. The committee estimates total 1996–97 marketable date shipments at 33.5 million pounds. Of that amount, Deglet Noor shipments are estimated at approximately 32.4 million pounds, with about 15 million pounds likely to meet the current requirements for DAC and FP dates. According to the committee, increasing the tolerance from 10 to 15 percent should allow about three to five percent more Deglet Noor dates to meet the DAC and FP requirements, or between 450,000 and 750,000 pounds. Making more Deglet Noor dates of satisfactory quality available for sale domestically and in Canada should provide for maximum utilization of the 1996–97 crop, thereby benefiting producers, handlers, and consumers.

The three committee members who opposed the recommendation believe

that the overall quality of dates packed will be decreased if smaller fruit is allowed to meet the requirements for DAC and FP dates. However, other committee members commented that the smaller size dates will still have to meet all of the other characteristics DAC and FP dates must already meet. Thus, consumers should continue to receive good quality whole dates with only a slight increase in the number of smaller size dates. In addition, the majority of committee members believe that this change will only affect about three to five percent of the Deglet Noor shipments that are expected to meet DAC and FP requirements.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of California dates who are subject to regulation under the marketing order and approximately 135 date producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Last year, as a percentage, about 75 percent of the handlers shipped under 4 million pounds of dates and 25 percent shipped over 4 million. Using an average f.o.b. price of $1.12 per pound, about 75 percent of date handlers could be considered small businesses under SBA's definition and about 25 percent of the handlers could be considered large businesses. The majority of handlers and producers of California dates may be classified as small entities.

This final rule revises the size requirements currently prescribed for the Deglet Noor variety of dates under § 987.112a of the California date marketing order. Deglet Noor dates from the 1996–97 crop are smaller in size and weight than normal, due to extremely high temperatures experienced last spring in the production area. The committee recommended increasing the current tolerance for individual, whole Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 to 15 percent, to make a larger quantity of the 1996–97 crop available for sale domestically and in Canada, thereby benefitting producers, handlers, and consumers. This rule will be in effect through October 31, 1997.

At the meeting, the committee discussed the impact of this change on handlers and producers in terms of cost. Handlers and producers receive higher returns for dates that meet DAC and FP requirements. As previously mentioned, dates sold as DAC or FP must meet the requirements for U.S. Grade B dates (with the exception of moisture for FP dates) as specified in the Standards and dates sold in other outlet categories such as product and export must meet requirements specified for U.S. Grade C dates. According to industry members, handlers receive about $.50 per pound more for U.S. Grade B dates than U.S. Grade C, and growers receive about $.30 more per pound more for U.S. Grade B dates.

In addition, as previously mentioned, 1996–97 marketable Deglet Noor shipments are estimated to be approximately 32.4 million pounds, of which about 15 million pounds should meet DAC and FP requirements. If, as the committee anticipates, increasing the tolerance for smaller size fruit will impact about three to five percent of the crop, this change should allow between about 450,000 and 750,000 pounds more Deglet Noor dates to be sold as DAC and FP dates. With a net increase to handlers and producers of about $.50 per pound and $.30 per pound, respectively, for U.S. Grade B dates, this change could mean an increase in total net returns of $225,000–$375,000 for all handlers and $135,000–$225,000 for all producers. The benefits for this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The committee discussed alternatives to this change, including not increasing the tolerance at all, as well as increasing the tolerance by 10 percent rather than five percent. While only a small amount of the crop is expected to be affected by increasing the tolerance, the committee believes that an increase should benefit producers and handlers with smaller fruit this season. The committee considered increasing the tolerance from 10 to 20 percent but believed that this could put too much smaller size fruit on the market. In addition, committee members commented that the tolerance was increased by five percent during the 1992–93 season and in prior seasons because of similar problems of an abundance of small size fruit due to hot temperatures, and that the five percent increase was satisfactory. Thus, the majority of committee members agreed that the tolerance for the size of Deglet Noor dates should be increased from 10 to 15 percent through October 31, 1997.

This final rule will relax size requirements under the date marketing order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. However, as previously stated, DAC and FP dates must meet the requirements for U.S. Grade B, as specified in the U.S. Standards for Grades of Dates (7 CFR 52.1001 through 52.1011) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Agreement Act of 1946 are voluntary. Further, the public comments received concerning the proposal did not address the initial regulatory flexibility analysis.

In addition, the committee's meeting was widely publicized throughout the date industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the October 31, 1996, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The committee itself is composed of nine members, of which six are handlers/producers and three are producers only, the majority of whom are small entities.

A proposed rule concerning this action was issued by the Department on December 2, 1996, put on public display at the Office of the Federal Register on December 5, 1996, and published in the Federal Register on Friday, December 6, 1996 (61 FR 64638). Copies of the rule were made available to industry members on December 5, 1996, at a meeting of the California Date Commission (Commission), a State organization that conducts promotional activities for the date industry. Many of the committee members also sit on the Commission. Copies of the rule were also mailed or sent via facsimile to all committee members and date handlers.

Finally, the rule was made available through the Internet by the Office of the Federal Register.

A 15-day comment period was provided to allow interested persons to respond to the proposal. Fifteen days was deemed appropriate because a rule finalizing the action would need to be in place as soon as possible since handlers are already shipping dates from the 1996–97 crop.

Two comments were received during the comment period in response to the proposal. The commenters, both representing the same producer operation, opposed the proposed relaxation. The points made by the commenters were thoroughly discussed prior to the committee vote.

The commenters disagreed with the statement in the proposed rule that the relaxation would benefit both producers and handlers. They claimed that the increased returns to the handlers would not be passed down to the producers. While this may differ between and among individual handlers and producers, it is the Department's understanding that growers are paid for their dates by handlers either on a weight basis (so much money per pound of dates delivered) or on a packout basis (so much money per pound of U.S. Grade B or U.S. Grade C dates). Committee members indicated at the meeting that, when growers are paid based on packout, such growers receive about $.30 more per pound for U.S. Grade B dates than U.S. Grade C dates. As previously mentioned, the committee anticipates that increasing the tolerance for smaller size fruit will allow more dates to meet U.S. Grade B and be sold as DAC and FP dates and thus, will benefit handlers and producers in the industry.

The commenters also contend that the proposed relaxation will lower industry quality standards at a time when the industry should be striving for higher standards. However, as discussed by the committee and specified in the proposed rule, the 5 percent increase in the number of smaller size dates should result in an average of only 2 additional smaller sized dates in each package of approximately 60 dates. The majority of the committee members felt such a relaxation would not significantly affect the overall quality of each date package.

One commenter claimed that the estimate of 450,000 to 750,000 pounds of additional dates made available by the proposed rule is not accurate because the industry's carryin inventory was 14 million pounds. While the total inventory is, indeed, estimated at 14.7 million pounds, the inventory of DAC dates—those dates affected by the relaxation—is only 5.7 million pounds, which is less than normal. The committee's estimate of an additional 450,000 to 750,000 pounds of DAC dates is accurate.

The commenter also suggested that smaller dates would not necessarily come only from the 1996 crop. The commenter stated that the rule's expiration date of October 31, 1997, overlaps the 1997 crop harvest. The commenter contends that smaller dates from the 1997 crop could be packed with the 1996 crop. However, harvest usually begins in mid to late October and only a small amount of dates are harvested and processed before the end of the month. Also, it is common industry practice to store dates for up to 10 months prior to processing, packaging and shipment. Therefore, the October 1997 time period would allow stored 1996 crop dates to be used.

The commenter also claimed that the relaxation is a short term solution and questioned whether other commodities lower quality standards because of adverse weather conditions. Such action has been recommended by other marketing order committees and approved by the Secretary for some commodities. Such recommendations have helped marketing order industries to fully utilize available production when harvests are diminished by adverse weather or other disasters.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because handlers are already shipping dates from the 1996–97 crop and handlers want to take advantage of the relaxation as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

§ 987.112a [Amended]

2. In § 987.112a, paragraphs (b)(2) and (c)(2), the words ''December 29, 1992, and ending October 31, 1993,'' are removed and the words ''February 21, 1997, and ending October 31, 1997,'' are added in their place.

Dated: February 14, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–4335 Filed 2–18–97; 2:02 pm]

BILLING CODE 3410–02–P

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB30

Pre-Loan Procedures for Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS) is issuing a minor amendment to its pre-loan procedures that will clarify that use of a conventional utility indenture as a security instrument for loans to power supply borrowers is permissible. This amendment will give these borrowers and RUS the flexibility to address the complex issues surrounding power supply loans in the rapidly changing electric industry. The rule will also enhance loan security and, by conforming more closely to private lending practice, allow easier access to private sector financing.

In the proposed rules section of this Federal Register, RUS is proposing approval of and soliciting comments on this action. If adverse comments are received on this action, RUS will withdraw this final rule prior to its effective date and address the comments recieved in response to this action in a final rule on the related proposed rule, which is published in the proposed rules section of this Federal Register. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This rule will become effective on April 7, 1997, unless we receive written adverse comments or notice of intent to submit adverse comments on or before March 24, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Submit any adverse comments or notice of intent to submit adverse comments to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 2230–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours at Room 4034, South Building, U.S. Department of Agriculture, Washington, DC 20250 between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 2230–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. Telephone: 202–720–0736. FAX: 202–720–4120. E-mail: fheppe@rus.usda.gov.

SUPPLEMENTARY INFORMATION: This regulatory action has been determined to be not significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and, therefore has not 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 action. 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 0572–0032.

Background

RUS recognizes that power supply borrowers (also known as generation and transmission borrowers or ''G&T's'') generally have a far more complex corporate structure and face more complex financing issues than distribution borrowers. In order to meet the financing needs of these borrowers more efficiently, RUS is amending its regulations to specifically allow the use of a conventional utility indenture in lieu of a mortgage as security instruments for loans to these borrowers.

Although current RUS regulations do not preclude the use of trust indentures as security instruments for RUS loans, the Agency believes that it would be useful to clarify how RUS regulations in 7 CFR Chapter XVII will be reconciled with any conflicting provisions contained in conventional utility indentures and related loan contracts which the Agency may accept in lieu of typical RUS mortgages and mortgages as loan instruments. The Agency anticipates that otherwise some of the provisions in such indentures and loan contracts might conflict with provisions in this chapter that were developed to implement or interpret the traditional standard forms of RUS loan instruments which were designed for use under different circumstances.

On July 18, 1995, at 60 FR 36882, and December 29, 1995, at 60 FR 67396, RUS substantially revised the forms of loan instruments it uses in making loans to electric distribution borrowers. Because of the differing situations of power supply borrowers, RUS did not attempt to prescribe corresponding forms of those new documents for power supply borrowers. Nevertheless, RUS recognizes that many of the reasons underlying the modernization effort apply to its power supply borrowers. Thus, RUS believes that the option of using trust indentures represents a balanced approach to increasing borrowers' access to private capital markets and reducing RUS operational controls while simultaneously enhancing RUS loan security by appropriately adapting to the changing cooperative electric industry.

RUS is willing to consider the use of an indenture when RUS and the power supply borrower mutually agree that it is appropriate. The terms of each indenture and related loan agreement will be negotiated on a case by case basis to best meet the needs of the individual borrower and the Government as the electric industry undergoes a period of drastic change. RUS believes that ultimately this approach will enhance loan security by addressing the individual circumstances of each borrower; will allow RUS greater flexibility in dealing with the more complex structures of most power supply borrowers; and will allow these borrowers easier access to private sources of credit, thus reducing their dependence on RUS financing. RUS recognizes that this approach may conflict from time to time with some provisions of 7 CFR Chapter XVII. This regulation provides that the terms of any indenture or associated loan contract control in such circumstances.

RUS is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the proposed rules section of this Federal Register publication, RUS is proposing to amend 7 CFR part 1710 should adverse or critical comments be filed.

If RUS receives such comments, RUS will publish a subsequent document that will withdraw this direct final rule before the effective date. All public comments received will be addressed in a subsequent final rule based on the proposed rule. RUS will not institue a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, and under the authority of 7 U.S.C. 901 *et seq.*, RUS amends 7 CFR Part 1710 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. 901–950(b); Pub. L. 99–591, 100 Stat. 3341; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1710.113 is amended by redesignating the existing paragraph (c) as paragraph (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 1710.113 Loan security.

* * * * *

(c)(1) * * *

(2) The Administrator, at his or her discretion, may approve the use of an indenture patterned after those indentures commonly used by utilities engaged in private market financing, in lieu of a mortgage as the security instrument for loans to power supply borrowers. The use of an indenture will be by mutual agreement of the borrower and the Administrator. The terms of each indenture and related loan agreement will be negotiated on a case by case basis to best meet the needs of the individual borrower and the Government. The provisions of the indenture and loan contract shall control, notwithstanding any provisions of 7 CFR Chapter XVII which may be in conflict therewith.

* * * * *

Dated: February 10, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–3990 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–24–AD; Amendment 39–9933; AD 97–04–09]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes. This action requires repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the barrel of the main landing gear (MLG); and replacement of cracked lower lugs with new or serviceable ones and a follow-on inspection. This amendment is prompted by reports indicating that, due to fatigue cracking in the lower lugs of the barrel, the MLG collapsed. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could lead to the collapse of the MLG.

DATES: Effective March 7, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 7, 1997.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–24–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the 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: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes. The DGAC advises that it has received reports indicating that the main landing gear (MLG) collapsed on two airplanes; one incident occurred during taxi and the other during landing roll. Investigation revealed that, following normal overhaul or repair procedures, moisture may enter the joint between the fixed barrel and the shock absorbing portion of the trailing arm of the MLG. Such moisture could result in corrosion and consequent fatigue cracking in the lower lugs of the barrel of the MLG, which is the main attachment point for the joint.

Fatigue cracking in the lower lugs of the barrel of the MLG, if not detected and corrected in a timely manner, could lead to the collapse of the MLG.

Explanation of Relevant Service Information

Messier-Dowty has issued Service Bulletin No. 631–32–132, dated January 21, 1997, which describes procedures for performing repetitive ultrasonic inspections to detect fatigue cracks of the barrel lower lugs of MLG. The service bulletin also describes procedures for replacement of cracked barrel lower lugs with new or serviceable ones and a follow-on inspection. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–294(B), dated January 15, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct fatigue cracking in the lower lugs of the barrel, which could result in collapse of the MLG. This AD requires repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the barrel of MLG. This AD also requires replacement of cracked lower lugs with new or serviceable ones and a follow-on inspection. The actions are required to be accomplished in accordance with the service bulletin described previously.

Interim Action

The FAA is considering further rulemaking action to supersede this AD to require modification of the lower lugs of the barrel of the MLG, which will constitute terminating action for the repetitive inspections required by this AD action. However, the planned compliance time for these actions is sufficiently long so that prior notice and time for public comment will be practicable.

In addition, the FAA is continuing to investigate whether the existing design of the lower lugs of the barrel makes overhauls or repairs difficult to accomplish correctly. Preliminary investigation results indicate that, following an improperly overhauled or repaired lower lug of the barrel, moisture could enter the joint between the fixed barrel and the shock absorbing portion of the trailing arm of the MLG. Such moisture could result in corrosion and consequent fatigue cracking in the lower lugs of the barrel, which may lead to the collapse of the MLG. Once final action is identified, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–24–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–04–09 Aerospatiale: Amendment 39–9933. Docket 97–NM–24–AD.

Applicability: Model ATR42–300 and ATR42–320 series airplanes, on which the lower lugs of the barrel of the main landing gear (MLG) have been overhauled or repaired, certificated in any category.

Note 1: This AD does not affect new barrel assemblies that have never been overhauled or repaired.

Note 2: 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 fatigue cracking in the lower lugs of the barrel and consequent collapse of the MLG, accomplish the following:

(a) Prior to the accumulation of 2 years time-in-service since last overhaul or repair of the barrel lower lugs of the MLG, or within 60 days after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect fatigue cracks of the lower lugs of the barrel of the MLG, in accordance with Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997.

(1) If no echo is detected or the echo is less than 20%, repeat the ultrasonic inspection thereafter at intervals not to exceed 700 landings.

(2) If any echo is greater than or equal to 20%, prior to further flight, replace the barrel assembly with a new or serviceable barrel assembly, in accordance with the service bulletin. After replacement, prior to the accumulation of 2 years time-in-service on that replacement part, accomplish the actions specified in paragraph (a) 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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The inspections and replacement shall be done in accordance with Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997. 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 Aerospatiale, 316 Route de Bayonne,

31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 7, 1997.

Issued in Renton, Washington, on February 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3843 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 97–CE–06–AD; Amendment 39–9937; AD 97–04–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company (Formerly Beech Aircraft Corporation) Models 1900, 1900C, and 1900D 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) 97–04–02, which was sent previously to known U.S. owners and operators of certain Raytheon Aircraft Company (Raytheon) Models 1900, 1900C, and 1900D airplanes (formerly referred to as Beech Models 1900, 1900C, and 1900D airplanes). This AD requires installing new exterior operating instruction placards for the airstair door, cargo door, and emergency exits, as applicable. This AD results from an accident involving a Raytheon Model 1900C airplane that collided with another airplane while completing its landing roll. The ensuing fire destroyed both airplanes. The actions specified by this AD are intended to assure complete instructions are visible for opening the airstair door, cargo door, or emergency exits, which, if not visible or understandable, could result in the inability to open the airstair door, cargo door, or emergency exits during an emergency situation.

DATES: Effective March 10, 1997, to all persons except those to whom it was made immediately effective by priority letter AD 97–04–02, issued February 4, 1997, 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 March 10, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 25, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97–CE–06–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Rules Docket at the address above, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4124; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On February 4, the FAA issued priority letter AD 97–04–02, which applies to the following Raytheon Aircraft Company (formerly Beech Aircraft Corporation) airplanes:

Model	Serial No.
1900	UA–2 and UA–3.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900C (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–268.

That AD resulted from an accident involving a Raytheon Aircraft Company (Raytheon) Model 1900C airplane (formerly referred to as Beech Model 1900C) that collided with another airplane while completing its landing roll. The ensuing fire destroyed both airplanes.

Investigation following the accident indicates that all occupants of the Raytheon Model 1900C survived the impact of the collision. The emergency crew was not able to open the forward (main boarding) airstair door, and all occupants of the airplane died of smoke inhalation. The airstair door is unlocked and opened from the outside by depressing a release button while simultaneously rotating the door handle downward. The FAA believes that the instructions for opening the main boarding door of the Raytheon Model 1900C airplane were either not visible or not easily understandable.

Inspection of another Raytheon Model 1900C airplane revealed incomplete instructions for opening the airstair door. Specifically, these instructions consisted of a small placard with black letters 2/10-inch high on a white background, located aft and slightly lower than the door handle with the following information: ''PUSH BUTTON AND TURN HANDLE TO OPEN.'' The button was neither outlined nor highly visible, and the instructions did not include the requirement of depressing the button while simultaneously rotating the handle and they did not indicate which direction to move the handle.

Discussion of the Applicable Service Information

The FAA has reviewed and approved Raytheon Aircraft Mandatory Service Bulletin No. 2741, Issued: February, 1997. This service bulletin specifies installing (1) new exterior operating instruction placards for the airstair door and cargo door for Raytheon Models 1900 and 1900C airplanes; and (2) new exterior operating instruction placards for the airstair door, cargo door, and emergency exits for Raytheon Model 1900D airplanes. The placards and procedures for installing the placards are included with the following kits:

Raytheon Part Number (P/N) 114–5050–3, Exterior Marking Placard Kit, for Model 1900 airplanes, serial numbers UA–2 and UA–3.

Raytheon P/N 114–5050–1, Exterior Marking Placard Kit, for Model 1900C, serial numbers UB–1 through UB–74, and UC–1 through UC–174; and Model 1900C (C–12J) airplanes, serial numbers UD–1 through UD–6.

Raytheon P/N 129–5030–1, Exterior Marking Placard Kit, for Model 1900D airplanes, serial numbers UE–1 through UE–268.

The FAA's Determination and Explanation of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models 1900, 1900C, and 1900D airplanes of the same type design, the FAA issued priority letter AD 97–04–02 to assure complete instructions are visible for opening the airstair door, cargo door, or emergency exits, which, if not visible or understandable, could result in the inability to open the airstair door, cargo door, or emergency exits during an emergency situation. The AD requires installing new exterior operating instruction placards for the airstair door, cargo door, and emergency exits, as

applicable. The placards and instructions to accomplish the instructions are included with the kits previously referenced.

Compliance Time of This AD

The compliance time of this AD is presented in calendar time (20 days). The FAA has determined that calendar time is appropriate because incorporating the placard is not related to airplane flight hours and needs to be incorporated on all airplanes within a reasonable period of time. This compliance time of 20 days was selected to ensure that the action is accomplished within a reasonable amount of time without negatively impacting the operations of the Raytheon Models 1900, 1900C, and 1900D airplane fleet.

Determination of the Effective Date of the AD

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 lettters issued on February 4, 1997, to known U.S. operators of certain Raytheon Models 1900, 1900C, and 1900D 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.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–06–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–04–02 Raytheon Aircraft Company (formerly Beech Aircraft Corporation): Amendment 39–9937; Docket No. 97–CE–06–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial No.
1900	UA–2 and UA–3.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900C (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–268.

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

Compliance: Required within the next 20 days after the effective date of this AD, unless already accomplished, except to those operators receiving this action by priority letter issued February 4, 1997, which made these actions effective immediately upon receipt.

To assure complete instructions are visible for opening the airstair door, cargo door, or emergency exits, which, if not visible or understandable, could result in the inability to open the airstair door, cargo door, or emergency exits during an emergency situation, accomplish the following:

(a) Install new exterior operating instruction placards for the airstair door and cargo door of Raytheon Models 1900 and 1900C airplanes; and the new exterior operating instruction placards for the airstair door, cargo door, and emergency exits of Raytheon Model 1900D airplanes. The placards and procedures for installing the placards are included with the following kits, as referenced in Raytheon Aircraft Mandatory Service Bulletin No. 2741, Issued: February, 1997:

(1) Raytheon Part Number (P/N) 114–5050–3, Exterior Marking Placard Kit, for Model 1900 airplanes, serial numbers UA–2 and UA–3;

(2) Raytheon P/N 114–5050–1, Exterior Marking Placard Kit, for Model 1900C airplanes, serial numbers UB–1 through UB–74, and UC–1 through UC–174; and Model

1900C (C–12J), serial numbers UD–1 through UD–6; or

(3) Raytheon P/N 129–5030–1, Exterior Marking Placard Kit, for Model 1900D airplanes, serial numbers UE–1 through UE–268.

Note 2: Raytheon Aircraft Mandatory Service Bulletin No. 2741, Issued: February, 1997, references the above kits and contains other information relating to this subject.

(b) Overlapping the registration numbers through proper installation of the placards is permissible as specified in section 45.21, paragraph (b), of the Federal Aviation Regulations (14 CFR 45.21(b)). If this requirement cannot be met, obtain an alternative method of compliance using the instructions in paragraph (c) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Airworthiness 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.

(d) The installations required by this AD shall be done in accordance with the instructions to the following kits, as referenced in Raytheon Aircraft Mandatory Service Bulletin No. 2741, Issued: February, 1997:

—Raytheon Part Number (P/N) 114–5050–3, Exterior Marking Placard Kit, for Model 1900 airplanes, serial numbers UA–2 and UA–3;

—Raytheon P/N 114–5050–1, Exterior Marking Placard Kit, for Model 1900C airplanes, serial numbers UB–1 through UB–74, and UC–1 through UC–174; and Model 1900C (C–12J), serial numbers UD–1 through UD–6; and .

—Raytheon P/N 129–5030–1, Exterior Marking Placard Kit, for Model 1900D airplanes, serial numbers UE–1 through UE–268.

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 Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment (39–9937) becomes effective on March 10, 1997, to all persons except those persons to whom it was made immediately effective by priority letter AD 97–04–02, issued February 4, 1997, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on February 11, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3957 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 97–NM–27–AD; Amendment 39–9940; AD 97–04–15]

RIN 2120–AA64

Airworthiness Directives; Pacific Scientific Company, HTL/Kin-Tech Division, Fire Extinguisher Bottle Cartridges

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridges (squibs), which may be installed on various transport category airplanes. This action requires a one-time inspection of the electrical receptacle of these fire extinguisher bottle cartridges and their mating connectors to detect the presence of aluminum foil in the area of the pins of the cartridges and the connectors, and removal of any aluminum foil that is present. This amendment is prompted by a report of failure of a fire extinguisher bottle cartridge to discharge as a result of the presence of aluminum foil in the cartridge, which caused electrical shorting of the pins. The actions specified in this AD are intended to prevent such shorting, which could result in failure of the fire extinguisher bottle to discharge when commanded.

DATES: Effective March 7, 1997.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–27–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5245; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA received a report indicating that a Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridge (squib) failed to discharge when commanded. Investigation revealed that aluminum foil was present in the cartridge, which caused electrical shorting of the pins. Aluminum foil is used to shunt the electrical pins of the cartridge for shipping purposes. The aluminum foil had not been removed properly prior to installation of the fire extinguisher bottle cartridge. Further investigation revealed that the electrical shorting condition existed on six other installed cartridges.

The affected cartridges are Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridges having part numbers 13083–10 and 13083–25.

Electrical shorting of the pins in the fire extinguisher bottle cartridges, if not corrected, could result in failure of the fire extinguisher bottle to discharge when commanded.

FAA's Determination

The FAA has determined that, in order to ensure that the fire extinguisher bottle will discharge when commanded, Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridges having part numbers 13083–10 and 13083–25 must be inspected to ensure that any aluminum foil is removed from the fire extinguisher bottle cartridges installed on the affected airplanes.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other components of the same type design installed on transport category airplanes, this AD is being issued to prevent electrical shorting of the pins of the fire extinguisher bottle cartridge, which could result in failure of the fire extinguisher bottle to discharge when commanded. This AD requires a one-time visual inspection of the electrical receptacle of certain Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridges and their mating connectors to detect the presence of aluminum foil in the area of the pins of the cartridges and the connectors, and removal of any aluminum foil that is present.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and

opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket Number 97–NM–27–AD. The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–04–15 Pacific Scientific Company, HTL/KIN-Tech Division: Amendment 39–9940. Docket 97–NM–27–AD.

Applicability: Fire extinguisher bottle cartridges (squibs) having part numbers (P/N) 13083–10 and –25; as installed in, but not limited to, the following airplane models, certificated in any category:

de Havilland Model DHC–7 series airplanes;

de Havilland Model DHC–8–100 and –300 series airplanes;

General Dynamics Convair Model 340, 440, and C–131 (military) series airplanes modified in accordance with Supplemental Type Certificate SA41100;

Lockheed Model 382 series airplanes; and

Sabreliner Model 60, 65, and 75A series airplanes.

Note 1: This AD applies to Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridges having P/N's 13083–10 and –25, as installed on any airplane, regardless of whether the airplane 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 electrical shorting of the pins of the fire extinguisher bottle cartridge, which could result in failure of the fire extinguisher bottle to discharge when commanded, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the following:

(1) Pull the applicable circuit breakers and disconnect the electrical connector from any Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridge (squib) having P/N 13083–10 or 13083–25. CAUTION: Prior to removing the electrical connector from the fire extinguisher bottle cartridge, ensure that the technician is grounded properly. Cartridges are electrostatic discharge (ESD) sensitive.

(2) Perform a one-time visual inspection of the electrical receptacle of the cartridge and its mating connector to detect the presence of aluminum foil in the area of the pins of the cartridge and the connector. The aluminum foil may have the appearance of solder. Remove any aluminum foil that is present.

(3) Reinstall the electrical connector, and reset the applicable circuit breakers.

Note 2: Inspections and removal of foil accomplished prior to the effective date of this AD in accordance with Pacific Scientific Service Letter 97–018.BC, dated January 21, 1997, are considered acceptable for compliance with the requirements of this AD.

(b) As of the effective date of this AD, no person shall install on any airplane a Pacific Scientific Company, HTL/Kin-Tech Division, fire extinguisher bottle cartridge having P/N 13083–10 or 13083–25, unless the cartridge has been inspected in accordance with paragraph (a)(2) 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, 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.

(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) This amendment becomes effective on March 7, 1997.

Issued in Renton, Washington, on February 12, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4102 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–37; Amendment 39–9732; AD 96–18–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 96–18–08 applicable to Pratt & Whitney PW2000 series turbofan engines that was published in the Federal Register on September 30, 1996 (61 FR 50984). A superfluous phrase was added to the compliance section and is incorrect. This document deletes that phrase. In all other respects, the original document remains the same.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Pratt & Whitney PW2000 series turbofan engines, was published in the Federal Register on September 30, 1996 (61 FR 50984). The following correction is needed:

§ 39.13 [Corrected]

On page 50986, in the third column, in the Compliance Section of AD 96–18–08, in paragraph (n)(3), beginning in the second line, ''prior to exceeding 20,000 TPC, accomplish the following:'' is corrected to read ''prior to exceeding 20,000 TPC.''.

Issued in Burlington, MA, on February 5, 1997.

James C. Jones,

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

[FR Doc. 97–4142 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–ANE–37; Amendment 39–9874; AD 97–01–03]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 97–01–03 applicable to certain Textron Lycoming reciprocating engines that was published in the Federal Register on January 3, 1997 (62 FR 307). Paragraph (g) in the compliance section was misdesignated as paragraph(f). This document redesignates that paragraph. In all other respects, the original document remains the same.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Franco Pieri and Pat Perrotta, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581; telephone (516) 256-7526 and (516) 256–7534, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to certain Textron Lycoming reciprocating engines, was published in the Federal Register on January 3, 1997 (62 FR 307). The following correction is needed:

§ 39.13 [Corrected]

On page 309, in the first column, in the Compliance Section, the second paragraph ''(f)'' is redesignated to read paragraph ''(g)''.

Issued in Burlington, MA, on February 5, 1997.

James C. Jones,

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

[FR Doc. 97–4143 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 93–AWA–13]

RIN 2120–AA66

Modification of Los Angeles (LAX) Class B Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the Federal Register on December 19, 1996 (61 FR 66902), Airspace Docket No. 93–AWA–13. This rule modified the Los Angeles (LAX) Class B airspace area. In the final rule, the airspace designation as Area G inadvertently contained two errors. This action corrects those errors.

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: Federal Register Document 96–32109, Airspace Docket No. 93–AWA–13, published on December 19, 1996 (96 FR 66902), modified the LAX Class B airspace area. However, in the rule the description for Area G inadvertently described the portion of the area after Imperial Hwy/ Pacific Ocean with incorrect coordinates. This action corrects the coordinates after Imperial Hwy/Pacific Ocean by replacing them with the correct coordinates. Additionally, the airspace designation contained a descriptive boundary line defined by coordinates that should not have been included in the legal description. This action corrects the description of Area G by removing those coordinates.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for Area G, for the Class B airspace area as published in the Federal Register on December 19, 1996, (61 FR 66906; Federal Register Document 96–32109, Column 3) is corrected as follows:

§ 71.71 [Corrected]

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′48″ N, long. 118°13′54″ W; 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.

* * * * *

Issued in Washington, DC, on January 30, 1997.

William J. Marx,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–3236 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASW–29]

Revocation of Class D Airspace; Blytheville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action revokes the Class D airspace at Blytheville, AR. The decommissioning of the Blytheville, Arkansas International Airport control tower removes the need for Class D airspace extending upward from the surface to, but not including, 2,800 feet Mean Sea Level (MSL) within a 4.6-mile radius of the airport. This action is intended to revoke the unnecessary Class D airspace.

DATES: *Effective date:* 0901 UTC, March 7, 1997.

Comment date: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 96–ASW–29, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves the revocation of Class D airspace at Blytheville, AR, and was not preceded by notice and public procedure, comments are invited on the rule. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Interested parties are invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class D airspace, providing controlled airspace for terminal instrument operations, located at Blytheville, Arkansas International Airport, AR. The current Class D airspace was supported by a control tower, which was decommissioned following the closure of Eaker Air Force Base, subsequently renamed Blytheville, Arkansas International Airport.

Since this action merely involves the revocation of Class D airspace as a result of closing the airport control tower, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Since there will no longer be a control tower at Blytheville, Arkansas International Airport, the Class D airspace must be removed to avoid confusion on the part of the pilots flying in the vicinity of the airport, and to promote the safe and efficient handling of air traffic in the area. Therefore, I find that notice and public procedure under 5 U.S.C. 553 are unnecessary and good cause exists for making this amendment effective in less than thirty days.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace areas designated for an airport.

* * * * *

ASW AR D Blytheville, AR [Removed]

* * * * *

Issued in Fort Worth, TX, on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4211 Filed 2–19–97; 8:45 am]

BILLING CODE 4913–13–M

14 CFR Part 71

[Airspace Docket No. 97–ASW–01]

Removal of Class D Airspace; Shreveport Downtown Airport, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action removes the Class D airspace at Shreveport Downtown Airport, LA. The air traffic control tower at Shreveport Downtown Airport closed on December 31, 1995, and no longer provides services to aircraft operating at this airport. This action is intended to remove the controlled airspace for aircraft operating in the vicinity of Shreveport Downtown Airport, LA.

DATES: Effective date: 0901 UTC, April 21, 1997.

Comment date: Comments must be received on or before April 7, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–01, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes the Class D airspace, providing controlled airspace for airport operations, located at Shreveport Downtown Airport, LA. The closing of the air traffic control tower allows removal of the Class D airspace previously required to provide adequate controlled airspace for aircraft operating in the vicinity of the airport. This removal will avoid confusion on the part of the pilots flying near the airport, and promote the safe and efficient handling of air traffic in the area. This action will remove the Class D airspace at Shreveport Downtown Airport, LA. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D. dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR § 71.1. The Class D airspace designation listed in this document will be published subsequently in 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. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Additionally, removal of this Class D airspace will result in less restrictive airspace and reclassifying airspace to a less restrictive classification usually results in less adverse comments. 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. 97–ASW–01.'' 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.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace designated for an airport.

* * * * *

ASW LA D Shreveport Downtown Airport, LA [Removed]

* * * * *

Issued in Fort Worth, TX, on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4210 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASW–05]

Establishment of Class E Airspace; Sonora, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Class E airspace extending upward from 700 feet above ground level (AGL) at Canyon Ranch Airport, Sonora, TX. The development of a Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 32 at Canyon Ranch Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rule (IFR) operations for aircraft executing the VOR/DME SIAP to RWY 32 at Canyon Ranch Airport, Sonora, TX.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On June 19, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Canyon Ranch Airport, Sonora, TX, was published in the Federal Register (61 FR 31066). A VOR/DME SIAP to RWY 32 developed for Canyon Ranch Airport, Sonora, TX, requires the establishment of Class E airspace at this airport. The proposal was to establish the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. However, the proposal was published with an incorrect coordinate for the location of the Canyon Ranch Airport, Sonora, TX. The correct coordinates for the airport should have been (Lat. 30°16′09″ N, long. 100°27′03″ W). The description of the Class E airspace in this rule has been revised to reflect this change. The FAA has determined that this change will not increase the scope of this rule. Therefore, except for the non-substantive, editorial changes to correct the airport coordinates, the rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more AGL 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 published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes the Class E airspace located at Canyon Ranch Airport, Sonora, TX, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the VOR/DME SIAP to RWY 32.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Sonora Canyon Ranch, TX [New]

Sonora, Canyon Ranch Airport, TX
(Lat. 30°16′09″ N., long. 100°27′03″ W.)
Rocksprings VOR
(Lat. 30°00′53″ N., long. 100°17′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Canyon Ranch Airport, and within 1.8 miles each side of the 333° bearing from the Rocksprings VOR extending from the 6.6-mile radius to 7.6 miles southeast of the airport, excluding that airspace which overlies the Rocksprings Four Square Ranch Airport Class E area.

* * * * *

Issued in Fort Worth, TX, on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4209 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 91, 119, 121 and 135

[Docket No. 28577, Special Federal Aviation Regulation (SFAR) No. 78]

RIN 2120–AG11

Special Flight Rules in the Vicinity of the Rocky Mountain National Park; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the Federal Register (62 FR 1192) on January 8, 1997. The final rule establishes temporary Special Federal Aviation Regulations (SFAR) at Rocky Mountain National Park (RMNP) to preserve the natural enjoyment of visitors to RMNP by preventing any

potential adverse noise impact from aircraft-based sightseeing overflights.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Neil Saunders (202–267–8783).

Correction of Publication

In the rule document (FR Doc. 97–435) on page 1192 in the issue of Wednesday, January 8, 1997, Amendment numbers were inserted incorrectly in the docket line of the heading. Please make the following corrections: On page 1192, column 1, in the heading, the docket line in brackets is corrected to read as set forth above.

Issued in Washington, DC on February 11, 1997.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 97–4210 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Alternative Method of Compliance With the Written Record Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory; alternative method of compliance.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is issuing advice concerning compliance with the ''written'' record requirements of Commission Regulation 1.35 (17 CFR 1.35) for customer orders which are prepared and transmitted to and reported from exchange trading pits by electronic order-routing systems and for customer orders prepared by electronic off-floor order management systems (referred to collectively as ''electronic order-routing systems''). The ''written'' record requirements of Commission Regulation 1.35(a–1)(1), (a–1)(2)(i), (a–1)(4), and/or (d) will be deemed satisfied, subject to the terms and conditions set forth in this Advisory, to the extent that such a system generates electronic rather than ''written'' records. The electronic record of a customer order generated through an electronic order-routing system must include any modification made to the order, including any change or correction, as well as the time the modification is recorded in the system. The system also must maintain an accurate record of when and by whom records are accessed or modified. In addition, such a system must capture all order-related times required under these Commission Regulation 1.35 subsections to the highest level of precision achievable by the operating system. In this regard, such a captured time must be accurate at least to the second. The time captured must not use a clock that can be modified by the person entering the order. All electronic records of customer orders created by an electronic order-routing system must be maintained in accordance with the record retention requirements of Commission Regulation 1.31.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Browning, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is hereby issuing guidance concerning alternative compliance with the ''written'' record requirements of certain Commission Regulation 1.35 subsections which call for the preparation of ''written'' records of customer orders. Specifically, Regulation 1.35(a–1)(1) requires that a futures commission merchant (''FCM'') and introducing broker (''IB''), immediately upon receiving a customer's or option customer's order, prepare a written record of such order, including the account identification, order number, and a timestamp indicating the date and time, to the nearest minute, the order is received.[1] Similarly, Regulation 1.35(a–1)(2)(i) provides that each member of a contract market who receives a customer order on an exchange floor that is not in the form of a written record immediately upon receipt of such order prepare and timestamp a written record of the order.[2] For all such orders, Regulation 1.35(a–1)(4) requires an exit timestamp indicating the date and time of the report of execution.[3] Regulation 1.35(d) provides that a contract market member who executes a trade must prepare a trading card or other record showing the fill information for the customer purchase or sale order.[4]

The Commission is issuing this Advisory to facilitate further the implementation and use of electronic order-routing systems, including both proprietary and exchange systems, in U.S. futures markets. This action constitutes the latest in a series of steps taken by the Commission to encourage the futures industry to realize the business and regulatory benefits of such systems. Recently, to advance the public dialogue on improving the efficiency of exchange and proprietary order-routing systems and to discuss potential practicability issues related to audit trail standards,[5] the Commission convened a public Roundtable in Chicago, Illinois on October 16, 1996. At that forum, market users, financial market experts,

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[1] Commission Regulation 1.35(a–1)(1) states that:

Each futures commission merchant and each introducing broker receiving a customer's or option customer's order shall immediately upon receipt thereof prepare a written record of such order, including the account identification and order number, and shall record thereon, by time-stamp or other timing device, the date and time to the nearest minute, the order is received, and in addition, for [an] option customer's order, the time, to the nearest minute, the order is transmitted for execution.

[2] Commission Regulation 1.35(a–1)(2)(i) states that:

Each member of a contract market who on the floor of such contract market receives a customer's or option customer's order which in not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, such order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of such order in non-erasable ink, including the account identification and order number and shall record thereon, by time-stamp or other timing device, the date and time, to the nearest minute, the order is received.

[3] Commission Regulation 1.35(a–1)(4) states that:

Each member of a contract market reporting the execution from the floor of the contract market of a customer's or option customer's order or the order of another member of such contract market received in accordance with paragraphs (a–1)(2)(i) * * * of this section, shall record on a written record of such order, including the account identification and order number, by time-stamp or other timing device, the date and time to the nearest minute such report of execution is made. Each member of a contract market shall submit the written records of customer orders or orders from other contract market members to contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph as required by contract market rules adopted in accordance with paragraph (j)(1) of this section. The execution price and other information reported on such order tickets must be written in non-erasable ink.

[4] Commission Regulation 1.35(d) states, among other things, that:

Each member of a contract market who, in the place provided by the contract market for the meeting of persons similarly engaged, executes purchases or sales of any commodity for future delivery or commodity option on or subject to the rules of such contract market, shall prepare regularly and promptly a trading card or other record showing such purchases and sales. Such trading card or record shall show the member's name, name of the clearing member, transaction date, time, quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call and strike price. Such trading cards or other record shall also clearly identify the opposite floor broker or floor trader with whom the transaction was executed, and the opposite clearing member.

[5] Section 5a(b)(3) of the Futures Trading Practices Act of 1992 (''FTPA'') sets forth various heightened audit trail requirements which are subject to a ''practicability'' standard.

exchange officials and academics met to discuss the trade automation issues currently before the futures industry. Discussion at the Roundtable demonstrated the significance of the development and implementation of exchange and proprietary electronic order-routing systems to the continuing competitiveness of the U.S. exchanges and their member firms.[6] Previously, in February and March 1996, the Commission received automation briefings by the Chicago Mercantile Exchange (''CME''), New York Mercantile Exchange, Coffee, Sugar & Cocoa Exchange, Inc., Chicago Board of Trade, and the Futures Industry Association. The Commission issued a public summary of these proceedings on May 10, 1996, entitled the ''Market Automation Briefings-Commission Summary.''

The Commission has recognized the important business benefits that can result from electronic order routing systems.[7] The Commission also has emphasized that the FTPA ''does not mandate that its enhanced audit trail requirements be met through electronic means.'' [8] Nevertheless, the Commission believes that ''the effective use of technology [will ultimately] * * * provide safer, more efficient, well-supervised markets.'' [9]

II. Staff No-Action Positions Previously Taken Regarding Electronic Order-Routing Systems

To date, the Commission's Division of Trading and Markets (''Division''), in consultation with the Commission's Office of Information Resources Management (''OIRM''), has issued four no-action letters relating to electronic order-routing systems. Each of the no-action letters provided that the use of a specified electronic order-routing system was not inconsistent with the ''written'' record preparation requirements of Commission Regulation 1.35. Two letters addressed systems which involved transmission of orders to and from a trading pit. One of those letters dealt with a firm proprietary system [10] and the other an exchange system.[11] The two other letters involved firm proprietary electronic off-floor order management systems.[12] Essentially, those systems provide for the electronic generation, modification, and maintenance of a firm's ''office'' orders, that is, both discretionary and non-discretionary orders required to be prepared pursuant to Commission Regulation 1.35(a–1)(1).

In assessing both the Timber Hill System [13] and the TOPS–CUBS Program,[14] Division and OIRM staff found both systems are used to generate, in electronic form, all of the customer order information required by Commission Regulation 1.35. In this regard, both the Timber Hill System and the TOPS–CUBS Program capture all modifications made to a customer order, including changes and/or cancellations, as well as the times of such modifications to the nearest second. Moreover, in those cases where an order is filled partially, both the Timber Hill System and the TOPS–CUBS Program reflect the actual quantity that has been executed and timestamp the report of the partial execution to the nearest second. Commission staff also found that both the Timber Hill System and the TOPS–CUBS Program record the necessary Regulation 1.35 times for receipt of customer orders and report of execution times from the trading pit and do so more precisely than is required under the one minute standard in Regulation 1.35.

With respect to the storage of customer order data, both the Timber Hill System [15] and the TOPS–CUBS Program [16] maintain Commission Regulation 1.35 order information [17] for the statutorily required five-year time period, as provided under Regulation 1.31.[18] The staff found that both systems

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[6] The Commission shortly will be issuing a public summary of the Roundtable proceedings.

[7] *See* the Commission's ''Report on Audit Trail Status and Re-Test'' dated August 12, 1996 at p. 42.

[8] *See* the Commission's November 1994 ''Report to Congress on Futures Exchange Audit Trails'' at p. 62.

[9] *See* the Commission's May 10, 1996 ''Market Automation Briefings-Commission Summary'' at p. 3.

[10] On July 8, 1996, the Division issued a letter to CME that permitted the CME to allow one of its clearing member firms, Timber Hill, LLC (''Timber Hill'') to use, on a permanent basis, a handheld trading device and system (''Timber Hill System'') to receive customer orders in and report executions from the equity quadrant of the CME, described *infra*. By letter dated August 25, 1995, the Division originally permitted the CME to use the Timber Hill System for a 90-day pilot program. Extensions of that pilot program were subsequently granted by the Division.

[11] On June 14, 1996, the Division issued a letter that allowed a six-month pilot program to be implemented at CME under which certain CME member firms and floor broker groups are allowed to route customer orders for the front month of the CME's Eurodollar futures contract through the CME's electronic order-routing system, the ''Trade Order Processing System'' (''TOPS''), to the CME's order receipt system, the ''Universal Broker Station'' (''CUBS'') (''TOPS–CUBS Program''), described *infra*. By letter dated December 13, 1996, Division staff permitted CME to extend the TOPS–CUBS Program to June 13, 1997.

[12] On July 21, 1994, the Division issued a letter to Goldman, Sachs & Co. (''Goldman Sachs'') permitting it to implement its automated order preparation and record keeping system, Automated Order Routing and Trade Accounting (''AORTA''). The AORTA system is described *infra*.

On September 12, 1996, the Division issued a similar letter to Morgan Stanley & Co. (''Morgan Stanley'') permitting it to implement its automated Order Management System (''OMS''), described *infra*.

[13] In summary, under the Timber Hill System, a customer enters his order(s) electronically through a customer workstation(s) located on his premises. That order then is transmitted via the Timber Hill Network to a basestation located on the CME trading floor in a booth in proximity to the CME's Standard & Poors 500 and NASDAQ 100 futures and options pits. Upon receipt of the order by the floor basestation, the basestation broadcasts it to a wireless handheld device held by a Timber Hill floor broker located in the trading pit for execution. Upon execution (partial or complete), the order's fill information, as input into the handheld device by the floor broker, is transmitted from the handheld unit back to the basestation. The basestation then transmits the fill confirmation information back to the customer at his workstation via the Timber Hill System.

[14] In summary, TOPS is an electronic order entry, routing and fill reporting system. Under the TOPS–CUBS Program, orders for the Eurodollar futures contract are transmitted through TOPS, which includes terminals located off the trading floor, to CUBS computer terminals and associated software designed for use by a broker and/or a broker's clerk while at or in the trading pit. The CUBS system is a wired broker workstation that sits on a pedestal in the pit. It receives orders routed by TOPS and performs electronic order deck management.

[15] The Timber Hill System basestation maintains an on-line file of all customer orders transmitted through it, including order-related timestamps. CME receives this file from the basestation via a serial port feed (cable) on a real-time basis. Upon receipt of the basestation data, CME maintains it in machine-readable form and will keep it for the required five-year time period as provided under Commission Regulation 1.31, described *infra*.

Timber Hill also provides data for all customer orders executed through the Timber Hill system to the CME's clearing system via the on-line system which all CME member firms use to submit trade data to the CME's clearing system, the TREX Record. In addition, customer trade data are stored on the hard drives of customer workstations. On a daily basis, Timber Hill backs up to magnetic tape all customer trade data generated through the basestation, the main/''host'' computer and the customer workstations. Within one week of being generated, such data are placed on an optical disc(s). Twice a month, duplicate optical disks are deposited in a vault located off-site.

[16] Customer order data generated by trading activity occurring under the TOPS–CUBS Program are stored in two separate databases, a TOPS database and a CUBS database. This storage is conducted in accordance with the CME's routine security and disaster prevention procedures. As a preliminary matter, data in both databases is ''backed-up'' every evening onto a series of disk drives on the CME's mainframe computer, where it is stored for 30 days. Subsequently, CME stores the data from both databases in its archives on cartridge tape in a secure location.

[17] Commission Regulation 1.35(a) requires, among other things that each FCM, IB and member of a contract market must ''keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business dealing in commodity futures, commodity options, and cash commodities.'' Regulation 1.35(a) further provides that such records, which include all orders (filled, unfilled, or cancelled) and trading cards are to be maintained in accordance with the requirements of Regulation 1.31.

[18] Commission Regulation 1.31 requires, among other things, that:

All books and records required to be kept by the [Commodity Exchange] Act or [Commission]

were not inconsistent with that regulation, which permits data generated in electronic form to be maintained in optical media and in other forms. In addition, all Regulation 1.35 order information stored in connection with the Timber Hill System and the TOPS–CUBS Program, as described above, is made available, in a timely manner, for access by the Commission upon request in hard copy or machine readable form.

With respect to the TOPS–CUBS Program, Commission staff noted that the Program's ability to record electronically and automatically required Regulation 1.35 customer order information, including order-related times, enhances the preparation of customer data in terms of accuracy and detection of changes and should provide regulatory benefits.[19] The Timber Hill System provides similar benefits.

As previously noted, the two other staff no-action letters relate to electronic office order management systems. Those systems involve the electronic generation, maintenance and retention of office orders related to exchange trading. In general, the systems are intended to increase the efficiency with which these firms manage their order books, including through increased integration with other firm and customer activities. To date, both the Goldman Sachs AORTA system and the Morgan Stanley OMS system do not involve electronic transmission of orders to and from the exchange floor.[20] Nonetheless, these systems involve issues similar to those relating to the Timber Hill System and the TOPS–CUBS Program, but within the confines of their more limited operational scope.

In assessing the AORTA and OMS systems, Division and OIRM staff found that both systems record, in electronic form, all of the customer order information required by Commission Regulation 1.35 for office orders.[21] In addition, both systems were found to capture the time of order entry, the time of the transmission of a customer order to the floor, and the time that a sales person enters order fill (partial or complete) information into his system.[22] Both AORTA and OMS record any change to the customer order information, including the identity of the sales person making any change and the time of such change.

With respect to data storage, both AORTA and OMS were found to satisfy the record retention requirements of Commission Regulation 1.31.[23] Moreover, both of those systems were found to provide regulatory benefits in that they enhance the standards for office order preparation as provided under Commission regulation 1.35.

III. Discussion

The Commission believes that it is appropriate to take into account and to facilitate automation developments that are occurring with respect to exchange-related trading. The Commission also believes that it is preferable to do so through the issuance of this Advisory rather than through the case-by case approach taken by staff in response to the aforementioned proposals for electronic order-routing systems. This Advisory will enable new order routing systems to come on line without the necessity of first seeking a no-action position regarding the ''written'' record requirements of Commission Regulation 1.35. As a result, the important business and regulatory benefits these systems can provide will be fostered.

For an electronic order-routing system to be covered by this Advisory, it must satisfy the standards discussed below.[24] Those standards are consistent with the terms of the staff no-action positions previously taken regarding such systems and take cognizance of such systems' enhanced operational capabilities.

To the extent that an electronic order-routing system captures information required under Commission Regulation 1.35(a–1)(1), (2)(i), (4), and/or (d), and provided such system satisfies the standards set forth below, a ''written'' record need not be prepared. To the extent that a system is intended to satisfy one or more of those provisions, then the system must include all information that otherwise would be required to be in written form. Moreover, insofar as a system is used to comply with any one or more of the foregoing sections, it must include all information required by that section(s).[25]

The electronic record of a customer order generated by an electronic order-routing system must include any and all modifications made thereto. The record must include any changes and/or cancellations. All order-related times required under Commission Regulation 1.35, as well as the times for all modifications, are to be captured to the highest level of precision achievable by the operating system. In this regard, the Commission's experience is that these systems have the capability, at a minimum, to capture times to the second. Therefore, the Commission is requiring that such times must be accurate at least to the second. In addition, the times captured must not use a clock that can be modified by the person entering the order.

These systems also need to conform to the Commission's record keeping requirements as provided in Commission Regulation 1.31 for computer-generated records. Pursuant to that rule, computer-generated records can be substituted for a hard copy report when produced and maintained on optical disk in conformity with 1.31(d), microfilm, or microfiche. A computer-generated record used in lieu of a hard copy must be transferred to one of these three permitted non-erasable media ''as soon as is feasible.'' [26] In addition, ''appropriate safeguards'' must be in place to protect any such records temporarily stored in erasable form so as

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regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first [two] years of the [five] year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice [(''DOJ'')].

[19] *See* the Division's June 14, 1996 letter to Stephen Szarmack of the CME regarding the CME's request for no-action relief for the six-month pilot TOPS–CUBS Program at p. 13.

[20] For reasons unrelated to applicable regulatory requirements, the implementation of both of these systems has been delayed.

[21] In summary, the AORTA and OMS systems operate as follows: sales personnel prepare a computerized office order ''ticket,'' instead of a paper ticket, immediately upon receipt of a customer order and enter all of the customer order information currently required under Regulation 1.35. Both systems record, automatically, the precise time to the nearest second at which an order was entered. Upon order entry, sales personnel then send orders to the floors by telephone and indicate by keystroke that the order has been transmitted. Both systems automatically record a second time indicating when the order was transmitted to the floor. Fill information, including the report of execution time, is transmitted back from the floor to sales personnel, who enter that information into their system.

[22] This exceeds the requirements of Commission Regulation 1.35(a)(a–1)(i), which calls for the time a customer order was received and, for options, also the time the order is transmitted for execution.

[23] AORTA stores all records of customer orders on optical disk. Records produced and retained by AORTA are available for production to the Commission or the DOJ in hard copy, on diskette, or on CD–ROM.

All records of customer orders generated on OMS are stored on Morgan Stanley's Sybase Relational Database Management System (''Sybase''). Morgan Stanley supplements storage of data on Sybase with a hard copy/microfiche regime under which all transaction-related information is reproduced from Sybase on a daily basis and kept either in hard copy or microfiche for five years.

[24] If an order-routing system did not satisfy any of the standards set forth herein, then the operator of the system would still be able to request an individual no-action position as appropriate.

[25] In particular, the Commission notes that it is critical for such systems to satisfy the account identification requirements of Regulation 1.35.

[26] *See* the Commission's Regulation 1.31 final rulemaking, which allows production of computer-generated records on optical disk to be immediately substituted for hard copy reports for purposes of record storage. 58 FR 27458 (May 10, 1993) at 27460. The Commission also notes that it may be necessary to amend Regulation 1.31 to account for further technological developments.

to prohibit unauthorized access to the records and to provide for a record of the identity of the persons who access such records and of any modifications made.[27] In addition, assurance must be provided that a computer-generated record will be made readily available in machine-readable media or hard copy to the Commission or DOJ upon request. Moreover, records stored on ''machine readable media must use a format and coding structure'' specified in such a request by the Commission or DOJ.[28]

The Commission recognizes that the development of electronic order-routing systems continues to be in flux. The Commission intends to continue to monitor that process with a view toward providing further guidance by advisory or rule in the future. Among other things, the Commission will evaluate the manner in which electronic order-routing systems may interface with other audit trail recordkeeping practices in place at an exchange.

IV. Conclusion

To the extent that a customer order is prepared and transmitted to and reported from an exchange trading pit by an electronic order-routing system, or a customer order is prepared by an electronic off-floor order management system, and the standards set forth below are satisfied, then the ''written'' record requirements of Commission Regulation 1.35(a–1)(1), (a–1)(2)(i), (a–1)(4), and/or (d) will be deemed satisfied by the electronic record generated by the system. Specifically, such electronic records must:

(1) Include the customer order information required under Commission Regulation 1.35.(a–1)(1), (2)(i), (a–1)(4) and/or 1.35(d);

(2) Include any modification, including any change and/or cancellation, that is made to an order and indicate the time the modification is recorded in the system;

(3) Record all Commission-required and other order-related times, including order entry and exit times, and the time of any modification made to a customer order, including any change and/or cancellation, to the highest level of precision achievable by the operating system, but at least to the second. The times captured must not use a clock that can be modified by the person entering the order;

(4) Be kept in hard copy and/or allowable hard copy substitution media, as provided under Commission Regulation 1.31. The stored records shall be open to inspection by the Commission or DOJ as required under Commission Regulation 1.31 and be made readily available to the Commission or DOJ in machine-readable media or hard copy upon request. Records stored on machine-readable media must use a format and coding structure specified in the Commission request. To the extent that records temporarily are stored in erasable form, appropriate security measures must be implemented by the system operator to prohibit any unauthorized access to the records and to maintain an accurate record of when and by whom records are accessed or modified.

Issued in Washington, DC on February 12, 1997.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–4004 Filed 2–19–97; 8:45 am]

BILLING CODE 6351–01–P

[27] Id.

[28] Id. at 27465.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 96F–0184]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Sulphopropyl Cellulose

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 a change in the level of reactants for sulphopropyl cellulose ion-exchange resin for the recovery and purification of proteins for food use. This action is in response to a petition filed by Life Technologies, Inc.

DATES: Effective February 19, 1997; written objections and requests for a hearing by March 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: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 3, 1996 (61 FR 34852), FDA announced that a food additive petition (FAP 6A4500) had been filed by Life Technologies, Inc., 8400 Helgerman Ct., Gaithersburg MD 20874. The petition proposed to amend the food additive regulations in § 173.25 (21 CFR 173.25) to provide for a change in the level of the reactants for sulphopropyl cellulose ion-exchange resin for the recovery and purification of proteins for food use. The amendment proposed that the amount of epichlorohydrin plus propylene oxide employed does not exceed 250 percent by weight of the starting quantity of cellulose. The current regulation provides that the amount of epichlorohydrin plus propylene oxide employed does not exceed 61 percent by weight of the starting quantity of cellulose.

In the Federal Register of April 22, 1991 (56 FR 16266), FDA published a final rule that amended the regulation under § 173.25 to provide for the use of the ion-exchange resin and the starting materials used to manufacture the additive. The amendment to the regulation was based upon the information provided in FAP 6A3905. In the final rule of April 22, 1991, the agency stated that while the ion-exchange resin has not been shown to cause cancer, it may contain small amounts of the starting materials epichlorohydrin (ECH) and propylene oxide (PO) as byproducts of its production. Because the chemicals ECH and PO have been shown to cause cancer in test animals, the agency conducted a quantitative risk assessment procedure to calculate the risk from the use of ECH and PO. Based on the results of the risk assessment, the agency concluded in the final rule of April 22, 1991, that there was a reasonable certainty of no harm from exposure to ECH and PO that might result from the proposed use of the additive.

Recently, the agency was advised that the levels of the starting materials for the resin, ECH and PO, that are listed under § 173.25(a)(20) need to be amended. The petitioner discovered that the information in FAP 6A3905 that was used to calculate the levels of ECH and PO in the listings for the regulation contained errors that led to an underestimation of the actual levels of ECH and PO used in the production of the resin. A new petition (FAP 6A4500) was submitted to correct the regulation by listing the actual ratios of the starting materials ECH and PO that are currently being used in the manufacture of the ion-exchange resin.

The agency has reviewed the information in both petitions 6A3905 and 6A4500, and it has determined that

the levels of ECH and PO set out in current § 173.25(a)(20) are in error because those levels do not reflect the levels presently used by industry to manufacture the resin. The information in the present petition establishes that the manufacturing process and the resin composition do not differ from the process and resin composition evaluated in the original petition. Because the composition of the resin is unchanged, the exposure to the residues of ECH and PO remains unchanged. Therefore, the agency concludes that the agency's safety evaluation conducted for the original petition (FAP 6A3905) supports the safety of the amendment to § 173.25 proposed by FAP 6A4500. Accordingly, the agency concludes that a recalculation of a risk assessment performed for the original petition (FAP 6A3905) is not necessary to support this action.

Thus, FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe; (2) the additive will achieve its intended technical effect; and that therefore, (3) the regulations in § 173.25 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 determined under 21 CFR 25.24(a)(9) 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.

Any person who will be adversely affected by this regulation may at any time on or before March 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 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

2. Section 173.25 is amended by revising paragraph (a)(20) to read as follows:

§ 173.25 Ion-exchange resins.

* * * * *

(a) * * *

(20) Regenerated cellulose, cross-linked and alkylated with epichlorohydrin and propylene oxide, then sulfonated whereby the amount of epichlorohydrin plus propylene oxide employed does not exceed 250 percent by weight of the starting quantity of cellulose.

* * * * *

Dated: February 11, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4082 Filed 2–19–97; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300453; FRL–5588–1]

RIN 2070–AB78

Zinc Phosphide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on the raw agricultural commodities timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) in connection with EPA's granting of an emergency exemption to the state of Washington under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of zinc phosphide on timothy or timothy-alfalfa, clover stands. This regulation establishes maximum permissible levels for residues of phosphine in these foods pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire on April 15, 1998.

DATES: This regulation is effective February 20, 1997. The entries in the table expire on April 15, 1998. Objections and requests for hearings must be received by EPA on or before April 21, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300453], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Room M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300453], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Crystal Mall #2, Room 1132, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300453]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, 703-308-8326, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the phosphine resulting from the use of the rodenticide zinc phosphide in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) at 0.1 part per million (ppm). These tolerances will expire and be revoked automatically without further action by EPA on April 15, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996, FRL–5572–9).

New FFDCA section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' FFCDA section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. FFDCA section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

FFDCA section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. FFDCA section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under FFDCA section 408(l)(6) and requires that the regulations be consistent with FFDCA section 408(b)(2) and (c)(2) and FIFRA section 18.

FFDCA section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of FFDCA section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the FFDCA section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new FFDCA section 408, EPA does not intend to set precedents for the application of FFDCA section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Zinc Phosphide on Timothy and Timothy-alfalfa/clover and FFDCA Tolerances

EPA has authorized use under FIFRA section 18 of zinc phosphide on timothy and timothy-alfalfa/clover for control of the vole complex. A potential population of 500 voles per acre would mean significant economic loss during 1997. The currently available methods of control, including the use of zinc phosphide bait boxes and flood irrigation, are inadequate and impractical.

As part of its assessment of this specific exemption, EPA assessed the potential risks presented by residues of phosphine on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay). In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for residues of phosphine will permit the marketing of timothy and timothy-alfalfa/clover treated in accordance with the provisions of the FIFRA section 18-emergency exemptions. Consistent with the need to move quickly on this emergency exemption and in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under FFDCA section 408(e) as provided in FFDCA section 408(l)(6). Although these tolerances will expire and be revoked automatically without further action by EPA on April 15, 1998, under FFDCA section 408(l)(5), residues of phosphine not in excess of the amount specified in these tolerances remaining in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or

other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether zinc phosphide meets the requirements for registration under FIFRA section 3 for use on timothy and timothy-alfalfa/clover or whether permanent tolerances for zinc phosphide for timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) would be appropriate. This action by EPA does not serve as a basis for registration of zinc phosphide by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than Washington to use this product on these crops under FIFRA section 18 without following all provisions of FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for zinc phosphide, contact the Agency's Registration Division at the address in ''ADDRESSES'' at the beginning of this document.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, by using a dose that causes adverse effects (threshold effects) and a dose that causes no observed effect levels (NOELs).

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the reference dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low-dose extrapolations or margin of exposure (MOE) calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The theoretical maximum residue contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Zinc phosphide is already registered by EPA for outdoor residential lawn, nursery, right-of-way, recreational area, and other non-food uses, as well as several food use registrations. Phosphine is a highly reactive gas that reacts with raw agricultural commodities to form bound phosphate residues. The Agency stated in a registration standard for zinc phosphide (June 23, 1982) that a tolerance of 0.1 ppm for phosphine resulting from the use of zinc phosphide would be allowable for raw agricultural commodities, provided the bound phosphate residues can be fully characterized. At the time the registration standard was issued, the Agency identified 70% of the bound phosphate residues in treated commodities as consisting of oxyphosphorus acids, which are considered toxicologically insignificant at the levels found in treated commodities. Data have since been submitted which demonstrate that the remaining 30% of residues consists of oxidation products of phosphine (oxyphosphorus acids and/or their salts), which are also considered toxicologically insignificant at the levels found in treated commodities. EPA believes it has sufficient data to assess the hazards of zinc phosphide and to make a determination on aggregate exposure, consistent with FFDCA section 408(b)(2), for the time-limited tolerances for residues of phosphine resulting from the use of zinc phosphide in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) at 0.1 part per million (ppm). EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, EPA's Office of Pesticide Programs (OPP) has established the RfD for zinc phosphide at 0.0003 milligram(mg)/kilogram(kg)/day. The RfD was established based on an lowest effect level (LEL) of 3.48 mg/kg/day from an open literature 90-day rat feeding study. Effects observed at the LEL were decreased food consumption and body weight. An uncertainty factor of 10,000 was used due to data gaps and the absence of a NOEL in the study. The Agency has recently reviewed a 90-day gavage study in rats which had a NOEL

of 0.1 mg/kg/day and a LEL of 1.0 mg/kg/day. The LEL of 1.0 mg/kg/day was based on increased mortality and kidney nephrosis in male rats.

2. *Acute toxicity.* No toxicology studies were identified by OPP which demonstrated the need for an acute dietary risk assessment.

3. *Short-term, non-dietary inhalation and dermal toxicity.* Since 10% zinc phosphide tracking powder has been classified in Toxicity Category IV (LC_{50} > 19.6 mg/liter (L)), inhalation exposure resulting from this FIFRA section 18 action is not considered toxicologically significant. For short-term and intermediate dermal MOE calculations, EPA's Health Effects Division (HED), OPP recommended use of the adjusted acute dermal LD_{50} NOEL of 1,000 mg/kg from the acute dermal toxicity study in rabbits. In the absence of other dermal toxicity data, the acute NOEL dose of 1,000 mg/kg was divided by a 100-fold uncertainty factor to approximate a 3-month dermal NOEL for worker dermal exposure. The 3-month dermal NOEL is 10 mg/kg/day. At the LEL of 2,000 mg/kg in the rabbit dermal LD_{50} study, the animals lost weight, but no mortalities were observed up to 5,000 mg/kg highest dose tested (HDT). Actual risk from dermal exposure is likely to be significantly less, since zinc phosphide reacts with water and stomach acid to produce the toxic gas phosphine from oral, but not dermal, exposure.

4. *Carcinogenicity*. Zinc phosphide has not been reviewed for carcinogenicity. OPP has waived carcinogenicity data requirements for zinc phosphide on the basis that exposures to zinc phosphide are controlled to prevent exposures to humans. Applications to crop areas are such that the zinc phosphide will dissipate.

B. Aggregate Exposure

1. Tolerances are already established for residues of the phosphine resulting from the use of zinc phosphide on several raw agricultural commodities (40 CFR 180.284 (a) and (b)). There is no reasonable expectation of secondary residues in meat, milk, poultry, or eggs (40 CFR 180.6(a)(3)). Any residues of zinc phosphide ingested by livestock would be metabolized to naturally occurring phosphorous compounds. No human food items are derived from timothy grown for seed or mixed stands of timothy-alfalfa/clover produced for hay. Therefore, humans will receive no additional dietary exposure to phosphine as a result of establishment of this tolerance.

2. For the purpose of assessing chronic dietary exposure from zinc phosphide, EPA assumed tolerance level residues and 100% of crop treated for the proposed and existing food uses of zinc phosphide. These conservative assumptions result in over estimation of human dietary exposures.

3. Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. There is no information on zinc phosphide (phosphine) residues in ground water and runoff in the EPA's Environmental Fate and Effects Division (EFED) One-Liner Data Base. There is no established maximum concentration level (MCL) for residues of zinc phosphide (phosphine) in drinking water. No drinking water health advisory levels have been established for zinc phosphide (phosphine). There is no entry for zinc phosphide (phosphine) in the ''Pesticides in Groundwater Database'' (EPA 734-12-92-001, September 1992). Based on the available studies used in EPA's assessment of environmental risk, EPA does not anticipate exposure to residues of zinc phosphide (phosphine) in drinking water.

4. There are residential uses of zinc phosphide and EPA acknowledges that there may be short-, intermediate-, and long-term non-occupational, non-dietary exposure scenarios. OPP has identified a toxicity endpoint for an intermediate-term residential risk assessment. However, no acceptable reliable dermal exposure data to assess these potential risks are available at this time. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-occupational exposure with dietary exposure, the Agency will make its safety determination for these tolerances based on those factors which it can reasonably integrate into a risk assessment.

5. At this time, the Agency has not made a determination that zinc phosphide and other substances that may have a common mode of toxicity would have cumulative effects. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for these tolerances based on those factors which can reasonably integrate into a risk assessment. For purposes of these tolerances only, the Agency is considering only the potential risks of zinc phosphide in its aggregate exposure.

C. Safety Determinations For U.S. Population

No human food items are derived from timothy grown for seed or mixed stands of timothy-alfalfa/clover produced for hay. Taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to zinc phosphide from published tolerances (including recently published time-limited tolerances for potatoes and sugar beets) will utilize 27.5% of the RfD for the U.S. population. EPA does not anticipate chronic exposure to residues of zinc phosphide (phosphine) in drinking water.

D. Determination of Safety for Infants and Children

1. There were no developmental findings in rats up to a maternally toxic dose of 4.0 mg/kg/day zinc phosphide nor in mice at 4.0 mg/kg/day HDT. A comparison of the NOEL of 0.1 mg/kg/day in the recent 90-day rat gavage study and the NOELs for developmental toxicity in rats and mice (4.0 mg/kg/day) provides a 40-fold difference, which demonstrates that there are no special prenatal sensitivities for infants and children. OPP has waived teratogenicity in the rabbit and the two-generation reproduction study in the rat data requirements for zinc phosphide on the basis that exposures to zinc phosphide are controlled to prevent exposures to humans. Applications to crop areas are such that the zinc phosphide will dissipate. Since there are no reproduction studies with zinc phosphide, the post-natal potential for effects from zinc phosphide in infants and children cannot be fully evaluated. However, the above information, together with the uncertainty factor of 10,000 utilized to calculate the RfD for zinc phosphide, is considered adequate protection for infants and children with respect to prenatal and postnatal development against dietary exposure to zinc phosphide residues, and therefore, EPA has determined that an additional 10-fold safety factor is not appropriate.

2. EPA has concluded that the percent of the RfD that will be utilized by chronic dietary exposure to residues of zinc phosphide ranges from 6.8% for nursing infants (<1 year old) up to 59.9% for children 1 to 6 years old. However, this calculation assumes tolerance level residues for all commodities and is therefore an over estimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. As mentioned before,

EPA does not expect chronic exposure from drinking water.

V. Other Considerations

The metabolism of zinc phosphide in plants and animals is adequately understood for the purposes of these tolerances. The residue of concern is unreacted zinc phosphide, measured as phosphine, that may be present. Adequate methods for purposes of data collection and enforcement of tolerances for zinc phosphide residues as phosphine gas are available. Methods for determining zinc phosphide residues of phosphine gas are described in PAM, Vol. II, as Method A. There are no Codex tolerances for timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay).

VI. Conclusion

EPA concludes that there is a reasonable certainty of no harm to consumers, including infants and children, from aggregate exposure to zinc phosphide based on the following considerations. First, approval of these tolerances results in no additional exposure to consumers. Second, EPA has used a 10,000-fold safety factor in assessing the risk estimate posed by zinc phosphide. Third, this pesticide is being used to address an emergency situation and EPA, therefore, must make a quick decision. Fourth, because these tolerances are for an emergency situation, extended use under these tolerances are not authorized. Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of phosphine resulting from the use of zinc phosphide in timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) at 0.1 part per million (ppm). These tolerances will expire and be automatically revoked without further action by EPA on April 15, 1998.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new FFDCA section 408(e) and (l)(6) as was provided in the old FFDCA section 408 and section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 21, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given in ''ADDRESSES'' at the beginning of this document (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record

A record has been established for this rulemaking under docket control number [OPP–300453]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record.

The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this rule.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 6, 1997.

Peter Caulkins,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In §180.284, paragraph (c) is amended by revising the introductory text and adding in alphabetical order new entries to the table to read as follows:

§ 180.284 Zinc phosphide, tolerances for residues.

* * * * *

(c) Time-limited tolerances are established for residues of phosphine resulting from the use of the rodenticide zinc phosphide in connection with use of the pesticide under FIFRA section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances expire on the date specified in the table.

Commodity	Parts per million	Expiration/ Revocation Date
Alfalfa (forage)	0.1	April 15, 1998
Alfalfa (hay)	0.1	April 15, 1998
Clover (forage)	0.1	April 15, 1998
Clover (hay)	0.1	April 15, 1998
* *	*	* *
Timothy (forage)	0.1	April 15, 1998
Timothy (hay)	0.1	April 15, 1998
Timothy (seed)	0.1	April 15, 1998

[FR Doc. 97–3931 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 261

[SW–FRL–5690–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule; amendment.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending 40 CFR part 261, appendix IX to reflect changes in ownership and name for United Technologies Automotive, Inc., Jeffersonville, Indiana. Today's amendment documents these changes.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346 or at (703) 412–9810. For technical information contact Ms. Judy Kleiman, Waste Management Branch (DRP–8J), Waste, Pesticides and Toxics Division, U.S. Environmental Protection Agency, 77 W. Jackson Blvd, Chicago, IL 60604, (312) 886–1482.

SUPPLEMENTARY INFORMATION: In this document EPA is amending appendix IX to part 261 to reflect changes in the ownership and name for United Technologies Automotive. The petition process under §§ 260.20 and 260.22 allows facilities to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste. Based on waste specific information provided by the petitioner, EPA granted an exclusion to United Technologies Automotive on April 29, 1986, for F019 wastes at its Jeffersonville, Indiana, facility (51 FR 15888). On November 20, 1995, Region 5 received notice that ownership of the United Technologies Automotive facility in Jeffersonville, Indiana, was transferred to Profile Extrusion Company. On November 14, 1996, Region 5 received notice that ownership of Profile Extrusion Company was transferred to Alumnitec, Inc.

In this notification Alumnitec noted that no changes had been made in the management of the F019 waste excluded by the Agency, and that all conditions of the exclusion will continue to be met. Today's notice documents this change by updating Appendix IX to incorporate this change in name.

This change to 40 CFR Part 261, Appendix IX will be effective February 20, 1997. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. As described above, Alumnitec will continue to meet all conditions of United Technologies Automotive's exclusion. Therefore, a six-month delay in the effective date is not necessary in this case. This provides a basis for making this amendment effective immediately upon publication under the Administrative Procedures Act, pursuant to 5 U.S.C. 5531(d).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: January 21, 1997.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

For the reasons set out in the preamble, 40 CFR part 261 is to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

2. 40 CFR Part 261, Appendix IX, Table 1, is amended by removing the entry for ''United Technologies Automotive, Inc.'' and by adding in alphabetical order the entry for ''Alumnitec, Inc.'' to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * *	*	* * *
Alumnitec, Inc. (formerly Profile Extrusion Co., formerly United Technologies Automotive, Inc.).	Jeffersonville, IN	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from the chemical conversion of aluminum after April 29, 1986.
* * *	*	* * *

[FR Doc. 97–4121 Filed 2–19–97; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 100

RIN 0906–AA36

National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table—II

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: The Secretary has made findings as to certain illnesses and conditions that can reasonably be determined in some circumstances to be caused or significantly aggravated by certain vaccines. Based on these findings, the Secretary is amending, by final rule, the existing regulations governing the National Vaccine Injury Compensation Program (VICP) by revising the Vaccine Injury Table (Table) as authorized under section 313 of the National Childhood Vaccine Injury Act of 1986 and section 2114 (c) and (e) of the Public Health Service Act (the Act).

The VICP provides a system of no-fault compensation for certain individuals who have been injured by specific childhood vaccines. The Vaccine Injury Table included in the Act establishes presumptions about causation of certain illnesses and conditions, which are used by the Court to adjudicate petitions.

EFFECTIVE DATE: This regulation is effective March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Chief Medical Officer, Division of Vaccine Injury Compensation, Bureau of Health Professions, (301) 443–4198, or David Benor, Senior Attorney, Office of the General Counsel (301) 443–2006.

SUPPLEMENTARY INFORMATION:

Introduction and Procedural History

On November 8, 1995, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services (the Secretary), published in the Federal Register (60 FR 56289) A Notice of Proposed Rulemaking (NPRM) to amend the Vaccine Injury Table (the Table) and to revise the Qualifications and Aids to Interpretation of the Table (Qualifications and Aids). The NPRM was issued pursuant to section 2114(c) of the Act, which authorizes the Secretary to promulgate regulations to modify the Table, and section 2114(e), which directed the Secretary to add to the Table, by rulemaking, coverage of additional vaccines which are recommended by the Centers for Disease Control and Prevention for routine administration to children.

As stated in the preamble to the NPRM, under section 313 of the Act, Congress mandated that the Secretary review the scientific literature and other relevant information to determine whether, based upon the available evidence, a causal relationship exists between certain adverse events examined and exposure to vaccines against diphtheria, measles, mumps, poliomyelitis, and tetanus. The review was broadened to include the vaccines against hepatitis B, and Hemophilus influenzae type b (Hib). The Secretary entered into a contract with the Institute of Medicine (IOM), as recommended by Congress, to perform this review. The IOM issued its findings in a report entitled *Adverse Events Associated with Childhood Vaccines; Evidence Bearing on Causality*. (Institute of Medicine, K.R. Stratton, C.J. Howe, R.B. Johnson, Eds., 1994.) Upon consideration of the IOM report, consultations with the Advisory Committee on Childhood Vaccines (ACCV), and the National Vaccine Advisory Committee (NVAC), and review of other relevant scientific information, the Secretary published the proposed changes to the Table and the Qualifications and Aids.

There was a 6-month comment period after publication. The Secretary received three written comments in response to the NPRM. A public hearing was scheduled for February 29, 1996, as announced in the Federal Register on February 5, 1996 (61 FR 4249), but no individual or organization appeared to testify.

One of the commenters, an association representing pediatricians, extended its full support for the proposed additions and revisions to the Table.

A second comment was submitted by a manufacturer of several childhood vaccines. The manufacturer's comment was that the proposed revisions to the Table did not definitively state how the proposed revisions would affect persons who have pending civil actions against vaccine manufacturers or administrators when the revisions to the Table become effective. The manufacturer suggested that language should be added to the rule which affirmatively gives plaintiffs in the tort system the ability to file a claim, within 2 years after the effective date of the revision or before judgment, if the injury or death allegedly attributable to the vaccine occurred no more than 8 years before the effective date of the revision. Section 2116(b) of the Act provides a 2-year period after the effective date of a revision to the Table for a petition to be filed based on the revision. The injury or death alleged to be related to the vaccine must have occurred no more than 8 years before the date of the revision. However, section 2111(a)(5)(B) of the Act states that ''[i]f a plaintiff has pending a civil action for damages for a vaccine-related injury or death, such person may not file a petition under the subsection (b) (of the Act) for such injury or death.'' reading these provisions together, it appears that if a plaintiff in such a case dismisses the civil action and files a Program petition within the applicable time limit, the petition may proceed. (If the civil action led to an award of damages or a settlement, section 2111(a)(7) of the Act would prohibit the filing of the petition.) In the light of these statutory provisions, we believe that the issue raised by the commenter is adequately addressed.

The final comment was from a group representing vaccine-injured persons and their families. The group had comments in several areas. The Secretary has carefully considered these comments and responds to them below. The first assertion of the group was that two independent IOM committees concluded that the scientific evidence favors a causal relationship between oral polio vaccine and tetanus vaccine and Guillain-Barre Syndrome (GBS). The commenter questions why, given this information, the Secretary is proposing to remove GBS from the Table. First, it is worth noting that this condition has never been included in the Table. Moreover, the preamble to the NPRM explained in detail the Department's reasons for proposing not to extend the Table's coverage to this condition. (60 FR 56292–3 and 56296–7.) The commenter's reference to the IOM committee's report does not provide a sufficient basis to reverse the Department's analysis, given that this analysis fully considered the IOM committee's report, as well as other relevant data.

The commenter's second concern asked for an explanation of why anaphylaxis is the only Table injury for hepatitis B vaccine when the IOM review stated that no scientific studies have been conducted to determine if there is a causal relationship between hepatitis B and arthritis, Sudden Infant Death Syndrome (SIDS), GBS, myoptic (sic: optic) neuritis, multiple sclerosis, transverse myelitis or other central

demyelinating disease. Similarly, the group questions why there is no Table injury for Hemophilus influenzae type b (Hib) vaccine when no scientific studies have been done to determine whether there is a causal connection between the Hib vaccine and transverse myelitis, GBS, thrombocytopenia, anaphylaxis and SIDS. The Secretary is charged with revising the Table where such revisions are in keeping with scientific evidence. The goal is to have the Table and Qualifications and Aids reflect current scientific knowledge on the relationship between certain adverse events and covered vaccines. Where that scientific research concerning the relationship between a disorder and a vaccine is incomplete or nonexistent, the Secretary believes it would be inappropriate and inconsistent with her statutory responsibility to revise the Table to establish a presumption that a relationship exists.

The group also commented upon the ability of the Vaccine Adverse Events Reporting System (VAERS) to capture adequately the frequency and severity of vaccine reactions. VAERS is a passive reporting system for events that are temporally related to vaccine administration. *See* section 2125 of the Act. VAERS is not, however, a matter within the scope of this rulemaking.

Finally, the group states that no vaccine should be added to the Table until credible scientific studies have been conducted to determine which chronic health problems are being caused by new vaccines. Under section 2114(e) of the Act, the Secretary is required to revise the Table to include vaccines recommended to the Secretary by the Centers for Disease Control and Prevention (CDC), for routine administration to children. If the scientific evidence is insufficient to establish that an illness or condition is associated with such a vaccine, then it is appropriate to include the vaccine on the Table without establishing that such illness or condition is presumed to be caused by the vaccine. The addition of vaccines to the Table allows individuals alleging injury by such vaccines to file petitions for compensation and to prevail on the basis of the Act's ''causation in fact'' standard. *See* section 2111(c)(1)(C)(ii)(I) of the Act. Such petitioners benefit from participating in the Program in that they need not show negligence or some other standard of liability, as would be required in a civil action. Should the Department learn that these new vaccines have associated illnesses or conditions, rulemaking will be initiated to amend the Table.

Other Information

The Act provides that a revision to the Table based on the addition of vaccines under section 2114(e) of the Act shall take effect upon the effective date of a tax enacted to provide funds for compensation for injuries from vaccines that are added to the Table. *See* section 13632(a)(3) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 enacted August 10, 1993. The tax for the hepatitis B, the Hib and the varicella vaccines has not been enacted yet; accordingly, claimants alleging an injury or death as a result of a hepatitis B, Hib, or varicella vaccination will not have a cause of action against the Secretary until the tax is enacted and become effective. *See* § 100.3(c)(2). However, the other changes to the Qualifications and Aids to Interpretation of the Table and the addition of certain illnesses, disabilities or conditions to the Table, e.g., brachial neuritis as a Table injury for DPT, will become effective on March 24, 1997. *See* § 100.3(c)(1). Thus, there will be some delay between the time the final rule becomes effective and the time the hepatitis B, Hib, and varicella vaccines provide a cause of action for petitioners. As soon as the tax becomes effective, a petitioner may file a claim for an injury or death allegedly caused by these vaccines. The Clerk of the U.S. Court of Federal Claims will determine how a filing will be processed when a petitioner files a claim for hepatitis B, Hib, or varicella injuries before the tax becomes effective.

Hemophilus Influenzae Type B (Hib) Vaccine

As noted in the preamble to the NPRM (p. 56297), unconjugated Hib polysaccharide vaccine (PRP) was found to be associated with early onset invasive Hib disease. As discussed elsewhere in this preamble, the option to file a petition for an injury associated with vaccines now being added to the Table is limited to cases based on vaccine-related injuries or deaths that occurred within the 8-year period before the effective date of the addition. As almost all cases of early onset invasive Hib disease which are vaccine-related will be associated with vaccines given before December 1987 (when the Hib conjugate vaccine took the place of the PRP vaccine for routine administration), the result of this 8-year limitation means that the likely cases of this vaccine-associated condition will not be able to file for compensation under the Program, absent a change to the statute. Nevertheless, we are retaining this as a Table injury in case the vaccine has been administered within the 8-year period or is administered in the future.

Varicella Vaccine

As provided in the NPRM, the Table includes any new vaccine recommended by the CDC for routine administration to children. Since the publication of the NPRM, CDC has recommended the varicella vaccine for routine administration to children and, consistent with the Secretary's obligations under section 2114(e), the varicella vaccine has been added to the Table as item XI. No adverse reactions for the varicella vaccine are being added to the table, as there is no evidence of any serious illness or condition related to this vaccine. However, should the Department become aware of any adverse events associated with the varicella vaccine, rulemaking will be initiated to revise the Table accordingly.

Technical Amendments

In the Notice of Proposed Rulemaking published in the Federal Register on November 8, 1995, items I.C, II.C., III.C., IV.B, and V.C. of the Table read: ''[a]ny sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.'' These items are being revised to read: ''[a]any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.'' The additional language does not represent a change in the available Table injuries; rather, the language is added to provide internal consistency within the Table. In addition, because the varicella vaccine has been added to the Table as item XI, former item XI designated in the NPRM is now renumbered as item XII in the final rule. Further, we have revised the format of the Table to make it more readable.

Finally, as we indicated in the preamble to the 1995 regulation, we did not intend that hospitalization be viewed as an absolute requirement to establish an acute encephalopathy, but rather as an indicator of the severity of the acute event. (See the qualifications and aids to interpretation at § 100.3 (b)(2)(i)). To allay concerns in this regard, we have made this explicit in the regulation itself by adding the following parenthetical phrase at the end of the sentence in paragraph (i): ''whether or not a hospitalization occurred''.

Guidelines

As noted in the NPRM, section 313 requires that the Secretary establish guidelines based on the results of the 313 report ''respecting the administration'' of the vaccines that were reviewed, which guidelines shall include:

''(i) The circumstances under which any such vaccine should not be administered,

''(ii) The circumstances under which administration of any such vaccine should be delayed beyond its usual time of administration, and

''(iii) The groups, categories, or characteristics of potential recipients of such vaccine who may be at significantly higher risk of major adverse reactions to such vaccine than the general population of potential recipients.''

We have examined the recommendations of the Advisory Committee on Immunization Practices (ACIP) of the CDC, as set forth in the Morbidity and Mortality Weekly Reports Recommendations and Reports, dated September 6, 1996 entitled, ''Update: Vaccine Side Effects, Adverse Reactions, Contraindications and Precautions.'' Members of the public may obtain copies of the report by writing to MS Publications, C.S.P.O. Box 9120, Waltham, MA 02254, telephone 1–800–843–6356, 617–893–3800 (Massachusetts). The cost of the publication is $4.00. It may be obtained without charge through use of the World-Wide Web (WWW). The address is ''http://www.cdc.gov/epo/mmwr/mmwr__rr.html.'' We find that the ACIP recommendations are consistent with the findings that the Department made as part of section 313 NPRM and this final rule, and that they satisfy the statutory requirements for guidelines. Accordingly, we proposed that the ACIP recommendations will constitute the guidelines called for by section 313.

Section 313 calls for consultation with the ACCV and notice and opportunity for public hearing with respect to these guidelines. The ACIP recommendations were submitted to the ACCV at its meeting of June 6–7, 1996. We will also offer the opportunity for public comment on the use of the ACIP recommendations as the section 313 guidelines at a hearing which we anticipate will be scheduled in conjunction with a future ACCV meeting. A separate notice will be published in the Federal Register to invite public comment at that hearing. After consideration of any comments which we receive, we will publish a notice about the final adoption of these guidelines.

Future revisions of the ACIP recommendations will also be effective for 313 purposes and a notice to that effect will accompany the publication of the ACIP recommendations in the MMWR.

Economic Impact

The Secretary certifies that this final rule will not have a significant impact on a substantial number of small businesses, because it will have only small effects, and those primarily on individuals. The effects will be primarily on the ability of certain individuals to obtain compensation without having a burden of proving causation in fact. Attorneys who represent such individuals will be affected only to the extent that they may have a harder or easier burden of proof with respect to the petitions filed. However, under section 2115(e) of the Act, in almost all cases, attorneys' reasonable fees and costs are reimbursed from the Vaccine Injury Compensation Trust Fund.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

As stated above, this final rule would modify the Vaccine Injury Table based on legal authority, and under that authority the Court will award such fees and costs as appropriate under the law. As such, the regulation would have little direct effect on the economy or on Federal or State expenditures. For the same reasons, the Secretary has also determined that this is not a ''significant'' rule under Executive Order 12866.

Effect of the New Rule

The final rule will have an effect for individuals who were not eligible to file petitions based on the earlier versions of the Vaccine Injury Table, but who may be eligible to file petitions based on the revised Table. The Act permits such individuals to file a petition for such compensation not later than 2 years after the effective date of the revision if the injury or death occurred not more than 8 years before the effective date of the revision of the Table. *See* 42 U.S.C. 300aa–16(b). As part of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), Congress amended this section to permit individuals to file claims within this 2-year period, even if they had already filed a claim involving a particular vaccine, but only if the Table revision will ''significantly increase the likelihood of obtaining compensation.'' *See* Pub. L. 103–66, sec. 13632(a)(1). For example, this amendment would permit an individual whose claim alleging MMR vaccine-related thrombocytopenic purpura had been dismissed by the Claims Court to file a new claim for the same vaccine-related injury, if the individual can show that the addition of thrombocytopenic purpura to the Table as a MMR vaccine-related condition has significantly increased the likelihood of obtaining compensation.

Possible Effect on Other Legislation

This rule will not have an effect on the Vaccine for Children Program, implemented by the CDC under section 1928 of the Social Security Act, as enacted by section 13631 of Pub. L. 103–66. This section provides for the establishment of a program to distribute free vaccines to all vaccine-eligible children, as defined by this section. The rule modifies the existing Vaccine Injury Table, a mechanism by which compensation is awarded to individuals who have been found to have suffered from vaccine-related injuries. Because the two authorities are not related, the publication of this rule should not have any impact on the Vaccines for Children Program.

Paperwork Reduction Act of 1980

This final rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, and Immunization.

Dated: September 23, 1996.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

Approved: November 22, 1996.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR part 100 is amended as set forth below.

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act, 100 Stat. 3767, as revised (42 U.S.C. 300aa–15); § 100.3, Vaccine Injury Table, issued under secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779—3782 (42 U.S.C. 300aa–

1 note) and sec. 2114(c) and (e) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645 (42 U.S.C. 300aa–14(c) and (e)).

2. Section 100.3 is amended by revising the Vaccine Injury Table in paragraph (a); by republishing the introductory text in paragraph (b); by revising paragraph (b)(2)(i); by revising paragraph (b)(6); by adding paragraphs (b)(7), (b)(8), (b)(9), (b)(10), and (b)(11); and by revising paragraph (c) to read as follows:

§ 100.3 Vaccine injury table.

(a) * * *

VACCINE INJURY TABLE

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
I. Vaccines containing tetanus toxoid (e.g., DTaP, DTP, DT, Td, or TT).	A. Anaphylaxis or anaphylactic shock	4 hours.
	B. Brachial Neuritis	2–28 days.
	C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II. Vaccines containing whole cell pertussis bacteria, extracted or partial cell pertussis bacteria, or specific pertussis antigen(s) (e.g., DTP, DTaP, P, DTP–Hib).	A. Anaphylaxis or anaphylactic shock	4 hours.
	B. Encephalopathy (or encephalitis)	72 hours.
	C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
III. Measles, mumps, and rubella vaccine or any of its components (e.g., MMR, MR, M, R).	A. Anaphylaxis or anaphylactic shock	4 hours.
	B. Encephalopathy (or encephalitis)	5–15 days (not less than 5 days and not more than 15 days).
	C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IV. Vaccines containing rubella virus (e.g., MMR, MR, R).	A. Chronic arthritis	7–42 days.
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
V. Vaccines containing measles virus (e.g., MMR, MR, M).	A. Thrombocytopenic purpura	7–30 days.
	B. Vaccine-Strain Measles Viral Infection in an immunodeficient recipient.	6 months.
	C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
VI. Vaccines containing polio live virus (OPV)	A. Paralytic Polio	
	—in a non-immunodeficient recipient	30 days.
	—in an immunodeficient recipient	6 months.
	—in a vaccine associated community case	Not applicable.
	B. Vaccine-Strain Polio Viral Infection	
	—in a non-immunodeficient recipient	30 days.
	—in an immunodeficient recipient	6 months.
	—in a vaccine associated community case	Not applicable.
	C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
VII. Vaccines containing polio inactivated virus (e.g., IPV).	A. Anaphylaxis or anaphylactic shock	4 hours
	B. Any acute complication or sequela (including death of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed..	Not applicable.
VIII. Hepatitis B. vaccines	A. Anaphylaxis or anaphylactic shock	4 hours.

VACCINE INJURY TABLE—Continued

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IX. Hemophilus influenzae type b polysaccharide vaccines (unconjugated, PRP vaccines).	A. Early-onset Hib disease	7 days.
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
X. Hemophilus influenzae type b polysaccharide conjugate vaccines.	No Condition Specified	Not applicable.
XI. Varicella vaccine	No Condition Specified	Not applicable.
XII. Any new vaccine recommended by the Centers for Disease Control and Prevention for routine administration to children, after publication by the Secretary of a notice of coverage.	No Condition Specified	Not applicable.

(b) *Qualifications and aids to interpretation.* The following qualifications and aids to interpretation shall apply to the Vaccine Injury Table to paragraph (a) of this section:

* * * * *

(2) * * *

(i) An acute encephalopathy is one that is sufficiently severe so as to require hospitalization (whether or not hospitalization occurred).

* * * * *

(6) *Chronic Arthritis.* (i) For purposes of paragraph (a) of this section, chronic arthritis may be found in a person with no history in the 3 years prior to vaccination of arthropathy (joint disease) on the basis of:

(A) Medical documentation, recorded within 30 days after the onset, of objective signs of acute arthritis (joint swelling) that occurred between 7 and 42 days after a rubella vaccination;

(B) Medical documentation (recorded within 3 years after the onset of acute arthritis) of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following vaccination; and

(C) Medical documentation of an antibody response to the rubella virus.

(ii) For purposes of paragraph (a) of this section, the following shall not be considered as chronic arthritis: Musculoskeletal disorders such as diffuse connective tissue diseases (including but not limited to rheumatoid arthritis, juvenile rheumatoid arthritis, systemic lupus erythematosus, systemic sclerosis, mixed connective tissue disease, polymyositis/determatomyositis, fibromyalgia, necrotizing vascultitis and vasculopathies and Sjogren's Syndrome), degenerative joint disease, infectious agents other than rubella (whether by direct invasion or as an immune reaction) metabolic and endocrine diseases, trauma, neoplasms, neuropathic disorders, bone and cartilage disorders and arthritis associated with ankylosing spondylitis, psoriasis, inflammatory bowel disease, Reiter's syndrome, or blood disorders.

(iii) Arthralgia (joint pain) or stiffness without joint swelling shall not be viewed as chronic arthritis for purposes of paragraph (a) of this section.

(7) *Brachial neuritis.* (i) This term is defined as dysfunction limited to the upper extremity nerve plexus (i.e., its trunks, divisions, or cords) without involvement of other peripheral (e.g., nerve roots or a single peripheral nerve) or central (e.g., spinal cord) nervous system structures. A deep, steady, often severe aching pain in the shoulder and upper arm usually heralds onset of the condition. The pain is followed in days or weeks by weakness and atrophy in upper extremity muscle groups. Sensory loss may accompany the motor deficits, but is generally a less notable clinical feature. The neuritis, or plexopathy, may be present on the same side as or the opposite side of the injection; it is sometimes bilateral, affecting both upper extremities.

(ii) Weakness is required before the diagnosis can be made. Motor, sensory, and reflex findings on physical examination and the results of nerve conduction and electromyographic studies must be consistent in confirming that dysfunction is attributable to the brachial plexus. The condition should thereby be distinguishable from conditions that may give rise to dysfunction of nerve roots (i.e., radiculopathies) and peripheral nerves (i.e., including multiple monoeuropathies), as well as other peripheral and central nervous system structures (e.g., cranial neuropathies and myelopathies).

(8) *Thrombocytopenic purpura.* This term is defined by a serum platelet count less than 50,000/mm^3. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with other causes such as hypersplenism, autoimmune disorders (including alloantibodies from previous transfusions) myelodysplasias, lymphoproliferative disorders, congenital thrombocytopenia or hemolytic uremic syndrome. This does not include cases of immune (formerly called idiopathic) thrombocytopenic purpura (ITP) that are mediated, for example, by viral or fungal infections, toxins or drugs. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with disseminated intravascular coagulation, as observed with bacterial and viral infections. Viral infections include, for example, those infections secondary to Epstein Barr virus, cytomegalovirus, hepatitis A and B, rhinovirus, human immunodeficiency virus (HIV), adenovirus, and dengue virus. An antecedent viral infection may be demonstrated by clinical signs and symptoms and need not be confirmed by culture or serologic testing. Bone marrow examination, if performed, must reveal a normal or an increased number of megakaryocytes in an otherwise normal marrow.

(9) *Vaccine-strain measles viral infection.* This term is defined as a disease caused by the vaccine-strain that should be determined by vaccine-specific monoclonal antibody or polymerase chain reaction tests.

(10) *Vaccine-strain polio viral infection.* This term is defined as a disease caused by poliovirus that is isolated from the affected tissue and should be determined to be the vaccine-strain by oligonucleotide or polymerase chain reaction. Isolation of poliovirus from the stoll is not sufficient to establish a tissue specific infection or disease caused by vaccine-strain poliovirus.

(11) *Early-onset Hib disease.* This term is defined as invasive bacterial illness associated with the presence of Hib organism on culture of normally sterile body fluids or tissue, or clinical findings consistent with the diagnosis of epiglottitis. Hib pneumonia qualifies as invasive Hib disease when radiographic findings consistent with the diagnosis of pneumonitis are accompanied by a blood culture positive for the Hib organism. Otitis media, in the absence of the above findings, does not qualify as invasive bacterial disease. A child is considered to have suffered this injury only if the vaccine was the first Hib immunization received by the child.

(c) *Effective date provisions.* (1) Except as provided in paragraph (c)(2) of this section, the revised Table of Injuries set forth in paragraph (a) of this section and the Qualifications and Aids to Interpretation set forth in paragraph (b) of this section apply to petitions for compensation under the Program filed with the United States Court of Federal Claims on or after March 24, 1997. Petitions for compensation filed before such date shall be governed by section 2114(a) and (b) of the Public Health Service Act as in effect on January 1, 1995, or by § 100.3 as in effect on March 10, 1995 (see 60 FR 7678, *et seq.*, February 8, 1995), as applicable.

(2) The inclusion of hepatitis B, Hib, and varicella vaccines and other new vaccines (Items VIII, IX, X, XI and XII of the Table) will be effective on the effective date of a tax enacted to provide funds for compensation paid with respect to such vaccines. A notice will be published in the Federal Register to announce the effective date of such a tax.

[FR Doc. 97–4088 Filed 2–19–97; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–152; FCC 97–35]

Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; Clarification and interpretation.

SUMMARY: The First Report and Order (Order), released February 7, 1997, implements the non-accounting requirements prescribed by Congress in sections 260 and 274 of the Telecommunications Act of 1996 (the Act), which respectively govern the provision of telemessaging and electronic publishing services. The Order promotes the pro-competitive and deregulatory objectives of the Act.

EFFECTIVE DATE: March 24, 1997. The information collections in this Order will not become effective until at least May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lisa Sockett, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Order contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted February 6, 1997, and released February 7, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc9735.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.

This Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility Certification which is set forth in the Order. A brief description of the certification follows.

The Commission certifies, pursuant to 5 U.S.C. 605(b), that the clarification and interpretation adopted in this Order will not have a significant economic impact on a substantial number of ''small entities,'' as this term is defined in 5 U.S.C. 601(6). The Commission therefore is not required to prepare a final regulatory flexibility analysis of the clarification and interpretation adopted in this Order. This certification and a statement of its factual basis are set forth in the Order, as required by 5 U.S.C. 605(b).

Paperwork Reduction Act

This Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–12. Written comments by the public on the information collections are due March 24, 1997. OMB notification of action is due April 21, 1997. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0738

Title: Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96–152.

Form No.: N/A.

Type of Review: Revision.

Respondents: Business or other for profit.

Public reporting burden for the collection of information is estimated as follows:

Information collection	Number of respondents (approx.)	Annual hour burden per response	Total annual burden
Third-party disclosure requirement: To the extent a BOC refers a customer to a separated affiliate, electronic publishing joint venture or affiliate during the normal course of its telemarketing operations, it must refer that customer to all unaffiliated electronic publishers requesting the referral service. In particular, the BOC must provide the customer the names of all unaffiliated electronic publishers requesting the referral service, as well as affiliated electronic publishers, in random order.	7 BOCs	1,200 to 30,000 calls per BOC per year × 1/10th hour per response = 120 to 3,000 hours.	7 × 120 to 3,000 = 840 to 21,000 burden hours.

Total Annual Burden: 3,000 burden hours.

Estimated Costs Per Respondent: $0.

Needs and Uses: The attached item imposes a third-party disclosure requirement on BOCs in order to implement the nondiscrimination requirement of section 274(c)(2)(A) of the Act.

Synopsis of First Report and Order

I. Introduction

1. In February 1996, the ''Telecommunications Act of 1996'' became law. The intent of the 1996 Act is ''to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.''

2. On July 18, 1996, the Commission released a Notice of Proposed Rulemaking. 61 FR 39385 (July 29, 1996), (''*NPRM*'') regarding implementation of sections 260, 274, and 275 of the Communications Act addressing telemessaging, electronic publishing, and alarm monitoring services, respectively. This Order implements the non-accounting requirements of sections 260 and 274. We address in separate proceedings the alarm monitoring provisions of section 275 and the enforcement issues related to sections 260, 274, and 275. In addition, the accounting safeguards required to implement sections 271 through 276 and section 260 are addressed in a separate proceeding.

3. The 1996 Act opens local markets to competing providers by imposing new interconnection, unbundling, and resale obligations on existing providers of local exchange services. In enacting sections 260 and 274, Congress recognized that the local exchange market will not be fully competitive immediately. Congress therefore imposed requirements applicable to local exchange carriers' (LECs') provision of telemessaging services in section 260, and a series of requirements applicable to Bell Operating Companies' (BOCs') provision of electronic publishing services in section 274. Collectively, these requirements are designed to prevent, or facilitate the detection of, improper cost allocation, discrimination, or other anticompetitive conduct.

4. Section 260 permits incumbent LECs (including BOCs) to provide telemessaging service subject to certain nondiscrimination safeguards. Section 274 allows a BOC to provide electronic publishing service disseminated by means of its basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture'' that meets the separation, joint marketing, and nondiscrimination requirements in that section. BOCs that were offering electronic publishing services at the time the 1996 Act was enacted must comply with section 274 by February 8, 1997. As noted in part VII, *infra,* the requirements of this *Order* will become effective 30 days after publication of a summary in the Federal Register. In addition, the collection of information contained in this *Order* is contingent upon approval by the Office of Management and Budget (OMB). Accordingly, we do not anticipate taking any enforcement action based on these requirements until they become effective. The requirements under section 274 expire on February 8, 2000.

5. In this proceeding, our goal is to implement the non-accounting requirements in sections 260 and 274 in a manner that is consistent with the fundamental goal of the 1996 Act—to open all telecommunications markets to robust competition. By fostering competition in these markets, we seek to produce maximum benefits for consumers of telemessaging and electronic publishing services.

II. Scope of the Commission's Authority

A. Electronic Publishing

1. Background

6. In the *NPRM,* we sought comment on the extent to which section 274 grants the Commission authority over the intrastate provision of electronic publishing services. We noted that section 274(b)(4) specifically refers to ''such regulations as may be prescribed by the Commission or a State commission'' for the valuation of BOC assets. We therefore tentatively concluded that the Commission may not have exclusive jurisdiction over all aspects of intrastate services provided pursuant to section 274.

7. In addition, apart from any intrastate jurisdiction conferred by section 274 itself, we sought comment on the extent to which the Commission may have the authority to preempt inconsistent state regulations with respect to matters addressed by section 274.

2. Comments

(Parties that filed comments and replies are listed in the Attachment below.)

8. AT&T contends that section 274 covers both interstate and intrastate provision of electronic publishing services, and that this section confers on the Commission general jurisdiction over the provision of intrastate electronic publishing services. In support of its position, AT&T points to several sections that, in its view, refer to Commission authority over intrastate electronic publishing, including: (1) Section 274(e), which authorizes the Commission to hear complaints for violations of section 274; (2) section 274(f), which requires all separated BOC affiliates engaged in electronic publishing to file reports with the Commission; and (3) section 274(c)(2)(C), which grants the Commission the authority to determine whether the BOCs may be authorized to have a greater financial control of a joint venture with small, local electronic publishers. AT&T further maintains that the reference to valuation of BOC assets by state commissions in section 274(b)(4) does not restrict the Commission's general regulatory authority to establish rules, but merely indicates that, if a state commission has its own accounting rules, those rules

should be applied to the extent they are not inconsistent with the Commission's rules.

9. NAA contends that, because section 274 is silent with respect to whether it covers interstate or intrastate, and interLATA or intraLATA electronic publishing, and because electronic publishing services are not regulated telecommunications services, the Commission's authority under section 274 is limited to enforcing BOC compliance with the section's requirements that BOCs operate through a separated affiliate or electronic publishing joint venture and make various filings and reports. NAA further asserts that the Commission has authority to adjudicate complaints and requests for cease and desist orders with respect to violations of section 274, whether interstate or intrastate, but that states are not precluded from also enforcing this law. NAA also contends that states should be allowed to continue to use their cost allocation procedures for intrastate purposes.

10. A number of BOCs and state commissions, on the other hand, argue that section 274 does not give the Commission authority over intrastate electronic publishing services. Some of these commenters argue that section 274 covers such intrastate services, but that this section does not divest the states of their authority over intrastate services under section 2(b) of the Communications Act. These latter commenters argue that section 274 contains new requirements that state commissions will implement in their traditional role of regulating intrastate electronic publishing services.

11. These BOCs and state commissions also argue that section 2(b) of the Communications Act and section 601(c) of the 1996 Act bar the Commission from exercising authority under section 274 with respect to intrastate electronic publishing services absent an express grant of authority from Congress. PacTel and Ameritech contend that such a grant of authority is provided in section 274 in limited circumstances, including receiving BOC filings, prescribing regulations to value BOC asset transfers, and acting on complaints and applications for cease-and-desist orders. The California Commission argues that, although section 274(e) clearly supports our jurisdiction over complaints alleging violations of section 274, that section does not preclude states from trying to resolve disputes prior to the filing of a complaint or lawsuit in the federal arena. BellSouth disputes even this limited grant of authority over intrastate electronic publishing services, arguing that section 274(e) does not give the Commission either explicit or implicit statutory jurisdiction over intrastate electronic publishing services.

12. Several BOCs and state commissions claim that the Commission may preempt state regulations and exercise jurisdiction over intrastate electronic publishing only to the extent that such services are inseparably mixed interstate-intrastate communications, pursuant to the standard set forth in *Louisiana PSC.* The New York and California Commissions further argue that the Commission currently has no basis to make the showing necessary to preempt state regulation of intrastate electronic publishing.

13. AT&T and MCI contend that the Commission retains the authority to preempt state regulatory requirements relating to electronic publishing that are inconsistent with its policies and rules. AT&T further argues that, because the interstate and intrastate aspects of electronic publishing cannot be separated, the Commission's jurisdiction over interstate electronic publishing services extends to such intrastate services as well.

3. Discussion

14. As discussed above, in the *NPRM,* we tentatively concluded that the Commission may not have exclusive jurisdiction over all aspects of intrastate services provided pursuant to section 274, based on the language of section 274(b)(4). This section provides that BOCs and their separated affiliates or electronic publishing joint ventures must ''value any assets that are transferred * * * and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies.'' After examining the language of the statute and the comments filed in this proceeding, we conclude, for the reasons set forth below, that the Commission's authority under section 274 applies to the provision of intrastate as well as interstate electronic publishing services. We conclude, therefore, that while states may impose regulations with respect to BOC provision of electronic publishing services, those regulations must not be inconsistent with section 274 and the Commission's rules thereunder. We emphasize, however, that the scope of the Commission's authority under section 274 extends only to matters covered by that section.

15. Thus, we agree with AT&T and Bell Atlantic that section 274 applies not only to the provision of interstate electronic publishing services, but also to such services when they are provided on an intrastate basis. The language in section 274 expressly demonstrates that Congress intended this section to reach intrastate electronic publishing services. For example, section 274(c)(2)(C) expressly limits the permissible participation of a BOC or affiliate in electronic publishing joint ventures to an interest of 50 percent or less, but also provides that, ''[i]n the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize [a BOC] or affiliate to have a larger equity interest.'' Notwithstanding the local nature of small, local electronic publishers, which suggests that they provide intrastate services, this section confers authority on the Commission to determine whether BOCs may have a greater interest in electronic publishing joint ventures with such electronic publishers.

16. In addition, section 274 requires that a BOC or BOC affiliate engage in the provision of electronic publishing services disseminated by means of that BOC or its affiliate's ''basic telephone service'' only through a ''separated affiliate'' or an electronic publishing joint venture.'' The statute defines ''basic telephone service'' to mean ''any wireline telephone exchange service, or wireline telephone exchange service facility * * *.'' The term ''telephone exchange service,'' as defined in section 3(47), is a primarily intrastate service. As we noted in the *Accounting Safeguards Order* (62 FR 2918 (January 21, 1997)), these references to primarily intrastate services clearly indicate that the scope of section 274 encompasses intrastate matters.

17. We further conclude that, given the jurisdiction granted by section 274, the Commission also has jurisdiction under the Communications Act to establish rules applicable to intrastate electronic publishing services. Sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt any rules it deems necessary or appropriate in order to carry out its responsibilities under the Act, so long as those rules are not otherwise inconsistent with the Act. Nothing in section 274 bars the Commission from clarifying and implementing the requirements of section 274. Moreover, courts repeatedly have held that the Commission's general rulemaking authority is ''expansive'' rather than limited. In addition, it is well-established that an agency has the authority to adopt rules to administer congressionally mandated requirements.

18. Our conclusion that the Commission has jurisdiction under the

Communications Act to establish rules applicable to the full scope of section 274, including intrastate electronic publishing services, is particularly appropriate where, as here, the Commission is authorized to adjudicate complaints alleging violations of section 274. Section 274(e) provides a private right of action to any person claiming that an act or practice of a BOC, affiliate, or separated affiliate has violated any requirement of section 274. Under section 274(e)(1), such person may file a complaint with the Commission or bring suit in a U.S. District Court as provided in section 207. In addition to damages, section 274(e)(2) permits an aggrieved person to apply to the Commission for a cease-and-desist order or to a U.S. District Court for an injunction or an order compelling compliance. We find that it serves the public interest for us to clarify in advance the section 274 requirements imposed on the BOCs that parties may ask us to enforce later. Such clarification of the requirements will reduce uncertainty, aid BOCs and their affiliates in complying with the requirements of section 274, and facilitate the prompt resolution of compliance disputes that may be presented in complaint proceedings.

19. We reject the argument that section 2(b) of the Communications Act requires the conclusion that section 274, and the Commission's authority thereunder, apply only to the provision of interstate electronic publishing services. As demonstrated, for example, by section 274(c)(2)(C)'s grant of authority to the Commission to alter the maximum interest that a BOC may hold in electronic publishing joint ventures with small, local electronic publishers, Congress gave the Commission intrastate jurisdiction without amending section 2(b). Thus, we find that, in enacting section 274 after section 2(b), and squarely addressing therein the issues before us by using the statutory language discussed above, Congress intended for section 274 to take precedence over any contrary implications based on section 2(b).

20. We similarly are not persuaded that section 601(c) of the 1996 Act evinces an intent by Congress to preserve states' authority over intrastate matters arising under section 274. Section 601(c) of the 1996 Act provides that the Act and its amendments ''shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.'' As discussed above, we conclude that section 274 expressly modifies federal law, and the Commission's statutory authority thereunder, to reach intrastate electronic publishing services.

B. Telemessaging

1. Background

21. In the *NPRM,* we sought comment on the extent to which section 260 grants the Commission statutory authority over the intrastate provision of telemessaging services. We stated that telemessaging is an information service that, when provided by a BOC or its affiliate on an interLATA basis, is subject to the requirements of section 272 in addition to the requirements of section 260. We also noted that, in the *Non-Accounting Safeguards NPRM* (61 FR 39397 (July 29, 1996)), we tentatively concluded that the Commission's authority under sections 271 and 272 applies to interstate and intrastate interLATA information services provided by BOCs or their affiliates. Further, we pointed out that section 260 applies not only to BOCs and their affiliates, but also to all incumbent LECs. Finally, apart from any intrastate jurisdiction conferred by section 260 itself, we sought comment in the *NPRM* on the extent to which the Commission may have the authority to preempt inconsistent state regulations with respect to matters addressed by section 260.

2. Comments

22. AT&T, ATSI, and Voice-Tel contend that section 260, and the Commission's authority thereunder, apply to all telemessaging services provided by incumbent LECs, including interstate and intrastate, as well as interLATA and intraLATA, telemessaging services. ATSI contends that any attempt to limit the applicability of section 260 would deny providers of telemessaging a remedy against anticompetitive practices that Congress intended to provide them. AT&T further contends that section 260 is an independent grant of authority to the Commission and is not restricted in any way by sections 271 and 272. Rather, AT&T contends that sections 271 and 272 complement section 260 by imposing additional requirements on the BOCs.

23. Some BOCs and state commissions, on the other hand, argue that section 2(b) of the Communications Act and section 601(c) of the 1996 Act bar the Commission from exercising authority under section 260 with respect to any intrastate telemessaging services absent an express grant of authority from Congress. Some of these commenters contend that nothing in section 260 gives the Commission authority over any intrastate telemessaging services. Ameritech argues that section 260 grants the Commission limited jurisdiction over both interLATA and intraLATA telemessaging services, but only to the extent necessary to adjudicate complaints by other telemessaging providers that an incumbent LEC has improperly subsidized its telemessaging services or discriminated against other telemessaging services in violation of section 260. BellSouth argues that, although sections 271 and 272 give the Commission limited reach over intrastate interLATA telemessaging services, such jurisdiction is not comprehensive and does not reach intrastate intraLATA telemessaging services.

24. Several BOCs and state commissions claim that the Commission may preempt state regulations and exercise jurisdiction over intrastate telemessaging services only subject to the *Louisiana PSC* exception for inseparably mixed interstate-intrastate communications. The New York Commission and BellSouth further argue that the Commission currently has no basis to make the showing necessary to preempt state regulation of intrastate telemessaging services.

25. AT&T, MCI, and Voice-Tel contend that the Commission has authority to preempt state regulatory requirements relating to telemessaging services that are inconsistent with its policies and rules. Voice-Tel and AT&T further argue that, because the interstate and intrastate aspects of telemessaging services cannot be separated, the Commission's jurisdiction over interstate telemessaging services extends to such intrastate services as well.

26. Cincinnati Bell argues that the Commission should preempt state regulations that restrict the ability of small and mid-sized incumbent LECs to provide telemessaging services on an integrated basis.

3. Discussion

27. For the reasons set forth below, we conclude that section 260, and the Commission's authority thereunder, apply to the provision of intrastate as well as interstate telemessaging services. Consequently, we find that section 2(b) of the Communications Act does not bar the Commission from establishing regulations to clarify and implement the requirements of section 260 that apply to intrastate services. We conclude, therefore, that the rules we may establish to implement section 260 are binding on the states, and that the states may not impose regulations with respect

to incumbent LEC provision of telemessaging services that are inconsistent with section 260 and the Commission's rules thereunder.

28. In the *Non-Accounting Safeguards Order* (62 FR 2927 (January 21, 1997)), we concluded that telemessaging is an information service that, when provided by a BOC or its affiliate on an interLATA basis, is subject to the requirements of section 272. We further concluded that section 272 applies to both intrastate and interstate interLATA information services. We have therefore already concluded that the Commission has jurisdiction over certain aspects of intrastate telemessaging services.

29. Section 260 not only imposes additional obligations on BOCs to prevent unlawful subsidization, and discrimination in favor, of its telemessaging service, but also extends its requirements beyond BOCs and their affiliates to all incumbent LECs. We conclude that section 260 applies to the provision of all telemessaging services by incumbent LECs, whether interstate or intrastate, and for BOCs, whether interLATA or intraLATA. This conclusion is supported by the terms of the statute. Specifically, section 260 prohibits an incumbent LEC from, among other things, subsidizing its telemessaging service from its ''telephone exchange service or its exchange access.'' ''Telephone exchange service,'' as defined in section 3(47), is a primarily intrastate service. As we noted in the *Accounting Safeguards Order*, this reference to a primarily intrastate service clearly indicates that the scope of section 260 encompasses intrastate matters.

30. We reject BellSouth's argument that section 260 does not apply to intrastate intraLATA services. As discussed below, section 260, unlike section 272, does not make a distinction between interLATA and intraLATA services. Moreover, the terms in section 260 encompass both interLATA and intraLATA services.

31. We further conclude that, given the jurisdiction granted by section 260, the Commission also has jurisdiction under the Communications Act to establish rules applicable to intrastate telemessaging services. As noted above, sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt any rules it deems necessary or appropriate to carry out its responsibilities under the Act, so long as those rules are not otherwise inconsistent with the Act. Nothing in section 260 bars the Commission from clarifying and implementing the requirements of this section.

32. Our conclusion that the Commission has jurisdiction to establish rules applicable to intrastate telemessaging services is particularly appropriate where, as here, the Commission exercises an adjudicatory function. Section 260(b) requires that the Commission establish expedited procedures for the receipt and review of complaints alleging violations of the nondiscrimination provisions in section 260(a), or regulations adopted pursuant thereto, that result in ''material financial harm'' to a provider of telemessaging service. As in our discussion of section 274 above, we find that it serves the public interest for us to clarify in advance the section 260 requirements that are imposed on incumbent LECs and that parties may ask us to enforce later. Such clarifications will reduce uncertainty, aid incumbent LECs in complying with the requirements of section 260, and facilitate the prompt resolution of compliance disputes that may be presented in complaint proceedings.

33. We reject the argument that section 2(b) of the Communications Act requires the conclusion that section 260, and the Commission's authority thereunder, apply only to the provision of interstate telemessaging services. Rather, as discussed above with respect to electronic publishing under section 274, we find that, in enacting section 260 after section 2(b), and squarely addressing therein the issues before us, Congress intended for section 260 to take precedence over any contrary implications based on section 2(b).

34. We similarly are not persuaded that section 601(c) of the 1996 Act evinces an intent by Congress to preserve states' authority over intrastate matters arising under section 260. Section 601(c) of the 1996 Act provides that the Act and its amendments ''shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.'' As discussed above, we conclude that section 260 expressly modifies federal law, so that both federal law, and the Commission's authority thereunder, apply to both interstate and intrastate provision of telemessaging services.

C. Constitutional Issues

35. BellSouth and U S WEST raise constitutional concerns with respect to our implementation of sections 260 and 274. BellSouth contends that the Commission must be ''circumspect'' in its construction of sections 260 and 274 because both the separate affiliate requirement of section 272 that we proposed applying to BOCs' interLATA telemessaging services and the separated affiliate requirement of section 274 ''impose impermissible prior restraints on BOCs' speech activities,'' in violation of the First Amendment. Further, it maintains that sections 260 and 274, as well as other sections of the Act, are unconstitutional ''bills of attainder'' to the extent they single out BOCs by name and impose restrictions on them alone. Recognizing that we have no discretion to ignore Congress' mandate to apply sections 260 and 274, BellSouth urges us to construe these sections, and others, narrowly. U S WEST concurs with BellSouth and urges the Commission not to adopt any structural rules beyond the express terms of the statute.

36. NAA, in reply, dismisses BellSouth's constitutional arguments. It rejects as frivolous the argument that the electronic publishing safeguards are an unconstitutional prior restraint on BOCs' speech activities. It further states that the separated affiliate requirement (1) is a ''reasonable approach to detecting and preventing cross-subsidy and discrimination that does not unnecessarily burden the BOCs' right to speak;'' (2) does not violate the First Amendment because it expires four years after enactment of the Act and serves important government interests; and (3) is not a bill of attainder because BOCs are only singled out for ''temporary, narrowly-focused, economic regulation.''

37. Although decisions about the constitutionality of congressional enactments are generally outside the jurisdiction of administrative agencies, we have an obligation under Supreme Court precedent to construe a statute ''where fairly possible to avoid substantial constitutional questions'' and not to ''impute to Congress an intent to pass legislation that is inconsistent with the Constitution as construed by the [Supreme Court].'' As BellSouth concedes, we have no discretion to ignore Congress' mandate respecting these sections or any other sections of the Act. Nevertheless, we find BellSouth's argument to be without merit.

38. With respect to section 274, we reject the argument that requiring BOCs to provide electronic publishing services through a separated affiliate violates the First Amendment. BellSouth bases its argument on an assertion that, as ''content-related'' services, electronic publishing services are commercial speech entitled to First Amendment protection. We conclude that, to the extent that BOC provision of electronic publishing services constitutes speech for First Amendment

purposes, the section 274 separated affiliate requirement neither prohibits the BOCs from providing such services, nor places any restrictions on the content of the information the BOCs may provide. Instead, the section 274 separated affiliate requirement is a content-neutral restriction on the manner in which BOCs may provide electronic publishing services that are disseminated by means of a BOC's basic telephone service. These restrictions address the important governmental interest of protecting against improper cost allocation and discrimination by the BOCs, and they do so in a narrowly-tailored, content-neutral manner. Thus, we conclude that the separated affiliate requirement imposed by section 274 on BOC provision of electronic publishing services does not violate the First Amendment.

39. Similarly, we reject BellSouth and U S WEST's argument that section 274 is an unconstitutional ''bill of attainder'' because the statute singles out BOCs by name and imposes restrictions on them alone. We conclude that section 274 is not an unconstitutional bill of attainder simply because it applies only to the BOCs. Rather, judicial precedent teaches that, in determining whether a statute amounts to an unlawful bill of attainder, we must consider whether the statute ''further[s] nonpunitive legislative purposes,'' and whether Congress evinced an intent to punish. As noted above, the section 274 restrictions on BOC provision of electronic publishing services are temporary requirements aimed at protecting against improper cost allocation and discrimination by the BOCs. Moreover, we find no evidence, and BellSouth and US WEST have offered none, that would support a finding that Congress enacted section 274 to punish the BOCs. In fact, in enacting the 1996 Act, Congress freed BOCs from the terms of an antitrust consent decree. Thus, we conclude that the section 274 restrictions imposed on BOCs do not violate the Bill of Attainder Clause.

40. With respect to section 260, BellSouth raises constitutional issues in this proceeding regarding the tentative conclusion in the *Non-Accounting Safeguards NPRM* that, under section 272, BOCs must provide interLATA telemessaging services through a separate affiliate. We find no merit in BellSouth's arguments for the same reasons discussed above and in the *Non-Accounting Safeguards Order.*

III. BOC Provision of Electronic Publishing—Section 274

A. Definition of Electronic Publishing

1. Electronic Publishing Services Under Section 274(h)

a. Background

41. Section 274(h)(1) defines ''electronic publishing'' as: the dissemination, provision, publication, or sale to an unaffiliated entity or person, of any one or more of the following: news (including sports); entertainment (other than interactive games); business, financial, legal, consumer, or credit materials; editorials, columns, or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information.

Section 274(h)(2) also lists specific services that are excluded from the definition of electronic publishing. These excepted services include, among other things, common carrier provision of telecommunications service, information access service, information gateway service, voice storage and retrieval, electronic mail, certain data and transaction processing services, electronic billing or advertising of a BOC's regulated telecommunications services, language translation or data format conversion, ''white pages'' directory assistance, caller identification services, repair and provisioning databases, credit card and billing validation for telephone company operations, E 911 and other emergency assistance databases, and video programming and full motion video entertainment on demand.

42. In the *NPRM,* we sought comment on how to distinguish the services that are properly included in the definition of electronic publishing in section 274(h)(1) from those services that are excluded under 274(h)(2). We asked parties to identify any enhanced services that BOCs currently provide that appear to meet the definition of an electronic publishing service under section 274. To the extent it is unclear whether a particular service, or a particular group of services, is encompassed by the statutory definition of electronic publishing, we invited parties to identify the basis for the ambiguity and to make recommendations on how the service, or services, should be classified. For example, we cited the *Non-Accounting Safeguards NPRM,* which sought comment on whether we should classify as ''electronic publishing'' services those services for which the carrier ''controls, or has a financial interest in, the content of the information transmitted by the service.''

43. In addition, we observed in the *NPRM* that, although electronic publishing is specifically included in the definition of information services, BOC provision of electronic publishing is explicitly exempted from the separate affiliate and nondiscrimination requirements of section 272 that apply to BOC provision of interLATA information services. We noted that, in contrast to section 272, which applies only to BOC provision of interLATA information services, section 274 does not distinguish between the intraLATA and interLATA provision of electronic publishing services. We sought comment, therefore, on whether section 274 applies to BOC provision of both intraLATA and interLATA electronic publishing services.

b. Comments

44. NAA asserts that the definition of electronic publishing in section 274(h) is clear and detailed; therefore, it contends, there is no need to anticipate ambiguous services at this time. Other commenters agree that the definition of electronic publishing in section 274(h)(1) is clear, but suggest that Commission clarification of some of the exceptions to electronic publishing in section 274(h)(2) would be appropriate. For example, several parties ask us to clarify that the ''gateway'' exception in section 274(h)(2)(C) includes access to a home page that electronically links selected Internet sites or other home pages. Similarly, they contend that introductory information regarding an Internet service provider's services and electronic linkage to these services should also be included in the ''gateway'' exception. In addition, they contend that software browsers should be considered ''navigational systems,'' which are also excluded from the definition of electronic publishing under section 274(h)(2)(C). AT&T notes, however, that, even where particular BOC services are exempt from the requirements of section 274, the separate affiliate requirements of section 272 may still apply.

45. Some commenters also ask us to clarify that BOC transmission of information that falls within the definition of electronic publishing under section 274(h)(1) does not make the BOC's transmission of such information subject to the requirements of section 274 unless the BOC has control of, or a financial interest in, the content of the information transmitted. Those situations where a BOC merely

provides access to another entity's content, they argue, should not be considered electronic publishing.

c. Discussion

46. We find, as the commenters indicate, that electronic publishing services may include services provided through the Internet or through proprietary data networks. We also find that, although the definition of electronic publishing in section 274(h) is quite detailed, clarification of the ''gateway'' exception of section 274(h)(2)(C) is appropriate. Section 274(h)(2)(C) provides that electronic publishing shall not include:

The transmission of information as part of a gateway to an information service that does not involve the generation or alteration of the content of information, including data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access electronic publishing services, which do not affect the presentation of such electronic publishing services to users.

We conclude, consistent with the comments on this issue, that a BOC's provision of access to introductory World Wide Web home pages, other types of introductory information, and software (such as browsers) does not constitute the provision of electronic publishing services under section 274(h)(2)(C). We find that, as long as a BOC merely provides access to a home page, or an initial screen that does not include any of the enumerated content types in section 274(h)(1), it is engaged in the provision of ''gateway'' services that section 274(h)(2)(C) excludes from the definition of electronic publishing services. Further, the statute expressly excludes ''introductory information content'' from the definition of electronic publishing services. Similarly, we find that end user software products, such as World Wide Web browsers, to the extent they enable users ''to access electronic publishing services'' and do not themselves incorporate the content types listed in section 274(h)(1), constitute ''navigational systems'' that are excepted from the definition of electronic publishing. Further, we conclude that hypertext ''links,'' and other pointers, from any gateway or navigational system to electronic publishing content are similarly ''navigational'' systems and thus are not electronic publishing services under section 274(h)(1).

47. Moreover, we find that, to the extent BOCs engage in activities that are excluded from the definition of electronic publishing under section 274(h), they are not subject to the joint marketing restrictions of section 274(c) with respect to those activities. We find, however, that certain activities that are excluded from the definition of electronic publishing may still be information services subject to the separate affiliate, nondiscrimination, and joint marketing requirements of section 272. For example, although ''gateway'' services, as discussed above, are generally excluded from the definition of electronic publishing services, in the *Non-Accounting Safeguards Order* we found that certain BOC-provided Internet access services may be interLATA information services subject to the requirements of section 272.

48. As to services that are neither expressly included nor excluded from the definition of electronic publishing, or services whose proper classification may be otherwise ambiguous, it would be speculative for us to determine at this time whether such services are electronic publishing services. Rather, we find that the appropriate classification of an ambiguous service will necessarily involve a fact-specific analysis that is best performed on a case-by-case basis. Moreover, we decline to adopt NAA's proposal that we rely solely on whether such service involves ''the generation or alteration of the content of information.'' Although we recognize that Congress used this language in describing several exceptions to the definition of electronic publishing, we do not find this fact to be dispositive in itself. There is no indication in section 274 or its legislative history that Congress intended the ''generation or alteration'' language to be the controlling factor in determining the nature of ambiguous services. We may, nevertheless, take it into consideration in any determination we make concerning the classification of an ambiguous service.

49. As to the electronic publishing services described in section 274(h)(1), we conclude, for the reasons discussed below, that a BOC must control, or have a financial interest in, the content of information transmitted over its basic telephone service in order to be subject to the requirements of section 274. We therefore agree with those parties that argue that a BOC is not subject to section 274 requirements merely because it provides the transmission component of an electronic publishing service offered by an unaffiliated entity to end users. We find support for our conclusion in two of the exceptions to the definition of electronic publishing—section 274(h)(2)(B), which excepts from the definition of electronic publishing ''[t]he transmission of information as a common carrier,'' and section 274(h)(2)(M), which excludes ''[a]ny other network service of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information.'' We note further that this ''control or financial interest'' test is consistent with the definition of electronic publishing in the Modification of Final Judgment (MFJ). The MFJ, among other things, prohibited AT&T from engaging in electronic publishing over its own transmission facilities. It defined ''electronic publishing'' as the ''provision of any information which AT&T or its affiliates has, or has caused to be, originated, authored, compiled, collected, or edited, *or in which it has a direct or indirect financial or proprietary interest*, and which is disseminated to an unaffiliated person through some electronic means.'' See *United States* v. *Western Electric*, 552 F. Supp. 131, 180–81 (D.D.C. 1982) (emphasis added), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983). As discussed below, however, because we received very few comments on the exact meaning of ''control'' and ''financial interest,'' we are seeking additional comment on this issue in a *Further Notice of Proposed Rulemaking* (''*FNPRM*'').

50. Finally, we conclude that section 274 applies to a BOC's provision of both intraLATA and interLATA electronic publishing services. Nothing in the statute or its legislative history suggests that Congress intended to distinguish between intraLATA and interLATA electronic publishing services. We therefore agree with those commenters that argue that, if Congress had intended to distinguish between intraLATA and interLATA electronic publishing as it did in describing information services subject to section 272, it would have done so.

2. Dissemination by Means of ''Basic Telephone Service''

a. Background

51. Section 274 prescribes the terms under which a BOC may offer electronic publishing. Section 274(a) states that no BOC or BOC affiliate ''may engage in the provision of electronic publishing that is disseminated by means of such [BOC's] or any of its affiliates' basic telephone service, except that nothing in this section shall prohibit a separated affiliate or electronic publishing joint venture operated in accordance with

this section from engaging in the provision of electronic publishing.'' In the *NPRM,* we tentatively concluded that a BOC or BOC affiliate may engage in the provision of electronic publishing services disseminated by means of a BOC or its affiliate's basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture.''

b. Comments

52. No commenters disagree with our tentative conclusion that a BOC or BOC affiliate may engage in the provision of electronic publishing services disseminated by means of a BOC or its affiliate's basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture.'' The majority of BOCs point out, however, that electronic publishing *not* disseminated via the basic telephone service of a BOC or its affiliate is not subject to the requirements of section 274. For example, PacTel maintains that a BOC or its affiliate may engage in the provision of electronic publishing service disseminated by means of telephone exchange service or facilities provided by a competitive wireline telephone service provider without having to create a separated affiliate or electronic publishing joint venture under section 274(a).

53. Similarly, Ameritech asserts, and SBC agrees, that if a BOC only provides exchange access, and not basic telephone service, it is not subject to section 274 requirements. For example, Ameritech contends that, if a BOC originates or terminates a toll call disseminating electronic publishing information, the BOC is providing ''exchange access,'' not exchange service. In response, AT&T asserts that ''basic telephone service'' under section 274 extends to any electronic publishing disseminated by means of either the BOC or its affiliate's local exchange service or local exchange facilities. This definition, AT&T argues, would include the exchange access service of a BOC or its affiliate.

c. Discussion

54. We affirm our tentative conclusion that, pursuant to the plain language of section 274(a), a BOC or BOC affiliate may engage in the provision of electronic publishing services disseminated by means of a BOC or its affiliate's basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture.'' Moreover, in reading section 274(a) together with the definition of ''basic telephone service'' in section 274(i)(2), we conclude that a BOC or BOC affiliate is not required to provide electronic publishing services through a separated affiliate or electronic publishing joint venture if it disseminates its electronic publishing via the basic telephone service of a competing wireline local exchange carrier or commercial mobile radio service provider. We find that dissemination via the basic telephone service of competing, unaffiliated providers significantly reduces the ability of the BOC to allocate costs improperly and to discriminate in favor of its affiliate. We therefore decline to apply the requirement that a BOC provide electronic publishing services through a separated affiliate or electronic publishing joint venture where Congress did not. We also conclude that, with respect to electronic publishing services provided through the Internet, ''dissemination'' means the transmission of information via a BOC or its affiliate's basic telephone service to the Internet, rather than the transmission of information to the end user. Thus, a BOC that is providing Internet access services to end users, and nothing more, is not engaged in the provision of electronic publishing pursuant to section 274.

55. We reject Ameritech's assertion, however, that a BOC's dissemination of electronic publishing services through its exchange access service is exempt from the requirements of section 274. Pursuant to section 274(a), BOCs that provide electronic publishing services disseminated via their own ''basic telephone service'' must do so through a separated affiliate or electronic publishing joint venture. Section 274(i)(2) defines ''basic telephone service'' as ''any wireline telephone exchange service, or *wireline telephone exchange service facility,* provided by a [BOC] in a telephone exchange area.'' We find that, when a BOC provides exchange access service, it uses its telephone exchange service facilities. Indeed, ''exchange access'' is defined in section 153(16) as ''the offering of access to telephone exchange services *or facilities* for the purpose of the origination or termination of telephone toll services.'' Since the definition of ''basic telephone service'' in section 274(i)(2) encompasses both the telephone exchange service and the exchange service *facility,* the use of exchange access service, which in turn uses the BOC's telephone exchange service facilities, for the dissemination of electronic publishing falls within this definition and must be provided in accordance with the requirements of section 274. This conclusion is appropriate as a matter of policy, too, since the BOCs' near-monopoly over exchange access service as well as local exchange service gives them an incentive to allocate costs improperly and discriminate against unaffiliated electronic publishing entities.

56. We conclude therefore that, to be engaged in the provision of electronic publishing services subject to section 274, the BOC must disseminate the information via its basic telephone service (as defined by 274(i)(2)) and have control of, or a financial interest in, the content of the information being provided. Similarly, we also conclude that control of, or a financial interest in, the content of the information alone, without BOC dissemination of information, is not electronic publishing under section 274.

57. We note that, to the extent a BOC disseminates electronic publishing services through the facilities of a competing wireline local exchange carrier, or commercial mobile service provider, and thus is not required to provide such services through a separated affiliate or electronic publishing joint venture, it may still be subject to the joint marketing prohibition of section 274(c)(1)(B). As discussed below, this section contemplates situations in which a BOC affiliate is involved in the provision of services that are ''related to'' the provision of electronic publishing, but does not provide electronic publishing services disseminated by means of a BOC or its affiliate's basic telephone service.

B. ''Separated Affiliate'' and ''Electronic Publishing Joint Venture'' Requirements of Section 274

1. The ''Operated Independently'' Requirement of Section 274(b)

a. Background

58. Section 274(b) states that a separated affiliate or electronic publishing joint venture established to provide electronic publishing services pursuant to section 274(a) shall be ''operated independently'' from the BOC. Subsections 274(b) (1)–(9) then list nine structural separation and transactional requirements that apply to the separated affiliate or electronic publishing joint venture. In the *NPRM* we addressed only the structural separation requirements of section 274(b) and only those requirements are addressed herein. Subsections 274(b) (1), (3), (4), (8), and (9) are transactional requirements that are addressed in the *Accounting Safeguards Order.* We observed in the NPRM that the structural separation requirements of section 274(b) do not refer, in all

instances, to both separated affiliates and electronic publishing joint ventures. We, therefore, sought comment on whether Congress intended the phrase ''operated independently'' to have a different meaning for separated affiliates and for electronic publishing joint ventures. We also sought comment in the *NPRM* on whether the Commission should adopt additional regulatory requirements to ensure compliance with the ''operated independently'' requirement of section 274(b).

b. Comments

59. Several commenters argue that Congress intended the phrase ''operated independently'' to have the same meaning for separated affiliates and electronic joint publishing ventures when subsections 274(b) (1)–(9) refer to both separated affiliates and electronic publishing joint ventures. They note, however, that some of the requirements of section 274(b) do not apply to electronic publishing joint ventures. Where the statutory language does not refer to both separated affiliates and electronic publishing joint ventures, these commenters maintain that the phrase ''operated independently'' should not be read to render all the requirements in subsections (b)(1)–(9) applicable to both separated affiliates and electronic publishing joint ventures; they contend, for example, that sections 274(b)(5) and 274(b)(7) are inapplicable to electronic publishing joint ventures since those subsections refer only to separated affiliates. Other commenters argue that the language ''operated independently'' compels us to apply all of the section 274(b) requirements to separated affiliates and electronic publishing joint ventures.

60. As to the issue of whether we should adopt regulatory requirements to ensure compliance with the ''operated independently'' requirement of section 274(b), BOCs and several trade associations argue that the structural and transactional safeguards of section 274 are clear, self-executing and comprehensive. They assert that Congress could have expressly provided for additional requirements had it deemed them necessary to ensure the operational independence of BOCs from their separated affiliates and electronic publishing joint ventures. They further assert that the phrase ''operated independently'' is not a separate substantive restriction, as their competitors maintain, but that subsections 274(b) (1)–(9) reflect Congress' determination of the requirements necessary to achieve operational independence. Several of these commenters observe that this position is consistent with the Commission's interpretation of the same language in *Computer II* and the cellular separation rules, where ''operate independently'' is not given an independent meaning. Finally, several commenters assert that Congress did not grant the Commission authority to adopt additional regulations in section 274(b).

61. Other commenters contend that the inclusion of the phrase ''operated independently,'' in addition to the requirements in subsection 274(b) (1)–(9), supports the conclusion that we are authorized to and should adopt additional regulations to ensure compliance with section 274(b). They maintain that the ''operated independently'' language is a separate substantive requirement from those restrictions in subsections 274(b) (1)–(9). These commenters urge us to read the ''operated independently'' language as authorizing us to adopt additional rules such as those adopted in *Computer II.* Specifically, they urge us to adopt regulations precluding the separated affiliated or joint venture from: (1) Leasing or sharing physical space collocated with regulated transmission facilities used to provide basic service; (2) sharing computer facilities with the local exchange carrier; (3) developing software jointly with the regulated entity; and (4) marketing any other equipment or services to any affiliate. Time Warner further proposes that we adopt regulations precluding the separated affiliate or electronic publishing joint venture from constructing, owning or operating its own transmission facilities, thereby requiring the separated affiliate or joint venture to purchase its capacity from the regulated carrier under tariff and ensuring ''that local exchange monopoly power is not leveraged into the provision of electronic publishing.''

c. Discussion

62. We conclude that the ''operated independently'' requirement of section 274(b) obligates a separated affiliate to comply with all the requirements of subsections 274(b) (1)–(9). We further conclude that an electronic publishing joint venture, to comply with the ''operated independently'' requirement of section 274(b), need only satisfy the requirements of subsections 274(b) (1)–(4), (6), and (8)–(9), since subsections 274(b)(5) and 274(b)(7) specifically refer to separated affiliates and not to electronic publishing joint ventures. We discuss more fully below the structural separation requirements of section 274(b), *i.e.*, subsections 274(b) (2), and (5)–(7). As noted above, the transactional requirements of section 274(b), *i.e.*, subsections 274(b) (1), (3), (4), (8), and (9), are discussed in the *Accounting Safeguards Order.*

63. We reject the arguments made by certain commenters that the phrase ''operated independently'' is a separate substantive restriction that requires us to apply subsections 274(b) (1)–(9) to both separated affiliates and electronic publishing joint ventures even where the statute refers only to a separated affiliate. We see no reason for Congress to have expressly referred in section 274(b)(5) and section 274(b)(7) to separated affiliates if the restrictions in those subsections were intended to apply to both separated affiliates and electronic publishing joint ventures.

64. We also reject the similar argument that the phrase ''operated independently'' is a separate substantive restriction authorizing us to adopt additional restrictions beyond those in subsections 274(b) (1)–(9). There is no evidence in the statute or its legislative history that Congress intended the restrictions in section 274(b) merely to be a list of minimum requirements that need to be supplemented by additional rules to be imposed on separated affiliates or electronic publishing joint ventures. We find, therefore, that the ''operated independently'' requirement in section 274(b) is satisfied if a BOC and its separated affiliate or electronic publishing joint venture comply with the applicable restrictions in subsections 274(b) (1)–(9), as noted above. While we decline to adopt additional restrictions beyond those in subsections 274(b) (1)–(9), we reject the argument that Congress did not grant the Commission the authority to do so.

65. This interpretation of the ''operated independently'' requirement in section 274(b) is not inconsistent with our determination in the *Non-Accounting Safeguards Order* that the section 272(b)(1) ''operate independently'' provision imposes requirements beyond those contained in subsections 272(b)(2)–(5). The ''operated independently'' requirement in section 274(b) is followed by nine substantive restrictions that we read as the criteria to be satisfied to ensure operational independence between a BOC and its electronic publishing entity created pursuant to section 274(a). In contrast, the ''operate independently'' provision in section 272 appears in subsection 272(b)(1), which is one of five separate substantive requirements in section 272(b).

2. Section 274(b)(2)

a. Background

66. Section 274(b)(2) provides that a separated affiliate or electronic publishing joint venture and the BOC with which it is affiliated shall ''not incur debt in a manner that would permit a creditor of the separated affiliate or joint venture upon default to have recourse to the assets of the [BOC].'' We sought comment in the *NPRM* on the types of activities a BOC, a separated affiliate, or an electronic publishing joint venture are precluded from engaging in under section 274(b)(2). We tentatively concluded that a BOC may not cosign a contract, or any other instrument, with a separated affiliate or an electronic publishing joint venture by which it would incur debt in violation of section 274(b)(2). We also sought comment on: whether this subsection affects a separated affiliate differently than an electronic publishing joint venture because of their different corporate relationships to the BOC, and whether we should establish specific requirements regarding the types of activities contemplated by section 274(b)(2).

b. Comments

67. A number of commenters generally agree with our tentative conclusion that section 274(b)(2) prohibits a BOC from cosigning with a separated affiliate or an electronic publishing joint venture a contract, or any other instrument, that allows a creditor, upon default, to have recourse to the assets of the BOC. AT&T and MCI maintain that we should also interpret section 274(b)(2) to prohibit a BOC's parent holding company from co-signing a debt of a separated affiliate or electronic publishing joint venture. The BOCs, in reply, assert that interpreting section 274(b)(2) to preclude a BOC's parent company from cosigning a contract or any other instrument with a BOC's separated affiliate or electronic publishing joint venture is neither supported by the statutory language nor public policy. They further state that there is no need for additional regulations to effectuate section 274(b)(2).

c. Discussion

68. As stated in the *NPRM*, we find that the intent of section 274(b)(2) is to protect BOC local exchange and exchange access service subscribers from bearing the cost of default by BOC affiliates. We adopt our tentative conclusion that section 274(b)(2) prohibits a BOC from cosigning with a separated affiliate or an electronic publishing joint venture a contract, or any other instrument, that would incur debt in a manner that grants the creditor recourse, upon default, against the assets of a BOC. Consistent with this conclusion, we further conclude that a BOC's parent is precluded from cosigning a contract or other instrument for a BOC's separated affiliate or electronic publishing joint venture, if the effect is to provide its creditor with recourse, upon default, to a BOC's assets. We reject, however, the arguments urging us to extend the restrictions in section 274(b)(2) to preclude a BOC's section 274 separated affiliate or electronic publishing joint venture from incurring debt in a manner that would permit a creditor, upon default, to have recourse to the assets of a BOC's parent holding company, provided that this recourse does not effectively result in recourse to the assets of the BOC. The text of the statute does not support the proposed restriction. Moreover, it would leave section 274 separated affiliates and electronic publishing joint ventures at a disadvantage as compared with other electronic publishing companies that are permitted to rely upon the credit of their parent corporations.

69. We decline to apply this section differently as to separated affiliates and electronic publishing joint ventures. No arguments were advanced supporting the need for different treatment with respect to these alternate vehicles for providing electronic publishing services, and we see no evidence at this time indicating that this subsection affects these entities differently. In this regard we agree with SBC that ''no useful purpose would be served by * * * speculating as to whether the subsection might affect a separated affiliate differently than a joint venture,'' and that we should proceed on a case-by-case basis, rather than adopt a ''one size fits all'' rule.

70. We reject AT&T's proposal that we require contracts or other instruments through which a separated affiliate or electronic publishing joint venture obtains credit to provide expressly that the creditor has no recourse either to the assets of a BOC or to the assets of the parent holding company of a BOC. As stated above, we do not read section 274(b)(2) to preclude a creditor of a separated affiliate or electronic publishing joint venture from having recourse, upon default, to the assets of a BOC parent holding company. Further, given the clarity of section 274(b)(2), we see no need to adopt a rule at this time requiring contracts through which a separated affiliate or electronic publishing joint venture obtains credit to provide expressly that the creditor has no recourse to the assets of a BOC. BOCs, nevertheless, may include such a provision in their contracts, if they so choose.

3. Section 274(b)(5) and Shared Services

a. Background

71. Section 274(b)(5) provides that a separated affiliate and a BOC shall ''(A) have no officers, directors, and employees in common after the effective date of this section; and (B) own no property in common.'' We tentatively concluded in the *NPRM* that, since this subsection does not specifically refer to electronic publishing joint ventures, BOCs are not precluded from sharing officers, directors, and employees with an electronic publishing joint venture. We also tentatively concluded in the *NPRM* that section 274(b)(5) does not preclude a BOC from owning property in common with an electronic publishing joint venture.

72. We also sought comment on the extent of the separation between a BOC and a separated affiliate required by section 274(b)(5)(A). We noted, for example, ''that section 274(c)(2) permits joint marketing activities between a BOC and either a separated affiliate or electronic publishing joint venture under certain conditions.'' With respect to a BOC and a separated affiliate, we sought comment on ''whether, to the extent that they are engaged in permissible joint marketing activities, the separated affiliate may share marketing personnel with the BOC.'' We further sought comment on ''how BOCs may engage in joint marketing activities with a separated affiliate pursuant to section 274(c)(2)(A) if they cannot share marketing personnel.''

73. We invited comment on the types of property encompassed by the phrase ''property in common.'' We tentatively concluded that section 274(b)(5)(B) prohibits a BOC and its separated affiliate from jointly owning goods, facilities, and physical space. We also tentatively concluded that it prohibits the joint ownership of telecommunications transmission and switching facilities, one of the separation requirements we adopted for independent LECs in the *Competitive Carrier Fifth Report and Order* (49 FR 34824 (September 4, 1984)). Finally, we sought comment on whether the section 274(b)(5) prohibition on joint ownership of property between a BOC and its separated affiliate also precludes a BOC and a separated affiliate from sharing the use of property owned by one entity or the other and from jointly leasing any property.

b. Comments

74. *Applicability of Section 274(b)(5) to Electronic Publishing Joint Ventures.* The BOCs and NAA agree with our tentative conclusion that section 274(b)(5) does not preclude a BOC from having officers, directors, or employees in common with an electronic publishing joint venture. These parties also agree with our tentative conclusion that this section does not bar a BOC from owning property in common with its electronic publishing joint venture. Other commenters disagree with our tentative conclusions. MCI and Time Warner maintain that section 274(b)(5) should apply to both separated affiliates and electronic publishing joint ventures and that interpreting this section to apply only to BOCs and their separated affiliates would undermine what they consider to be the separate substantive ''operate independently'' requirement of section 274(b). AT&T recognizes that section 274(b)(5), on its face, does not prohibit a BOC from sharing common personnel or owning property in common with an electronic publishing joint venture, but argues that we have authority to proscribe such sharing arrangements or ownership under section 274(b)(5), if necessary to ensure compliance with the ''operated independently'' language.

75. *Extent of the Separation Required Between a BOC and a Separated Affiliate.* Several BOCs state that section 274(b)(5)(A) should not be interpreted to act as a limitation upon the permissible joint marketing activities in section 274(c)(2). They contend that it is not necessary for a BOC and its separated affiliate to have employees in common to engage in the joint marketing activities permitted by section 274(c)(2). According to these commenters, employees of one entity may perform inbound telemarketing or referral services permitted under section 274(c)(2)(A) and (B) for the other entity.

76. SBC argues that a BOC and a separated affiliate, to the extent they engage in permissible joint marketing activities, should be allowed to employ individuals in common. Specifically, it states that ''where there is a conflict between the authority conferred by [s]ection 274(c)(2) and the general operational independence requirements of Section 274(b), the former, more specific provisions should control.''

77. AT&T states that section 274(b)(5) ''prohibit[s] BOC personnel from participating in the operation, planning, marketing or other activities of the separated affiliate, and vice versa * * *.'' MCI states that a BOC should only be allowed to provide telemarketing services pursuant to nondiscriminatory, publicly disclosed contracts.

78. ''*Property in Common.*'' No commenters oppose and some commenters agree with our tentative conclusion that section 274(b)(5)(B) prohibits a BOC and its separated affiliate from jointly owning goods, facilities, and physical space. They further agree that this section prohibits the joint ownership of telecommunications transmission and switching facilities.

79. *Shared Use or Joint Leasing of Property.* The BOCs argue that section 274(b)(5)(B) does not prohibit a BOC and its separated affiliate from sharing the use of property owned by one of the entities, or from jointly leasing property. They maintain that section 274(b)(5)(B) pertains only to ownership of property. Several BOCs note that potential concerns arising from shared use of property are addressed by the requirements of section 274(b)(3). AT&T and Time Warner, on the other hand, urge us to interpret section 274(b)(5)(B) to prohibit a BOC and its separated affiliate both from sharing property owned by one of the entities and from jointly leasing property. MCI does not address whether this section permits joint leasing of property. It states, however, that joint use of property would invite the improper allocation of costs against which the separated affiliate requirement is intended to protect. MCI and Time Warner specifically contend that a separated affiliate should not be permitted to collocate its equipment with BOC local exchange and exchange access equipment or to share computer facilities.

80. *Sharing of Services.* NYNEX and Ameritech argue that neither the Act nor its legislative history can be read to prohibit a BOC and its separated affiliate from utilizing the administrative and corporate governance functions provided by their parent holding company. AT&T argues that we should prohibit, pursuant to section 274(b)(5), a BOC from establishing a second affiliate to perform services or own property for both the BOC and its separated affiliate. MCI, in reply to the BOCs' comments, states that we should preclude the sharing of in-house functions, either by having one entity perform such functions for the other or by having another affiliate, or the parent, perform them for both a BOC and its separated affiliate.

81. *Other Activities.* AT&T argues that we ''should prohibit the BOCs from using any compensation system that directly or indirectly bases the compensation of BOC officers, directors, or other employees on the performance of the affiliate, or vice versa.'' The BOCs generally reply that there is no statutory basis for such a requirement, which would effectively preclude BOCs from offering stock options, other forms of deferred compensation, and bonuses which are commonly used in industry and frequently are based, in part, upon the performance of entities within a corporate family.

c. Discussion

82. *Applicability of Section 274(b)(5) to Electronic Publishing Joint Ventures.* We adopt our tentative conclusion that section 274(b)(5)(A) does not preclude a BOC from having officers, directors, and employees in common with an electronic publishing joint venture. We also adopt our tentative conclusion that section 274(b)(5)(B) does not preclude a BOC from owning property in common with an electronic publishing joint venture. Congress expressly limited the scope of these restrictions to a BOC's separated affiliate. Moreover, we find no basis in this record for extending these restrictions to a BOC's electronic publishing joint venture. This determination is consistent with our finding above that the phrase ''operated independently'' in section 274(b) is not a separate substantive restriction and, therefore, does not provide a basis for making section 274(b)(5) applicable to electronic publishing joint ventures.

83. *Extent of the Separation Required Between a BOC and a Separated Affiliate.* We find that section 274(b)(5)'s provision barring a BOC and its separated affiliate from having ''officers, directors, and employees in common'' does not limit the permissible joint activities set forth in section 274(c)(2). As certain commenters note, it is not necessary for a BOC and its separated affiliate to have employees in common to engage in the joint activities permitted under section 274(c)(2). For this reason, we reject those comments urging us to read section 274(c)(2) as allowing a BOC and its separated affiliate to have personnel in common for the purpose of engaging in permissible joint activities. Such an exception to the prohibition in section 274(b)(5) is not necessary to give effect to sections 274(b)(5) and 274(c)(2) and is not supported by the statutory language. While our interpretation of the interplay between section 274(b)(5) and section 274(c)(2) may result in some reduced efficiency in engaging in the joint activities permitted under section 274(c)(2), we are not convinced that it will be substantial enough to warrant our reading into section 274(b)(5) an

exception where none exists in the statutory language.

84. ''*Property in Common.*'' We adopt our tentative conclusion that section 274(b)(5) prohibits a BOC and its separated affiliate from jointly owning goods, facilities, and physical space, including telecommunications transmission and switching facilities. The prohibition against joint ownership of goods, facilities and physical space is clear on the face of the statute. Moreover, none of the commenters disagree with this tentative conclusion.

85. *Shared Use or Joint Leasing of Property.* We agree with the BOCs that the statutory prohibition in section 274(b)(5) does not preclude a BOC and its separated affiliate from either sharing the use of property owned by either a BOC or its separated affiliate or jointly leasing property. For example, we find that section 274(b)(5) permits a separated affiliate to collocate its equipment in end offices or on other property owned or controlled by the BOC, as long as such collocation agreements satisfy section 274(b)(3). We also find that this section permits a BOC and its separated affiliate to contract with each other for the use of joint transmission and switching equipment, again subject to the requirements of section 274(b)(3). Those commenters arguing for an expanded interpretation of ''own'' to include a prohibition against shared use of property and joint leasing of property offer no statutory support for their position. We are unwilling to assume that Congress intended the prohibition against ownership of property in section 274(b)(5) to include leaseholds and the shared use of property owned by either a BOC or its separated affiliate. Further, we find that allowing shared use of property and joint leases between a BOC and its separated affiliate enables the BOC to take advantage of economies of scale and scope. Concerns about anticompetitive behavior can be addressed through the transactional requirements of section 274(b)(3), the nondiscrimination requirements of section 274(d), and the Commission's affiliate transaction rules.

86. *Sharing of Services.* The prohibition in section 274(b)(5)(A) against a BOC and its separated affiliate having ''officers, directors, and employees in common'' is worded slightly differently from the requirement in section 272(b)(3) that a BOC and its separate affiliate have ''separate officers, directors, and employees.'' We interpret, however, these two provisions to have the same substantive meaning. Both sections 272 and 274 preclude the same person from serving simultaneously as an officer, director, or employee of both a BOC and its section 272 or 274 affiliate, respectively. Thus, an individual may not be on the payroll of both entities. Based on the record before us, we decline to read section 274(b)(5)(A) to prohibit a BOC and its separated affiliate from utilizing the administrative and corporate governance functions provided by their parent holding company or another BOC affiliate. Section 274 does not address whether the parent company of a BOC and its separated affiliate or another BOC affiliate is permitted to perform functions for both a BOC and its separated affiliate. There is no basis in the record for concluding that administrative and corporate governance functions provided to a BOC and its separated affiliate by a parent company or another BOC affiliate would result in the BOC and its separated affiliate violating section 274(b)(5)(A)'s prohibition on having ''officers, directors, and employees in common.'' Further, a parent company that performs services for both a BOC and its section 274 separated affiliate must fully document and properly apportion the costs incurred in furnishing such services.

87. *Other Activities.* We reject AT&T's request that we interpret section 274(b)(5)(A) to prohibit compensation schemes that base the level of remuneration of BOC officers, directors, and employees on the performance of the section 274 separated affiliate, or vice versa. We find that tying the compensation of an employee of a section 274 separated affiliate to the performance, for example, of the BOC's parent holding company and all of its enterprises as a whole, including the performance of the BOC, does not make that individual an employee of the BOC for purposes of section 274(b)(5)(A). Nor does such a compensation arrangement for a BOC employee make that individual an employee of the section 274 separated affiliate. Further, we agree with those commenters stating that such a scheme would effectively preclude BOCs from offering stock options, other forms of deferred compensation, and bonuses, which are commonly used in industry and frequently are based, in part, upon the performance of entities within a corporate family. Indeed, as PacTel notes, ''[i]t is common for corporations to have compensation systems that base a portion of compensation, especially for officers and directors, on the performance of the corporation as a whole. This is consistent with the fiduciary duty of corporate officers and directors * * * .''

4. Section 274(b)(6)

a. Background

88. Section 274(b)(6) states that a separated affiliate or electronic publishing joint venture and the BOC with which it is affiliated shall ''not use for the marketing of any product or service of the separated affiliate or joint venture, the name, trademarks, or service marks of an existing [BOC] except for names, trademarks, or service marks that are owned by the entity that owns or controls the [BOC].'' We tentatively concluded that this provision is sufficiently precise as to make unnecessary the adoption of implementing regulations.

b. Comments

89. Time Warner asks us to clarify that the prohibition in section 274(b)(6) prevents a BOC from sharing a name, trademark, or service mark with the Regional Bell Holding Company (''RBOC''). It argues that the exception in section 274(b)(6) permitting the separated affiliate or electronic publishing joint venture to use the name, trademark, or service mark of the RBOC would ''vitiate the general prohibition against cross-labeling if the BOC affiliates or joint ventures were permitted to use names, trademarks, or service marks that are shared by an operating company and the [RBOC].''

90. The BOCs and YPPA, in reply, state that Time Warner's suggestion is unsupported by the statutory language and would eliminate the express statutory exception Congress created in section 274(b)(6).

c. Discussion

91. We adopt our tentative conclusion that section 274(b)(6) does not require the adoption of implementing regulations. We find that Time Warner's suggestion is contradicted by the statutory language and legislative history that expressly allow a separated affiliate or electronic publishing joint venture to use ''the names, trademarks, or service marks that are owned by the entity that owns or controls the [BOC].'' We agree with BellSouth that the adoption of Time Warner's suggestion ''would require the Commission to assume that Congress was unaware that four of the seven [RBOCs] share their names with their BOC subsidiaries.'' We decline to make this assumption.

5. Section 274(b)(7)

a. Background

92. Section 274(b)(7) states that a BOC is not permitted ''(A) to perform hiring or training of personnel on behalf of a separated affiliate; (B) to perform the purchasing, installation, or maintenance of equipment on behalf of a separated affiliate, except for telephone service that it provides under tariff or contract subject to the provisions of this section; or (C) to perform research and development on behalf of a separated affiliate.'' Since this subsection does not specifically refer to electronic publishing joint ventures, we tentatively concluded that BOCs are permitted to perform these functions on behalf of an electronic publishing joint venture. In addition, we sought comment on whether, ''[t]o the extent that a BOC and a separated affiliate are engaged in permissible joint marketing activities,'' a BOC may perform the hiring or training of marketing personnel on behalf of its separated affiliate under section 274(b)(7)(A). We also sought comment on the type of ''equipment'' encompassed by section 274(b)(7)(B). We asked, for example, whether a BOC providing telephone service to a separated affiliate under tariff or contract subject to the requirements of section 274 is permitted under section 274(b)(7)(B) to purchase, install, and maintain transmission equipment for the separated affiliate.

93. With respect to section 274(b)(7)(C), we asked whether there are any circumstances under which a BOC may share its research and development with its separated affiliate. Specifically, we sought comment on whether this provision simply limits a BOC's ability to perform research and development for the sole and exclusive use of a separated affiliate, or whether it requires a BOC to refrain from performing any research and development that may be potentially useful to a separated affiliate. We also asked about other ways in which this provision may limit a BOC's ability to perform research and development for the separated affiliate.

b. Comments

94. *Applicability of Section 274(b)(7) to Electronic Publishing Joint Ventures.* The BOCs and NAA agree with our tentative conclusion that BOCs are permitted to perform the functions in section 274(b)(7) on behalf of an electronic publishing joint venture. Time Warner and AT&T disagree with our tentative conclusion. They maintain, consistent with their argument respecting section 274(b)(5), that section 274(b)(7) should apply to both a separated affiliate and an electronic publishing joint venture. They state that this interpretation is necessary to give effect to what they consider a separate substantive requirement that a BOC be ''operated independently'' from its electronic publishing joint venture.

95. *Relationship Between Section 274(b)(7)(A) and Section 274(c)(2).* Several commenters argue that there is no exception in section 274(b)(7) for permissible joint marketing activities in section 274(c)(2) and, therefore, we should not permit a BOC, when engaged in permissible joint marketing with its separated affiliate, to perform the hiring or training of marketing personnel on behalf of the separated affiliate. SBC, however, argues that we should allow a BOC to hire and train marketing personnel to carry out the permissible joint marketing activities in section 274(c)(2). It states that this approach is not anticompetitive because teaming or other business arrangements entered into by a BOC pursuant to section 274(c)(2)(B) must be conducted on a nondiscriminatory basis.

96. *The Type of ''Equipment'' Encompassed by Section 274(b)(7)(B).* The majority of commenters agree that section 274(b)(7)(B) permits a BOC to purchase, install, and maintain transmission equipment for its separated affiliate if the BOC is providing telephone service to the separated affiliate under tariff or contract. Bell Atlantic urges us to differentiate between ''provision of a *service* that uses equipment owned by the BOC, an arrangement specifically permitted under this subsection, from the purchasing, installation, and maintenance of *equipment* 'on behalf of' the affiliate, which is barred.'' The distinction, according to Bell Atlantic, is that in the latter situation, the equipment would be owned by the separated affiliate. U S WEST similarly states that this section prohibits a BOC from providing any depreciable equipment to be used by its separated affiliate in conducting the affiliate's business, but that it does not prohibit a BOC from providing services to its section 274 affiliate operation. Several other BOCs argue that the provision of telephone services includes purchasing, installation, or maintenance of transmission equipment, and any other equipment necessary or incidental to providing such service. They note that section 274(b)(3) ensures that there are ample safeguards that such transactions are conducted at arm's length. Other commenters state only that section 274(b)(7)(B) requires BOCs to provide telephone service pursuant to section 274(d). Time Warner specifically urges us to require BOCs to provide unaffiliated electronic publishers with the same access to wireline telephone exchange services that they provide to their in-region separated affiliate or electronic publishing joint venture.

97. *Limitations on Research and Development.* The BOCs, NAA, and USTA generally argue that section 274(b)(7)(C) only limits their ability to perform research and development for the sole and exclusive use of the separated affiliate. They contend that it would be against public policy to restrict BOCs from performing research and development simply because the results might, at some later date, be applied to electronic publishing. Time Warner argues that the statutory language of section 274(b)(7)(C) should lead us to prohibit BOCs, under any circumstances, from sharing any research and development work or results with their in-region electronic publishing affiliates. It further states that we should adopt the *Computer II* rules that preclude specific research and development by the regulated entity on behalf of the competitive affiliate. AT&T, in reply to the BOCs' comments, states only that we ''should reject the BOCs' attempts to circumvent the prohibition in [s]ection 274(b)(7)(C) against BOC research and development on behalf of a separated affiliate through hypertechnical constructions.''

c. Discussion

98. *Applicability of Section 274(b)(7) to Electronic Publishing Joint Ventures.* We adopt our tentative conclusion that section 274(b)(7) does not preclude a BOC from performing the activities in section 274(b)(7) on behalf of an electronic publishing joint venture. The reasons supporting this determination are the same as those supporting our determination that section 274(b)(5) is inapplicable to electronic publishing joint ventures.

99. *Relationship Between Section 274(b)(7)(A) and Section 274(c)(2).* We agree with those commenters asserting that the restrictions in section 274(b)(7)(A) on a BOC performing the hiring or training of personnel on behalf of a separated affiliate apply even when the BOC is engaged in permissible joint activities pursuant to section 274(c)(2). Reading an exception into section 274(b)(7)(A) for the joint activities permitted under section 274(c)(2) is neither supported by the statutory language, nor necessary to give effect to that section and section 274(c)(2). Thus, a BOC may not perform the hiring or training of personnel on behalf of its separated affiliate, even though it may

be engaged in permissible joint activities under section 274(c)(2), such as providing inbound telemarketing services or engaging in nondiscriminatory teaming or business arrangements, as discussed below.

100. *The Type of ''Equipment'' Encompassed by Section 274(b)(7)(B).* We find that section 274(b)(7)(B) prohibits a BOC from purchasing, installing, or maintaining equipment on behalf of its separated affiliate, except for the telephone service that it provides under tariff or contract. We agree with the position of several commenters that the provision of telephone service includes purchasing, installing, and maintaining equipment necessary or incidental to providing such service. As long as the equipment providing the telephone service is owned by a BOC, and not its separated affiliate, such activities are permissible under this section. We note, as some commenters suggest, that, even when engaging in permissible activities under section 274(b)(7), BOCs remain subject to the nondiscrimination requirements in section 274(d).

101. *Limitations on Research and Development.* We conclude that the prohibition in section 274(b)(7)(C) on a BOC performing research and development ''on behalf of'' its separated affiliate precludes a BOC, at a minimum, from performing research and development for the sole and exclusive use of the separated affiliate. We also find that it precludes a BOC from performing research and development for the use or benefit of its section 274 separated affiliate together with other affiliates. We further conclude, however, that the prohibition in section 274(b)(7)(C) on a BOC performing research and development ''on behalf of'' its separated affiliate, as interpreted herein, does not limit a BOC's ability to perform research and development simply because the results might, at a future date, be applied to electronic publishing. We agree with those commenters arguing that such an interpretation ''would not serve the public's continued desire for new and different communications solutions'' and would be ''antithetical to the public interest and national policy under Section 7 of the Communications Act.'' We also find that it would be impractical for a BOC to anticipate all potential uses of research and development activities it might undertake. We recognize that these principles may not address all of the possible scenarios that may arise. Such determinations are fact specific and will need to be made on a case-by-case basis.

102. Further, we disagree with Time Warner that prohibiting a BOC from sharing any research and development work or results with its separated affiliate is supported by the statutory language. Time Warner and AT&T fail to offer any persuasive statutory or policy arguments in support of their position.

6. Comparison with ''Separate Affiliate'' Requirement of Section 272

a. Background

103. We sought comment in the *NPRM* on the interrelationship between the requirements for a ''separate affiliate'' in section 272(b) and the requirements for a ''separated affiliate'' and ''electronic publishing joint venture'' in section 274(b). To the extent that certain BOCs currently are providing all of their information services on an integrated basis, we sought comment on what modifications these BOCs would have to make to their current provision of service in order to provide electronic publishing services in compliance with the separated affiliate or electronic publishing joint venture requirements of section 274.

104. We also sought comment on whether a BOC may provide electronic publishing services through the same entity or affiliate through which it provides in-region interLATA telecommunications services, manufacturing activities, and interLATA information services. In addition, we sought comment on whether a BOC providing any or all of its section 272 services and its section 274 electronic publishing services through the same entity would have to comply with the requirements of section 272, section 274, or both.

b. Comments

105. There were few comments on the interrelationship between the requirements in sections 272(b) and 274(b). Ameritech states that the requirements of section 272(b) are a subset of those found in section 274(b), but that section 274(b) imposes additional requirements beyond those in section 272(b). It notes that another principal difference between the separation requirements of the two sections is that a section 272 separate affiliate may own or be owned by a BOC as long as the separation requirements of that section are satisfied; however, a section 274 separated affiliate may not own or be owned by the BOC entity. NYNEX states that sections 272 and 274 deal with considerably different affiliate activities and should be construed to be independent of each other. PacTel states that, to the extent there are similarities in the requirements specified in sections 272(b) and 274(b), those requirements should be interpreted consistently.

106. AT&T also notes that several of the requirements in the two sections overlap, but, like Ameritech states, that section 274(b) imposes additional requirements having no counterpart in section 272(b). AT&T further asserts that all interLATA electronic publishing services should be subject to the requirements of section 272, and that section 274 merely supplements the requirements of section 272. In reply, Bell Atlantic and YPPA state that a section 274 separated affiliate need not also comply with section 272, even if the electronic publishing services are interLATA. They maintain that Congress, in enacting section 272(a)(2)(C), expressly exempted interLATA electronic publishing services from the requirements of section 272.

107. All of the commenters agree that a BOC may provide electronic publishing services through the same entity or affiliate through which it provides section 272 services. They disagree, however, on whether an affiliate providing both section 272 and section 274 services must comply with all of the requirements of both sections. AT&T, MCI and Time Warner state that a BOC offering electronic publishing services and section 272 services through the same affiliate must comply with all of the requirements of sections 272 and 274, *i.e.*, the structural separation and transactional requirements, as well as the joint marketing and nondiscrimination provisions of both sections.

108. The BOCs and YPPA disagree with the other commenters. They argue that a BOC providing electronic publishing services through the same entity or affiliate through which it provides section 272 services must comply with the separation requirements in both sections 272(b) and 274(b) on a service-by-service basis. Specifically, they maintain that the entity providing both section 272 services and electronic publishing services must comply only with the requirements of each section relevant to the particular service (*i.e.*, a section 272 service or electronic publishing services) being provided. They further argue that a BOC need only comply with the joint marketing and nondiscrimination restrictions of sections 272 and 274 on a service-by-service basis.

109. There is some disagreement among the BOCs as to those requirements in section 274(b) that they deem applicable when providing

section 272 and section 274 services through the same entity. Several BOCs assert that the separation requirements unique to either section 272 or section 274 would apply only to those services specified in their respective sections, *e.g.*, because section 272 does not prohibit the hiring and training of personnel, section 274(b)(7)(A) would only apply with respect to the entity's electronic publishing activities. U S WEST categorizes those requirements that the entity must comply with in sections 272(b) and 274(b) as structural separation requirements, arguing that compliance with the ''transactional'' requirements of either section is necessitated on a service-by-service basis. It categorizes section 274(b)(7)(A) as an example of a transactional requirement. YPPA, too, distinguishes between the structural separation requirements and the affiliate transaction requirements of sections 272(b) and 274(b), arguing that the latter need only be complied with on a service-by-service basis. It cites sections 272(b)(5) and 274(b)(3) as examples of affiliate transaction requirements that need only be complied with on a service-by-service basis.

c. Discussion

110. We conclude that a BOC may provide electronic publishing services and section 272 services through the same entity or affiliate. Nothing in the Act or its legislative history suggests otherwise. We further conclude that the BOC or the entity providing both section 272 and section 274 services, as applicable, must comply with the requirements of both these sections, including: (1) all of the requirements of section 272(b) and section 274(b); (2) all applicable requirements of section 272(g) and section 274(c); and (3) all applicable requirements of section 272(c) and section 274(d). To the extent there is a conflict between the provisions of sections 272 and 274, the BOC or the entity providing both section 272 and 274 services, as applicable, must comply with the more stringent requirement of either section. These conclusions are discussed more fully below. We specifically reject AT&T's contention that electronic publishing services are subject to the section 272 separate affiliate requirements, pursuant to section 272(a)(2)(B), which imposes a separate affiliate requirement on interLATA telecommunications services. Electronic publishing services are included within the statutory definition of information services in section 153(20). They are specifically excluded, however, from the section 272 separate affiliate requirement pursuant to section 272(a)(2)(C).

111. *Section 272(b) and Section 274(b) Requirements.* We agree with those commenters asserting that a BOC providing electronic publishing services through the same entity or affiliate through which it provides section 272 services must comply with all of the requirements of both section 272(b) and section 274(b). Allowing the BOCs to comply with the requirements of sections 272(b) and 274(b) on a service-by-service basis is likely to lead to *ad hoc* determinations as to those requirements in both sections 272(b) and 274(b) with which the entity must comply.

112. We find that allowing the entity performing section 272 and section 274 services to determine how to comply with the section 272(b) and section 274(b) requirements creates the potential for administrative and enforcement problems. As a practical matter, however, requiring the entity providing both section 272 and section 274 services to comply with all the requirements of sections 272(b) and 274(b) will not be substantially more onerous than requiring the entity to comply with only those provisions of one section or the other. We determined in the *Non-Accounting Safeguards Order* that the ''operate independently'' requirement of section 272(b)(1) imposes requirements beyond those listed in subsections 272(b)(2)–(5). We therefore adopted additional requirements in our rules to implement section 272(b) to ensure operational independence between a BOC and its section 272 affiliate; several of these are parallel to provisions in section 274(b). Thus, BOCs providing section 272 and section 274 services are already required to comply with many of the same requirements; and to the extent these services are combined the complications of complying with both sections 272(b) and 274(b) will be few.

113. *Joint Marketing and Nondiscrimination Provisions in Sections 272 and 274.* As noted above, while a BOC may provide both section 272 services and electronic publishing services through the same entity, it must comply with the applicable joint marketing and nondiscrimination provisions in both sections 272 and 274. With respect to the joint marketing provisions, if a BOC chooses to provide section 272 services together with its electronic publishing services, it must comply with the joint marketing restrictions of section 274(c)(1)(A) and section 272(g). Section 274(c)(1)(A) precludes the BOC from carrying out any ''promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate.'' An entity established by a BOC to provide section 272 services and electronic publishing services is a section 274 ''separated affiliate'' for purposes of section 274(c)(1)(A), as it will be a ''corporation * * * that engages in the provision of electronic publishing services.'' The BOC, therefore, must comply with all the section 274 joint marketing provisions pertaining to its ''separated affiliate.'' In addition, since the entity is also providing section 272 services, the joint marketing provisions in section 272(g) would apply as well.

114. The statutory language in sections 272(c) and 274(d) also requires that a BOC providing both section 272 services and electronic publishing services together in one entity comply with the nondiscrimination provisions in both sections 272 and 274. To the extent that a BOC under ''common ownership or control with a separated affiliate or electronic publishing joint venture'' provides ''network access and interconnections for basic telephone service to electronic publishers,'' it must do so subject to the nondiscrimination requirements in section 274(d). In addition, section 272(c) imposes certain nondiscrimination safeguards on a BOC's dealings with an affiliate providing section 272 services. The nondiscrimination safeguards of section 272(c) thus pertain to the BOC's dealings with an entity or affiliate providing both section 272 services and electronic publishing services.

115. In sum, we find that a BOC may provide both section 272 and section 274 services through the same entity, but in doing so, must comply with the applicable joint marketing and nondiscrimination requirements in each of those sections. We find that the express statutory language in each of those sections compels this result. As noted above, to the extent there is a conflict between the provisions of sections 272 and 274, the BOC or the entity providing both section 272 and 274 services, as applicable, must comply with the more stringent requirement of either section. For example, if a BOC is permitted to engage in a joint marketing activity under section 272(g), but that activity is barred under section 274(c)(1)(A), the latter provision would preclude the BOC from engaging in that activity.

C. Joint Marketing

1. Restrictions on Joint Marketing Activities—Section 274(c)(1)

a. Scope of Section 274(c)(1)(B)

(1) Background

116. Section 274(c)(1) of the Act establishes several restrictions on joint marketing activities in which a BOC may engage with either a ''separated affiliate'' or an ''affiliate.'' In particular, section 274(c)(1)(A) provides that ''a [BOC] shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate.'' Section 274(c)(1)(B) states that ''a [BOC] shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.''

117. In the *NPRM*, we observed that the clause ''that is related to the provision of electronic publishing'' in section 274(c)(1)(B) may be interpreted to modify either the ''promotion, marketing, sales, or advertising'' activities that are circumscribed by that section, or the word ''affiliate.'' We also noted that the definition of ''affiliate'' in section 274 expressly excludes a ''separated affiliate.'' We therefore sought comment on the proper interpretation of section 274(c)(1)(B).

(2) Comments

118. Several commenters argue that section 274(c)(1)(B) of the Act should be interpreted to prohibit a BOC from carrying out joint marketing activities for or in conjunction with an affiliate if the *activities* of the BOC relate to the provision of electronic publishing. In particular, BellSouth argues that section 274(c)(1)(B) is intended to address situations in which a BOC affiliate offers electronic publishing services or services related to electronic publishing, and non-electronic publishing services, *i.e.*, an affiliate that provides print directory services as well as electronic publishing services. BellSouth contends that, by omitting the word ''separated'' in subsection (c)(1)(B), Congress clarified that some activities of a BOC affiliate that is engaged in the provision of electronic publishing services may be unrelated to electronic publishing. According to BellSouth, a BOC therefore may engage in joint marketing activities with its directory affiliate so long as such activities ''relate to the traditional directory products of the directory affiliate rather than any electronic directory products.'' SBC argues that section 274(c)(1)(B) does not apply if a BOC performs services for an affiliate that are unrelated to the provision of electronic publishing.

119. U S WEST, in contrast, argues that the phrase ''that is related to the provision of electronic publishing'' modifies ''affiliate'' because such an interpretation provides BOCs with greater flexibility in organizing their businesses and is consistent with congressional intent. For example, U S WEST contends that, if we adopt this interpretation, a BOC choosing to provide electronic publishing services through a section 272 affiliate would be subject to the joint marketing provisions of section 274(c)(1)(B), rather than section 272.

(3) Discussion

120. We conclude that the phrase ''that is related to the provision of electronic publishing'' modifies the ''promotion, marketing, sales, or advertising'' activities that are circumscribed by section 274(c)(1)(B). As such, we interpret section 274(c)(1)(B) of the Act to prohibit a BOC from carrying out any promotion, marketing, sales or advertising activities with an affiliate, if such activities ''relate to'' the provision of electronic publishing. As an initial matter, we find that the joint marketing prohibition in section 274(c)(1)(B) is intended to address situations that are not otherwise covered by section 274(c)(1)(A). Consequently, we conclude that section 274(c)(1)(B) contemplates situations in which a BOC affiliate is involved in the provision of services that are in some manner ''related to'' the provision of electronic publishing, but does not provide electronic publishing services disseminated by means of a BOC's or any of its affiliates' basic telephone service. Because a BOC or BOC affiliate may engage in the provision of electronic publishing that is disseminated by means of such BOC's or any of its affiliates' basic telephone service only through a separated affiliate or an electronic publishing joint venture, a BOC ''affiliate'' that falls under section 274(c)(2)(B) of the Act, by definition, must not engage in such provision of electronic publishing. A BOC affiliate that provides electronic publishing services by means of its basic telephone service would constitute a ''separated affiliate'' subject to the joint marketing restriction in section 274(c)(1)(A).

121. Consequently, section 274(c)(2)(B) addresses situations in which a BOC may have, for example, an affiliated holding company that, in turn, holds an ownership interest in a separated affiliate. Such a BOC would be precluded from carrying out any promotion, marketing, sales or advertising activities for or in conjunction with that affiliated holding company if and to the extent that such activities are ''related to the provision of electronic publishing.'' A BOC, however, would not be prohibited from engaging in marketing activities with the affiliated holding company that are unrelated to the provision of electronic publishing. This interpretation of section 274(c)(1)(B) effectively would prevent the BOCs from indirectly promoting, marketing, selling, or advertising the electronic publishing services of a separated affiliate.

122. We reject U S WEST's contention that section 274(c)(1)(B) prohibits a BOC from carrying out marketing activities for or with an *affiliate* that is related to the provision of electronic publishing. Given the definition of ''separated affiliate,'' which contemplates the provision of electronic publishing services by such entity, it is difficult to conceive of an affiliate ''related to the provision of electronic publishing'' that would not otherwise constitute a separated affiliate, and thus be subject to the joint marketing restriction in section 274(c)(1)(A). We also reject BellSouth's contention that section 274(c)(1)(B) of the Act is intended to address situations in which a BOC provides electronic publishing and non-electronic publishing services through one affiliate. As noted above, a BOC affiliate that provides electronic publishing services through the BOCs' or any of its affiliates' basic telephone service would constitute a ''separated affiliate'' that would be subject to the joint marketing prohibition in section 274(c)(1)(A).

b. Scope of Section 274(c)(1)(A)

(1) Background

123. We sought comment in the *NPRM* on whether a BOC can carry out both section 272 and section 274 activities through one entity or affiliate, and, if so, whether the affiliate would have to comply with the requirements of section 272, section 274, or both. We conclude in this *Order* that a BOC may provide both section 272 and section 274 services through the same affiliate. In so doing, however, a BOC must comply with the structural and transactional requirements of both sections 272(b) and 274(b). We also conclude that a BOC providing section 272 and section 274 services through the same affiliate must comply with the applicable joint marketing provisions and nondiscrimination provisions of both those sections.

124. Some parties raised the issue of whether and to what extent the joint marketing restrictions of section 274 apply in cases where a BOC provides through the same affiliate electronic publishing services and non-electronic publishing services, *i.e.*, print directory services, that do not fall under section 272 of the Act. Because BOCs currently may be providing electronic publishing and such non-electronic publishing services through one affiliate, or may wish to provide such services through one entity in the future, we address that issue in this *Order.*

(2) Comments

125. U S WEST and BellSouth argue that, if a BOC provides electronic publishing services and non-electronic publishing services, such as print directory services, through the same affiliate, the joint marketing restrictions of section 274 would apply *only* to the electronic publishing activities of the affiliate. U S WEST argues, *inter alia,* that Congress, in adopting the prohibitions in section 274(c)(1) of the Act, intended to circumscribe, for a limited time, joint marketing activities between a BOC and its section 274 separated affiliate because such affiliate would use the BOC's basic telephone service to disseminate its electronic publishing services. U S WEST argues that the section 274 joint marketing prohibitions thus were intended to restrict the BOCs' ability to ''leverage those basic services to favor its electronic publishing services which use [such] services.'' U S WEST maintains therefore that, absent a connection between a publishing activity and the BOC's network operations, there is no indication that Congress meant to impede commercial speech activities engaged in by a BOC corporate enterprise.

(3) Discussion

126. We conclude that, while a BOC may provide through the same affiliate both electronic publishing services and non-electronic publishing services, such as print directory services, which do not fall under section 272 of the Act, it must comply with the joint marketing requirements of section 274. The plain language of section 274(c)(1)(A) states that ''a [BOC] shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a *separated affiliate.*'' Section 274(c)(1)(A), therefore, precludes a BOC from engaging in certain activities with a separated affiliate as a corporate entity, even in connection with non-electronic publishing services.

127. While our interpretation could provide a disincentive for BOCs to offer electronic publishing and non-electronic publishing services through the same affiliate, as U S WEST points out, the unambiguous statutory language requires this interpretation. We thus conclude that section 274(c)(1)(A) prohibits marketing and sales-related activities carried out by a BOC for or in conjunction with a separated affiliate, irrespective of whether such affiliate provides both electronic publishing services and non-electronic publishing services, such as print directory services, that do not fall under section 272 of the Act.

c. Activities Prohibited under Section 274(c)(1)

(1) Background

128. In the *NPRM,* we observed that the activities proscribed by section 274(c)(1) include the ''promotion, marketing, sales, or advertising'' by a BOC for or with an affiliate. We tentatively concluded that such activities ''encompass prohibitions on advertising the availability of local exchange or other BOC services together with the BOC's electronic publishing services, making those services available from a single source and providing bundling discounts for the purchase of both electronic publishing and local exchange services.'' We sought comment on that tentative conclusion and on whether any other types of prohibitions were contemplated.

(2) Comments

129. Ameritech, AT&T and NAA generally agree with our tentative conclusion regarding the types of activities that are prohibited under sections 274(c)(1)(A) and (B) of the Act. Ameritech also argues, however, that the only prohibited marketing activities are those that ''involve the BOC and the electronic publishing affiliate working together,'' and therefore nothing precludes unilateral marketing, promotion, or sales activities by either the BOC or its separated affiliate. In addition, Ameritech contends that bundling discounts may be offered in all cases of permissible joint marketing activities. According to Ameritech, ''while the BOC requires regulatory authority to discount regulated services, the electronic publisher is free to set its unregulated price—and any promotional discounts—as it sees fit.'' AT&T disputes Ameritech's contention that section 274(c)(1) of the Act permits a BOC to market the electronic publishing services of its separated affiliate so long as it does not ''coordinate'' its promotional activities with such affiliate.

130. U S WEST generally agrees that the activities prohibited under sections 274(c)(1)(A) and (B) of the Act include making local exchange or other BOC services available together with electronic publishing services, but states that this prohibition is subject to the inbound telemarketing exception in section 274(c)(2)(A) of the Act. PacTel argues that a separated affiliate, electronic publishing joint venture, teaming or other business entity is not precluded from purchasing the telecommunications services of a BOC and then advertising such services with electronic publishing services, making the services available from a single entity, and providing bundled discounts.

131. A number of parties contend that sections 274(c)(1)(A) and (B) of the Act prohibit only the BOCs from carrying out certain joint marketing activities, and that the provisions should not be interpreted to restrict the joint marketing activities that may be carried out by either a ''separated affiliate'' under section 274(c)(1)(A), or an ''affiliate'' under section 274(c)(1)(B). SBC specifically argues that the statute should not be interpreted to impose any restrictions on a separated affiliate's ability ''to market and sell services or products of the BOC, or those of any other affiliate or an unrelated party.'' Bell Atlantic similarly contends that an affiliate is not prohibited under the statute ''from marketing the BOC's services and products or acting as a single point of contact for the customer.''

132. NYNEX and YPPA argue that permitting a separated affiliate to market jointly its electronic publishing services with BOC telecommunications services would allow customers to realize the benefits of one-stop shopping. In addition, NYNEX and PacTel maintain that imposing marketing restrictions on a BOC separated affiliate that do not also apply to such affiliate's competitors would place the separated affiliate at a competitive disadvantage. A number of parties also contend that nothing in the Act prohibits a BOC affiliate from carrying out joint marketing activities as an agent for either or both the BOC and the separated affiliate.

133. Conversely, AT&T and Time Warner argue that the marketing prohibitions in section 274(c)(1) should not be construed to apply only to the marketing activities of the BOC. According to AT&T, allowing a separated affiliate to market jointly its electronic publishing services with BOC telecommunications services would

allow the BOC to ''move its entire marketing department into the separated affiliate'' in violation of the statutory prohibition against a BOC carrying out any marketing in conjunction with' a separated affiliate. Time Warner similarly states that interpreting section 274(c)(1) to apply only to the BOCs would allow the BOCs to circumvent the joint marketing restrictions of section 274.

(3) Discussion

134. As an initial matter, we conclude that the prohibitions in section 274(c)(1) apply only to activities carried out by a BOC. Sections 274(c)(1)(A) and (B) of the Act only proscribe BOC activities. We also find that neither a separated affiliate under section 274(c)(1)(A), nor an affiliate under section 274(c)(1)(B), is prohibited from marketing its services together with BOC telecommunications services, so long as such marketing activity is performed unilaterally by the separated affiliate or affiliate, respectively. Thus, a separated affiliate or affiliate is permitted under sections 274(c)(1)(A) and (B) to market its electronic publishing services with basic telephone service purchased from the BOC. We conclude that this type of marketing, in which a separated affiliate or affiliate unilaterally markets BOC local exchange service as an input to its electronic publishing services, is not prohibited under sections 274(c)(1)(A) or (B). We specify that marketing by the separated affiliate or affiliate must be unilateral not because section 274(c)(1) directly imposes any marketing restrictions on such entities, but, as a practical matter, because section 274(c)(1) bars a BOC from carrying out ''marketing . . . for or in conjunction with'' such separated affiliates or affiliates.

135. We reject AT&T's and Time Warner's contention that permitting a separated affiliate to market BOC telecommunications services would allow a BOC to circumvent the restrictions of section 274. As noted above, section 274(c)(1), by its terms, applies only to activities carried out by a BOC. While AT&T's and Time Warner's arguments pertain only to a ''separated affiliate,'' we have no basis for concluding that Congress intended to apply the restrictions in sections 274(c)(1)(A) and (B) to either separated affiliates or affiliates, respectively. Moreover, based on the plain language of sections 274(c)(1)(A) and (B), which prohibits a BOC from carrying out any ''promotion, marketing, sales, or advertising for or *in conjunction with*'' a separated affiliate or affiliate, a BOC would be precluded from, for example, ''moving its entire marketing department into the separated affiliate'' in order to circumvent the section 274(c)(1) restrictions.

136. Based on the above analysis, we also find that a BOC affiliate may carry out ''promotion, marketing, sales, or advertising'' activities as an agent for either a ''separated affiliate'' under section 274(c)(1)(A), or another ''affiliate'' under section 274(c)(1)(B). Because neither a separated affiliate nor an affiliate is subject to the restrictions in sections 274(c)(1)(A) and (B) of the Act, a BOC affiliate that acts as an agent for such separated affiliate or affiliate also is not subject to those restrictions. As in the case of a separated affiliate or affiliate, however, the scope of the agent's activities may be limited, as a practical matter, by the legal bar on a BOC carrying out promotion, marketing, sales or advertising activities ''for or in conjunction with'' such affiliates. We conclude, however, that because section 274(c)(1)(A) applies to activities carried out by BOCs, a BOC affiliate is prohibited from acting as an agent for the BOC in performing marketing and sales-related activities under that section, contrary to arguments raised by some parties. We also note that, under the definition of ''Bell operating company'' in section 274(i)(10), a BOC includes ''any entity or corporation that is owned or controlled by'' such BOC. As such, the section 274(c)(1) joint marketing prohibitions applicable to BOCs also would apply to entities that are owned or controlled by a BOC, such as an entity that acts as an agent for a BOC.

137. We also conclude, based on their language, that sections 274(c)(1)(A) and (B) of the Act prohibit a BOC or BOC agent from advertising local exchange or other BOC services together with electronic publishing services, making those services available from a single point of contact and providing bundling discounts for the purchase of both electronic publishing and local exchange services, except as permitted under section 274(c)(2) of the Act. Since section 274 only proscribes BOC activities, however, we conclude, consistent with our discussion above, that these activities may be carried out by a separated affiliate or affiliate, subject only to the practical limitation that a BOC may not participate owing to the legal bar on its ability to carry out promotion, marketing, sales or advertising activities ''for or in conjunction with'' a separated affiliate or an affiliate.

138. In our *Non-Accounting Safeguards Order* implementing sections 271 and 272 of the Act, we recognized that ''bundling'' contemplates the offering of BOC resold local exchange services and interLATA services as a package under an integrated pricing schedule. As a result, we concluded that the concept of ''bundling'' includes ''providing a discount if a customer purchases both interLATA services and BOC resold local services, conditioning the purchase of one type of service on the purchase of the other, and offering both interLATA services and BOC resold local services as a single combined product.''

139. Based on the definition of ''bundling'' in our *Non-Accounting Safeguards Order,* we conclude that ''bundling'' refers to the offering by a BOC or BOC agent of BOC local exchange and electronic publishing services as a package under an integrated pricing schedule. This restriction flows not only from section 274(c)(1), but from the fact that a BOC is forbidden by section 274(a) to engage in the provision of electronic publishing disseminated by means of its basic telephone service except through a separated affiliate or an electronic publishing joint venture. By providing such bundled services, the BOC or its agent would be engaged in the provision of electronic publishing in contravention of section 274(a). We further find, consistent with the *Non-Accounting Safeguards Order,* that sections 274(c)(1)(A) and (B) of the Act prohibit a BOC or BOC agent from providing customer discounts for the purchase of local exchange and electronic publishing services, conditioning the purchase of one type of service on the other, or offering both electronic publishing and local exchange services as one product. Moreover, we conclude, based on the explicit language of section 274(c)(1), that sections 274(c)(1)(A) and (B) of the Act prohibit a BOC or BOC agent not only from offering for sale both local exchange and electronic publishing services, but also from advertising those services in a single advertisement, and from selling both services through a single point of contact, *e.g.*, a single sales agent, except as permitted under section 274(c)(2). We find that Congress intended to proscribe those activities in adopting sections 274(c)(1)(A) and (B) of the Act.

d. Interplay Between Section 274 Joint Marketing Provisions and Other Provisions of the Act

(1) Background

140. In the *NPRM,* we sought comment on whether and to what extent

the joint marketing provisions in section 272(g) and the customer proprietary network information (CPNI) provisions in section 222 of the Act affect implementation of section 274.

(2) Comments

141. NYNEX argues that, because the marketing provisions in sections 272 and 274 of the Act apply to different services, the restrictions in section 274 should not be applied to the services and facilities provided under section 272. PacTel maintains that sections 272(g) and 222 of the Act do not affect implementation of section 274. U S WEST maintains that, based on implied consent gleaned from either the business relationship or customer notification, CPNI may be used by the BOC in marketing a separated affiliate's electronic publishing offerings. U S WEST also contends that, under section 222(d)(3) of the Act, a BOC could use CPNI on an inbound telemarketing call for both telecommunications and electronic publishing services of the BOC and third parties, provided the customer consented to such use on the call.

(3) Discussion

142. As discussed above, we conclude that, while a BOC may provide through the same affiliate both section 272 and section 274 services, it must comply with the applicable joint marketing restrictions of both those sections. We decline to address arguments raised in this proceeding regarding the interplay between section 274 and section 222 of the Act, relating to privacy of customer information. The Commission has pending a proceeding to implement section 222 of the Act. Until the completion of that proceeding, we defer any decision on the extent, if any, that section 222 of the Act affects implementation of section 274. As noted in the *CPNI NPRM* (61 FR 26483 (May 28, 1996)), the CPNI requirements the Commission previously established in the *Computer II* and *Computer III* proceedings remain in effect pending the outcome of the CPNI proceeding, to the extent that they do not conflict with section 222 of the Act.

2. Permissible Joint Activities—Section 274(c)(2)

a. Joint Telemarketing—Section 274(c)(2)(A)

(1) Background

143. As we observed in the *NPRM*, section 274(c)(2) of the Act permits three types of joint activities between a BOC and a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher under specified conditions. Under section 274(c)(2)(A) of the Act, a BOC may provide ''inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate or unaffiliated electronic publisher: *[p]rovided,* [t]hat if such services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, such services shall be made available to all electronic publishers on request, on nondiscriminatory terms.''

144. We stated in the *NPRM* that the statute is silent as to the specific obligations section 274(c)(2)(A) imposes on a BOC. We noted that the term ''inbound telemarketing'' is defined in section 274(i)(7) as ''the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.'' The term ''referral services,'' however, is not defined in the statute. As we discussed in the *NPRM*, the Joint Explanatory Statement states that the Conference Committee adopted the provisions of the House bill relating to electronic publishing, with some modifications relating to sunset of the section 274 requirements and use of BOC trademarks by separated affiliates and electronic publishing joint ventures. The provision of the House bill relating to electronic publishing joint ventures was identical to the provision ultimately adopted by the Conference Committee.

145. The Committee Report accompanying H.R. 1555 states that:

> Subsection (c)(2)(A) permits a BOC to provide inbound telemarketing or referral services related to the provision of electronic publishing, if the BOC provides the same service on the same terms and conditions, and prices to non-affiliates as to its affiliates. The term 'inbound telemarketing or referral services' is defined . . . to mean 'the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.' Thus, a BOC may refer a customer who seeks information on an electronic publishing service to its affiliate, but must make sure that the referral service is available to unaffiliated providers. No outbound telemarketing or similar activity, under which the call is initiated by the BOC or its affiliate or someone on its behalf, is permitted.

In the *NPRM,* we sought comment on whether the conditions imposed on inbound telemarketing discussed in the House Report should be adopted, and whether we should adopt any regulations pertaining to outbound telemarketing.

(2) Comments

146. AT&T argues that we should adopt the conditions on inbound telemarketing discussed in the House Report, *i.e.*, that a BOC may offer inbound telemarketing services to its affiliate only if it makes those services available to unaffiliated providers of electronic publishing services on the same terms, conditions and prices. In addition, it contends that a BOC should be prohibited from engaging in outbound telemarketing, consistent with the House Report. AT&T argues that section 274(c)(2)(A) should not be construed as an ''open-ended authorization for the BOCs to market the electronic publishing services of their separated affiliates'' because such an interpretation would result in the exception swallowing the rule. While NAA agrees that we should adopt the conditions on inbound telemarketing discussed in the House Report, it also argues that a BOC may provide outbound telemarketing services to an electronic publishing joint venture under section 274(c)(2)(C).

147. Conversely, the BOCs generally contend that they are permitted to engage in a broader range of marketing activities under section 274(c)(2)(A). In particular, Ameritech argues that section 274(c)(2)(A) expressly authorizes a BOC to handle all aspects of the electronic publisher's sales process while on an inbound telephone call. NYNEX similarly maintains that section 274(c)(2)(A) does not restrict in any way the inbound telemarketing services that a BOC may provide to a separated affiliate, electronic publishing joint venture or affiliate, except to require the BOC to make such services available to all electronic publishers ''on request, on nondiscriminatory terms.'' In addition, SBC argues that section 274(c)(2)(A) allows a BOC not only to refer a customer who requests information regarding an electronic publishing service to its affiliate, but also permits a BOC to market electronic publishing services to customers who inquire about them. SBC also argues that section 274(c)(2)(A) ''allow[s] a separated affiliate or a BOC to advertise a BOC call-in number to which potential customers might choose to initiate a call.'' BellSouth argues that section 274(c)(2)(A) of the Act is clear on its face, and therefore ''no further elucidation'' of that section is necessary.

148. PacTel argues that section 274(c)(2)(A)'s requirement that inbound telemarketing or referral services ''be made available to all electronic publishers on request, on nondiscriminatory terms'' means that

the terms of the service must be generally available to all *similarly situated* electronic publishers. U S WEST argues that the requirement should be construed to apply only to services that are of ''like kind.'' PacTel contends that section 274(c)(2)(A), like section 202(a) of the Act, allows reasonable discrimination. Conversely, Time Warner argues that nothing in the Act indicates that Congress intended to limit the provision of inbound telemarketing or referral services required by section 274(c)(2)(A) to competing electronic publishers offering services ''comparable'' to those offered by a BOC separated affiliate.

(3) Discussion

149. We conclude that a BOC may, pursuant to section 274(c)(2)(A), both provide ''referral services'' and ''market'' property, goods, or services related to the provision of electronic publishing by telephone to a customer or potential customer who initiated the call. This is consistent with the plain language of the statute, including the definition of ''inbound telemarketing'' in section 274(i)(7), and with the legislative history interpreting section 274(c)(2)(A). We also conclude, however, consistent with the clear language of the statute and with the House Report, that, to the extent a BOC provides inbound telemarketing or referral services for a separated affiliate, electronic publishing joint venture, or affiliate, it must make available ''such services . . . to all electronic publishers on request, on nondiscriminatory terms.'' Consistent with the legislative history, this means that the BOC must offer ''the same service on the same terms and conditions, and prices to non-affiliates as to its affiliates.''

150. A BOC may choose to provide inbound telemarketing or referral services either pursuant to a contractual arrangement or during the normal course of its inbound telemarketing operations. To the extent a BOC chooses either or both of these approaches in providing inbound telemarketing or referral services to a separated affiliate, electronic publishing joint venture or affiliate, we conclude, based on the nondiscrimination proviso in section 274(c)(2)(A), that it must make available the same approach to unaffiliated electronic publishers.

151. With regard to inbound telemarketing or referral services provided by a BOC to its separated affiliate, electronic publishing joint venture, or affiliate pursuant to a contractual arrangement, we find that the BOC must make available the same terms, conditions, and prices for such services to unaffiliated electronic publishers, except to the extent legitimate price differentials may exist. For example, such price differentials may reflect differences in cost, or may reflect the fact that an unaffiliated electronic publisher has requested superior or less favorable treatment in exchange for paying a higher or lower price to the BOC. As we stated in the *First Interconnection Order* (61 FR 45476 (August 29, 1996)), where costs differ, rate differences that accurately reflect those differences are not unlawfully discriminatory. We similarly conclude that price differences, ''when based upon legitimate variations in costs, are permissible under the 1996 Act when justified.'' PacTel's argument that the ''nondiscriminatory'' requirement in section 274(c)(2)(A) means that the terms of the service must be generally available to all ''similarly situated'' electronic publishers, therefore, has merit to the extent that price differences among electronic publishers reflect legitimate differences in cost.

152. The statute requires that, to the extent a BOC markets property, goods or services related to the provision of electronic publishing to a customer, or refers a customer to a separated affiliate, electronic publishing joint venture or affiliate during the normal course of its telemarketing operations, it must provide such marketing or referral services to all unaffiliated electronic publishers requesting such services, on nondiscriminatory terms. Thus, to the extent that a BOC provides referral service if a customer has not initially independently requested a specific referral to the BOC affiliate, a BOC must provide the names of all such unaffiliated electronic publishers, as well as its own affiliated electronic publishers, in random order, to the customer. A similar standard may also be appropriate for particular inbound telemarketing activities. We find that our interpretation is consistent with the intent of section 274(c)(2)(A) to ensure that a BOC providing inbound telemarketing or referral services to a separated affiliate provides such services on a nondiscriminatory basis to all unaffiliated electronic publishers.

153. We reject U S WEST's argument that imposing such a requirement on the BOCs with respect to referral services would be overly burdensome. We note, for example, that BOCs currently are subject to similar requirements in cases where a new local exchange customer of the BOC requests information regarding interexchange service. In such cases, BOCs are required, *inter alia*, to provide customers with the names and, if requested, the telephone numbers of carriers offering interexchange services. As part of this requirement, a BOC must ensure that the names of the interexchange carriers are provided in random order.

154. We disagree with U S WEST's contention that a BOC's obligation to provide inbound telemarketing or referral services under section 274(c)(2)(A) applies only with respect to services that are ''comparable'' to those of its separated affiliate. We conclude that a BOC's obligation under section 274(c)(2)(A) to make available inbound telemarketing and referral services on a nondiscriminatory basis requires that a BOC make available to unaffiliated electronic publishers the same services it provides to an affiliated electronic publisher, regardless of whether the unaffiliated electronic publishers offer services that are ''comparable'' to those of the BOC. Nothing in the statute or its legislative history indicates that a BOC must make available inbound telemarketing and referral services only to electronic publishing entities providing services ''comparable'' to those of the BOC's affiliate. To the extent that a BOC's agreement with its affiliated electronic publisher is limited to certain types of marketing or referral services, however, the BOC is then only obligated to make the same types of marketing or referral services available to unaffiliated electronic publishers.

155. With respect to AT&T's concern that interpreting section 274(c)(2)(A) to allow BOCs to ''market'' the electronic publishing services of their separated affiliates would circumvent the joint marketing prohibitions in section 274(c)(1), we find that the unambiguous statutory definition of ''inbound telemarketing'' in section 274(i)(7), and the fact that the general prohibition in section 274(c)(1) applies ''except as provided in paragraph (2) [274(c)(2)],'' requires this interpretation. We note that the statutory language allows BOCs to provide such marketing services only on nondiscriminatory terms, as discussed above. In addition, while our interpretation of the nondiscrimination requirement may serve as a disincentive for certain BOCs to market the services of an affiliated electronic publisher on an inbound call, we find that the statutory language compels this interpretation.

156. Finally, we conclude that section 274(c)(2)(A) prohibits outbound telemarketing or similar activities in which a call is initiated by a BOC, its affiliate, or someone on its behalf. Because section 274(c)(2)(A), by its terms, applies only to ''inbound telemarketing'' or referral services

related to the provision of electronic publishing, we believe that Congress did not intend to permit BOCs to engage in outbound telemarketing activities in adopting section 274(c)(2)(A). To the extent that the statutory language leaves any ambiguity on this question, the House Report supports our interpretation that a BOC is prohibited under section 274(c)(2)(A) from engaging in outbound telemarketing. We also believe that allowing a BOC to engage in outbound telemarketing activities to promote the electronic publishing services of its separated affiliate would eviscerate the general prohibition on BOC joint marketing activities in section 274(c)(1)(A) of the Act.

b. Teaming Arrangements—Section 274(c)(2)(B)

(1) Background

157. In the *NPRM*, we observed that, in addition to certain joint telemarketing activities, a BOC is permitted to engage in ''teaming'' or ''business arrangements'' to provide electronic publishing services under certain conditions pursuant to section 274(c)(2)(B). Section 274(c)(2)(B) specifically states that a ''[BOC] may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher if (i) the [BOC] only provides facilities, services, and basic telephone service information as authorized by this section, and (ii) the [BOC] does not own such teaming or business arrangement.''

158. We sought comment in the *NPRM* on what types of arrangements are encompassed by the terms ''teaming'' or ''business arrangements,'' and on the significance of section 274(c)(2)(B)'s placement under the ''Joint Marketing'' provisions in section 274(c). We also sought comment on what regulations, if any, are necessary to ensure that the arrangements in which BOCs engage pursuant to section 274(c)(2)(B) are ''nondiscriminatory,'' and on how the provision of ''basic telephone service information'' under that section relates to the requirements in section 222 for access to and use of CPNI.

(2) Comments

159. Ameritech, NAA, NYNEX, and PacTel generally argue that the terms ''teaming'' or ''business arrangements'' in section 274(c)(2)(B) contemplate a broad range of permissible activities. Ameritech argues that, so long as all the conditions under section 274(c)(2)(B) are met and the requirements of section 274 are otherwise satisfied, a BOC should be free to enter into a teaming or business arrangement with a separated affiliate or electronic publishing joint venture to jointly market electronic publishing services. NYNEX contends that teaming arrangements provide another form of ''one-stop shopping'' for consumers and present minimal risk of anticompetitive behavior. PacTel argues that the language of section 274(c)(2)(B) is so broad that it includes any activity other than the provision of electronic publishing itself, including promotion, marketing, sales and advertising activities. SBC argues that section 274(c)(2)(B) should be interpreted to permit a BOC and its separated affiliate jointly to promote, market, sell, and advertise their respective services pursuant to *any* form of business arrangement.

160. Bell Atlantic argues that the term ''teaming or business arrangements'' as used in section 274(c)(2)(B) encompasses myriad arrangements which include, but are not limited to, marketing proposals in which a BOC and an electronic publisher each prepares its portion of a joint bid to a customer. BellSouth contends that a teaming or business arrangement is more substantial than a coordinated joint marketing or sales campaign or joint bid preparation arrangement, given the statute's reference to BOC ownership in section 274(c)(2)(B). YPPA argues that teaming arrangements, which it asserts were permissible under the MFJ, are any arrangements whereby ''two businesses act independently to provide related products or services, but coordinate their activities so that the customer obtains a 'complete' package of the desired products or services.'' According to YPPA, ''teaming'' may include joint sales activities (including joint planning for sales calls), through advertising, premise visits or telemarketing.''

161. Conversely, Time Warner argues that section 274(c)(2)(B) permits a BOC to engage in a non-BOC owned teaming or business arrangement to provide its electronic publishing affiliate with the necessary facilities and telephone service for electronic publishing, provided that such facilities and services are offered on a nondiscriminatory basis pursuant to tariffed rates and conditions.

162. Bell Atlantic argues that, by placing section 274(c)(2)(B) under the ''Joint Marketing'' provisions in section 274(c), Congress intended to clarify that ''teaming or business arrangements'' are not to be considered joint marketing activities. PacTel argues that ''teaming arrangements'' are included under the heading of ''Joint Marketing'' because such arrangements are one of the three categories of exceptions listed under that heading.

163. PacTel argues that the nondiscrimination requirement for teaming and other business arrangements relates to how a BOC provides facilities, services and basic telephone service information to electronic publishers, not to a BOC's choice of teaming partners. Even if the nondiscrimination requirement were interpreted to apply to a BOC's choice of teaming partners, PacTel argues, a BOC nevertheless would retain discretion to team only with electronic publishers that met its reasonable standards. BellSouth similarly contends that the nondiscrimination obligation of section 274(c)(2)(B) precludes a BOC from giving preference to the teaming or business arrangement in the conduct of its regulated common carrier activities, but does not impose on the BOC an obligation to invest in a particular entity. SBC argues that the nondiscrimination requirement in section 274(c)(2)(B) ''provide[s] evenhandedness in the BOCs' provision of marketing and other services to [unaffiliated] electronic publishers.'' YPPA argues that the nondiscrimination requirement means that a teaming arrangement between a BOC and its separated affiliate ''cannot be markedly different'' from teaming arrangements made available to other electronic publishers.

164. NAA argues that, if a BOC uses its CPNI to provide ''basic telephone service information'' as part of a teaming arrangement, it is subject to the privacy requirements in section 222 for access to and use of the CPNI. PacTel states that section 274(c)(2)(B) allows a BOC to use CPNI as part of a teaming arrangement, consistent with section 222 of the Act. PacTel therefore argues that ''BOCs can use CPNI with the type of telecommunications service from which the information was derived, and with customer authorization can use it with any service.'' PacTel maintains that, to the extent that ''basic telephone service information'' is also CPNI, section 222 of the Act and any implementing regulations the Commission adopts govern the use of such information. To the extent such information is not CPNI, but network information, PacTel argues that a BOC is required to share such information with all electronic publishers with which the BOC teams. SBC argues that, where information qualifies as both ''basic telephone service information'' under section 274(i)(3) as well as CPNI under

section 222(f)(1), the terms of section 274 should prevail over the general terms in section 222 of the Act. SBC points out that section 274 of the Act contains no ''approval'' requirement as a precondition for using, disclosing, or accessing basic telephone service information. As such, SBC argues, a BOC should be permitted to use such information without first obtaining approval under section 222(c)(1) when engaged in permissible teaming or business arrangements.

(3) Discussion

165. We decline at this time to adopt specific regulations clarifying the types of arrangements that are contemplated by the terms ''teaming or business arrangements'' in section 274(c)(2)(B) of the Act. We conclude that those terms, which are not defined in the statute, may encompass a broad range of permissible marketing activities because section 274(c)(2)(B) imposes no explicit marketing limitations. At the same time, however, this provision contains no language that operates to remove business or teaming arrangements from the scope of the prohibitions in section 274(c)(1). We thus find that Congress, in including the general terms ''teaming or business arrangements'' in section 274(c)(2)(B), did not intend to limit or expand the types of marketing activities in which BOCs could engage under that section other than those specifically restricted or authorized elsewhere in section 274 (*e.g.*, in section 274(c)(1)).

166. Under section 274(c)(2)(B), therefore, a BOC providing telecommunications services and the electronic publishing provider with which it teams are limited to marketing their respective services. This interpretation is supported by the plain language of section 274(c)(2)(B), which generally provides that a BOC may engage in teaming or business arrangements if such BOC ''only provides facilities, services, and basic telephone service information as authorized by [section 274].'' Under this interpretation, a BOC is permitted to market only the facilities, services and basic telephone service information that section 274(c)(2)(B) permits the BOC to provide. This interpretation also is supported by a comparison of the text in section 274(c)(2)(B) with the text of sections 274(c)(2)(A) and (C), relating to inbound telemarketing and electronic publishing joint ventures, respectively. Unlike section 274(c)(2)(C), section 274(c)(2)(B) does not specifically permit the authorized entity to engage in joint marketing activities otherwise prohibited to the BOC by section 274(c)(1), *i.e.*, promotion, marketing, sales, and advertising activities. In addition, unlike section 274(c)(2)(A), section 274(c)(2)(B) contains no language that explicitly addresses marketing. We therefore conclude that a BOC participating in a teaming arrangement may not market the electronic publishing services of an electronic publishing provider with which it teams. In addition, the restrictions specifically set forth in section 274(c)(2)(B) would apply, *i.e.*, that such BOC only provide facilities, services and basic telephone service information as authorized by section 274, that the BOC not ''own'' the teaming or business arrangement, and that the teaming arrangement be ''nondiscriminatory.''

167. As noted above, a few commenters provide examples of the types of activities they believe are permissible under section 274(c)(2)(B) as a ''teaming or business arrangement.'' Bell Atlantic, for example, contends that such arrangements include, but are not limited to, marketing proposals in which a BOC and an electronic publisher each prepares its portion of a joint bid to a customer. In addition, YPPA argues that a teaming arrangement is any arrangement whereby ''two businesses act independently to provide related products or services, but coordinate their activities so that the customer obtains a 'complete' package of the desired products or services.'' YPPA states, for example, that a BOC may engage in a teaming arrangement with a separated affiliate whereby the BOC provides a customer with regulated telephone service and the separated affiliate provides the same customer with electronic publishing services. We conclude that nothing in the statute prohibits a BOC from engaging in the types of activities proposed by these commenters, so long as all of the requirements of section 274, including section 274(c)(2)(B), are satisfied. To the extent issues arise in the future as to whether certain other activities are permissible under section 274(c)(2)(B) as ''teaming or business arrangements,'' we intend to address those issues on a case-by-case basis.

168. We also conclude that section 274(c)(2)(B)'s requirement that a BOC only engage in teaming or business arrangements that are ''nondiscriminatory'' means that a BOC may provide to the teaming arrangement the necessary facilities, services and basic telephone service information for electronic publishing, provided that such facilities, services and information are offered on a nondiscriminatory basis both to other teaming arrangements and to unaffiliated electronic publishers. Under this interpretation, for example, a BOC would be prohibited from favoring a teaming arrangement with a separated affiliate over an arrangement with an unaffiliated electronic publishing provider in the provision of the BOC's facilities, services and basic telephone service information under section 274(c)(2)(B). We agree with PacTel and BellSouth that section 274(c)(2)(B) of the Act does not require a BOC to participate in a teaming arrangement with, or to invest in, an electronic publishing provider. Given that a ''teaming arrangement'' under section 274(c)(2)(B) contemplates that a BOC may hold less than a 10 percent interest in such arrangement, we believe that Congress did not intend to compel a BOC to acquire such an interest in other arrangements simply because the BOC has chosen to participate in a teaming arrangement with an electronic publisher of its choice. In addition, we find that such an interpretation would provide a disincentive for BOCs to engage in teaming arrangements in contravention of the plain language of section 274(c)(2)(B) and the pro-competitive goals of the 1996 Act.

169. We defer to our pending CPNI proceeding the question of whether the term ''basic telephone service information'' as defined in section 274(i)(3) of the Act includes CPNI as defined in section 222 of the Act. Based on the definition of ''basic telephone service information'' in section 274(i)(3), however, we conclude that the term includes network information of the BOC. We also defer to our CPNI proceeding the issue of whether section 222 requires a BOC engaged in permissible marketing activities under section 274(c)(2) to obtain customer approval before using, disclosing, or permitting access to CPNI. In particular, we defer to that proceeding the issue of whether or to what extent section 274(c)(2)(B) of the Act imposes any obligations on BOCs that use, disclose, or permit access to CPNI pursuant to a teaming arrangement. As noted above, however, the CPNI requirements the Commission previously established in the *Computer II* and *Computer III* proceedings remain in effect, pending the outcome of the CPNI proceeding, to the extent that they do not conflict with section 222 of the Act. Because we conclude that ''basic telephone service information'' under section 274(i)(3) includes network information, BOCs that provide network information as part of a teaming arrangement are required to provide such information to other teaming arrangements on a

nondiscriminatory basis pursuant to section 274(c)(2)(B).

c. Electronic Publishing Joint Ventures—Section 274(c)(2)(C)

(1) Permissible Level of BOC Ownership Interest in Electronic Publishing Joint Venture and Waiver for ''Good Cause''

(a) Background

170. Section 274(c)(2)(C) of the Act expressly permits a BOC or affiliate to ''participate on a nonexclusive basis in electronic publishing joint ventures with entities that are not a [BOC], affiliate, or separated affiliate to provide electronic publishing services.'' The BOC or affiliate, however, may not hold more than a 50 percent direct or indirect equity interest (or the equivalent thereof) or the right to more than 50 percent of the voting control over the joint venture. In addition, officers and employees of a BOC or affiliate participating in an electronic publishing joint venture may hold no greater than 50 percent of the voting control over the joint venture. The House Report clarifies that this restriction prohibits officers and employees of a BOC from ''*collectively* having more than 50 percent of the voting control of the venture.'' In the *NPRM*, we tentatively concluded that a BOC is deemed to ''own'' an electronic publishing joint venture ''if it holds greater than a 10 percent but not more than a 50 percent direct or indirect equity interest in the venture, or has the right to greater than 10 percent but not more than 50 percent of the venture's gross revenues.'' We sought comment on that tentative conclusion.

171. Section 274(c)(2)(C) also provides that, ''[i]n the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize [a BOC] or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80 percent.'' As we observed in the *NPRM*, although the term ''small, local electronic publisher'' is not defined in the statute, the House Report indicates that the term was intended to apply to publishers serving communities of fewer than 50,000 persons. We sought comment in the *NPRM* on how we should determine the service area of a ''small, local electronic publisher'' for the purpose of applying the 80 percent threshold. In addition, we sought comment on whether it would be consistent with congressional intent to adopt additional standards for determining which electronic publishers are subject to the 80 percent threshold, and, if so, what such standards should be. We also sought comment on how we should define ''local'' under section 274(c)(2)(C).

172. With regard to section 274(c)(2)(C)'s provision allowing waiver of the 50 percent equity interest and revenue share limitation in the case of joint ventures with small, local electronic publishers for ''good cause shown,'' we sought comment on the ''good cause'' showing that is required under that provision, and whether any additional regulations are necessary to implement the provision.

(b) Comments

173. The Joint Parties agree that a minimum 10 percent equity interest or gross revenue share by a BOC is sufficient to constitute ownership of an electronic publishing joint venture. NAA states that a BOC must ''own'' an electronic publishing joint venture, which means it must hold greater than a 10 percent direct or indirect equity interest in the venture, or have the right to greater than 10 percent of the venture's gross revenues. NAA also points out that, except for joint ventures with small, local electronic publishers, a BOC is limited to a minority stake in the electronic publishing joint venture. NAA argues that we should not adopt any standards at this time for determining what constitutes a ''small, local electronic publisher'' under section 274(c)(2)(C), but instead should address the issue in the context of specific waiver applications. NAA maintains that, in such cases, the ''good cause'' showing that is required under section 274(c)(2)(C) would be satisfied by demonstrating that greater participation by the BOC ''is needed to enable the [electronic publishing] service to be provided to the public.''

(c) Discussion

174. We conclude that a BOC may hold greater than a 10 percent but not more than a 50 percent direct or indirect equity interest in an electronic publishing joint venture under section 274(c)(2)(C) of the Act, or may have the right to greater than 10 percent but not more than 50 percent of the venture's gross revenues. Therefore, while a BOC may ''own'' an electronic publishing joint venture, it is limited to a 50 percent stake in such venture. Our interpretation is consistent with the definition of ''electronic publishing joint venture'' in section 274(i)(5) of the Act, which contemplates a degree of ownership by a BOC or affiliate, the definition of ''own'' in section 274(i)(8), and with the plain language of section 274(c)(2)(C), which restricts a BOC's ownership or revenue share interest in an electronic publishing joint venture to 50 percent.

175. We decline at this time to adopt any standards for determining which entities constitute ''small, local electronic publishers'' for the purpose of applying the 80 percent threshold in section 274(c)(2)(C) of the Act. While the House Report indicates that the term was intended to apply to publishers serving communities of fewer than 50,000 persons, it is difficult from a practical standpoint to define the service area of such publishers, given that electronic publishing services, by definition, contemplate the dissemination of information to the general public. Moreover, the term ''small'' may be defined based on a variety of standards, including the size of the community served, the gross revenues of the electronic publishing entity, or other factors. Given the difficulties with establishing standards at this time for determining what constitutes a ''small, local electronic publisher'' under section 274(c)(2)(C), we conclude that it is best to clarify this phrase on a case-by-case basis.

176. With regard to the ''good cause'' showing that is required for a BOC to hold a greater interest in an electronic publishing joint venture with a small, local electronic publisher under section 274(c)(2)(C) of the Act, one factor we may consider in determining whether a BOC has satisfied this standard is whether increased investment by the BOC is necessary to enable the joint venture to provide electronic publishing services. In adopting section 274(c)(2)(C), we believe that Congress intended, *inter alia*, to encourage market participation by small, local electronic publishing entities in the provision of electronic publishing services by allowing a BOC to hold a greater ownership interest in electronic publishing joint ventures with such entities. We emphasize, however, that this is only one factor we may consider in determining whether a BOC satisfies the ''good cause'' standard under section 274(c)(2)(C), and that other circumstances may exist that militate for or against a finding of ''good cause.'' We thus conclude that the issue of what constitutes ''good cause'' under section 274(c)(2)(C) should be addressed on a case-by-case basis in the context of fact-specific waiver applications.

(2) BOC Participation on a ''Nonexclusive'' Basis

(a) Background

177. In the *NPRM*, we also sought comment on what regulations, if any, are necessary to ensure that a BOC

participates in an electronic publishing joint venture on a ''nonexclusive'' basis. We noted that this provision appears to prohibit arrangements whereby a BOC participates in an electronic publishing joint venture with an electronic publishing entity to the exclusion of all other such entities. We also sought comment on whether the provision prohibits contracts between a BOC and an electronic publisher whereby the electronic publisher is committed to purchase basic transmission services necessary to provide electronic publishing exclusively from such BOC, or whether the provision contemplates other types of prohibitions.

(b) Comments

178. BellSouth, NAA, and NYNEX argue that the ''nonexclusive'' requirement in section 274(c)(2)(C) precludes a BOC from entering into an electronic publishing joint venture with one entity to the exclusion of all others. PacTel similarly states that a BOC and its affiliate are prohibited under the provision from entering into an agreement that either prohibits other parties from participating in the joint venture or precludes the BOC or its affiliate from participating in other electronic publishing joint ventures with other parties. BellSouth states, however, that a BOC is not obligated to participate in more than one electronic publishing joint venture. BellSouth and NAA also argue that the provision does not preclude a BOC from insisting, as a condition of its participation in the electronic publishing joint venture, that the joint venture purchase basic transmission services exclusively from the BOC in order to provide electronic publishing services. NAA and PacTel contend that the provision does not require an electronic publishing joint venture to be open to all, nor does it prelude a BOC from exercising its business judgment regarding its joint venture partners.

(c) Discussion

179. We conclude that the section 274(c)(2)(C) requirement that a BOC or affiliate participate in an electronic publishing joint venture on a ''nonexclusive'' basis prohibits a BOC or affiliate from entering into an agreement with its joint venture partner that precludes either entity from participating in other such ventures with other parties. The ''nonexclusive'' requirement in section 274(c)(2)(C) protects against the potential that a BOC could place competing local exchange providers at a competitive disadvantage by preventing its joint venture partners from aligning with such providers in other electronic publishing joint ventures. We note, however, that while section 274(c)(2)(C) of the Act proscribes these types of exclusive arrangements, it does not prevent a BOC from agreeing with its joint venture partner to exclude other parties from that particular venture. In addition, we find that section 274(c)(2)(C) does not require that an electronic publishing joint venture be open to any and all potential venture participants, nor does it preclude a BOC from exercising its business judgment regarding its joint venture partners. As noted above, because an ''electronic publishing joint venture'' as defined in section 274(i)(5) of the Act, contemplates some degree of BOC ownership, a BOC should be allowed to retain discretion regarding its joint venture partners. Requiring a BOC to take an ownership interest in a joint venture in which it was not free to select its partner would discourage BOCs from participating in such ventures and restrict competition in the provision of electronic publishing services.

180. We also find that the ''nonexclusive'' requirement in section 274(c)(2)(C) of the Act does not require a BOC or BOC affiliate to participate in more than one electronic publishing joint venture. As BellSouth points out, such an interpretation could be viewed as precluding a BOC from consummating an electronic publishing joint venture arrangement with its joint venture partner until the BOC had located and negotiated with another partner with whom to establish a joint venture. A BOC thus may refuse to participate in a second electronic publishing joint venture that is proposed to it after it has entered into an electronic publishing joint venture with another unaffiliated entity. Given that Congress, in adopting section 274 of the Act, sought to promote competition in the provision of electronic publishing services by allowing BOCs to provide such services subject to certain safeguards, we conclude that section 274(c)(2)(C) was not intended to require a BOC to participate in more than one electronic publishing joint venture. Such a requirement could restrict competitive entry into the provision of electronic publishing services by hampering BOC participation in electronic publishing joint ventures.

181. We also conclude that section 274(c)(2)(C) does not preclude a BOC from requiring an electronic publishing joint venture to purchase basic transmission services exclusively from the BOC as a condition of the BOC's participation in the joint venture. The express language of section 274(a) of the Act contemplates the provision by an electronic publishing joint venture of electronic publishing services that are disseminated by means of the BOC or BOC affiliate's basic telephone service. Moreover, nothing in section 274(a) indicates that Congress intended to prohibit a BOC participating in an electronic publishing joint venture from requiring that the joint venture purchase basic telephone service exclusively from the BOC.

(3) Interplay Between Section 274(c)(1)(B) and Section 274(c)(2)(C)

(a) Background

182. We noted in the *NPRM* that the joint marketing prohibitions in section 274(c)(1) of the Act appear not to apply to an electronic publishing joint venture. We also sought comment on the extent to which section 274(c)(2)(C), which allows a BOC to participate in electronic publishing joint ventures under certain conditions, permits a BOC to market jointly with an electronic publishing joint venture in light of other provisions in section 274 that prohibit certain marketing activities. We noted, for example, that section 274(b)(6) prohibits an electronic publishing joint venture from using the ''name, trademark, or service marks of an existing [BOC]'' for the marketing of any product or service, while section 274(c)(2)(A) permits a BOC to provide inbound telemarketing services for, among other things, an electronic publishing joint venture, but only under certain conditions. In addition, we sought comment in the *NPRM* on the distinction, if any, between the term ''carry out'' in sections 274(c)(1)(A) and (B), which set forth the general marketing prohibitions on BOCs, and the term ''provide'' in section 274(c)(2)(C).

(b) Comments

183. A number of commenters argue that section 274(c)(2)(C) is an exception to the general joint marketing prohibitions in section 274(c)(1) of the Act and thus permits a BOC to provide promotion, marketing, sales and advertising services to an electronic publishing joint venture. SBC argues that, because section 274(c)(2)(C) authorizes a BOC participating in an electronic publishing joint venture to ''provide promotion, marketing, sales, or advertising *personnel and services*,'' the venture itself may be staffed by BOC marketing and sales personnel. Ameritech argues that joint marketing activities otherwise prohibited under section 274(c)(1) are permitted to the extent they come under one of the three

categories of permissible joint marketing activities in section 274(c)(2) of the Act. NAA argues that section 274(c)(2)(C) permits a BOC to market jointly with an electronic publishing joint venture subject to the restrictions in section 274(b)(6) on use of names and trademarks. In addition, NAA contends that the use of the terms ''carry out'' in section 274(c)(1) and ''provide'' in section 274(c)(2)(C) was not intended to limit the services a BOC may perform for an electronic publishing joint venture.

184. Conversely, Time Warner argues that a BOC is prohibited from jointly marketing its local exchange services with the electronic publishing services of an electronic publishing joint venture, and vice versa. According to Time Warner, if a joint venture were permitted to jointly market its electronic publishing services with the BOC's local exchange services, ''the ability to leverage the BOC's local exchange monopoly into the electronic publishing market would remain.''

185. Bell Atlantic contends that sections 274(b)(6) and (c)(2)(A) of the Act do not affect the right of a BOC to provide marketing services for an electronic publishing joint venture. According to Bell Atlantic, the statute prohibits the joint venture, not the BOC, from using the BOC's name, trademark or service marks. To the extent the BOC is providing services to the joint venture, Bell Atlantic argues, it is free to use its own name, trademark and service marks. Bell Atlantic also maintains that it is subject to the conditions on inbound telemarketing in section 274(c)(2)(A) of the Act to the extent it performs inbound telemarketing activities for a joint venture.

(c) Discussion

186. We conclude that section 274(c)(2)(C) provides an exception to the general joint marketing prohibitions imposed on BOCs in section 274(c)(1) of the Act. As some commenters point out, the introductory clause in section 274(c)(1) of the Act indicates that subsections (c)(1)(A) and (B) prohibit BOCs from carrying out certain types of joint marketing activities ''[e]xcept as provided in [section 274(c)(2)].'' Therefore, while section 274(c)(1)(B) of the Act might otherwise be interpreted to prohibit a BOC from carrying out joint marketing activities with an electronic publishing joint venture, section 274(c)(2)(C) provides a clear exception that allows a BOC to engage in such activities. In particular, section 274(c)(2)(C) of the Act expressly permits a BOC participating in an electronic publishing joint venture to provide ''promotion, marketing, sales or advertising personnel and services'' to such joint venture.

187. Given the plain language of section 274(c)(2)(C), which allows a BOC participating in an electronic publishing joint venture to provide ''promotion, marketing, sales or advertising *personnel* and services'' to such joint venture, we agree with SBC that an electronic publishing joint venture may be staffed by BOC marketing and sales personnel. Moreover, we agree with NAA that use of the terms ''carry out'' in section 274(c)(1) and ''provide'' in section 274(c)(2)(C) was not intended to limit the services a BOC may perform for an electronic publishing joint venture. To the contrary, based on the more specific language of the statute, which allows BOC provision of marketing *personnel* as well as services, we conclude that section 274(c)(2)(C) contemplates a broader range of BOC marketing activities than those proscribed in section 274(c)(1) of the Act.

188. We also conclude that section 274(c)(2)(C) does not override the general prohibition in section 274(b)(6) of the Act on the use of ''name, trademarks, or service marks of an existing [BOC]'' by an electronic publishing joint venture and a BOC for the marketing of any product or service of the joint venture. Nothing in section 274 of the Act indicates that Congress intended section 274(c)(2)(C) to provide an exception to the broad restriction in section 274(b)(6) on the use of an existing BOC's name, trademarks and service marks. As such, to the extent a BOC engages in marketing activities permissible under section 274(c)(2)(C) of the Act, it must still comply with section 274(b)(6), as well as all other applicable provisions in section 274. For example, we agree with Bell Atlantic that a BOC is subject to the conditions in section 274(c)(2)(A) of the Act to the extent it performs inbound telemarketing activities for an electronic publishing joint venture.

D. Nondiscrimination Safeguards

1. Background

189. Section 274(d) requires a BOC ''under common ownership or control with a separated affiliate or electronic publishing joint venture [to] provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing.'' Prior to the Act, electronic publishing services were regulated as enhanced services and were subject to the nondiscrimination requirements established under the Commission's *Computer II* and *Computer III* regimes. Under *Computer III* and *Open Network Architecture*, BOCs have been permitted to provide enhanced services on an integrated basis. Moreover, BOCs have been required to provide at tariffed rates nondiscriminatory interconnection to unbundled network elements used to provide enhanced services.

190. We concluded in the *NPRM* that the *Computer III/ONA* requirements should continue to apply to the extent that such requirements are not inconsistent with the Act. We sought comment on whether the requirements of *Computer III/ONA* are consistent with the nondiscrimination requirements of section 274(d). To the extent that commenters argue that the *Computer III/ONA* requirements are inconsistent, we sought comment on whether and to what extent regulations are necessary to implement section 274(d).

191. We also tentatively concluded in the *NPRM* that section 274(d) prohibits BOCs under common ownership or control with a separated affiliate or electronic publishing joint venture from providing volume discounts, term discounts, or other preferential rates for basic telephone service to electronic publishers. In reaching this tentative conclusion, we reasoned that any such discount would be unlawful because section 274(d) prohibits BOCs from providing basic telephone services to some electronic publishers at rates that are ''higher on a per-unit basis'' than rates charged to other electronic publishers. We also tentatively concluded that section 274(d) does not require BOCs to file tariffs for services that no longer are subject to tariff regulation. Finally, we sought comment on the meaning of the requirement that access and interconnection be provided to electronic publishers ''at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation).''

2. Comments

192. The parties generally agree that the language of section 274(d) is sufficiently clear and that there is no need for the Commission to adopt additional rules to implement this provision of the statute. If the Commission nonetheless adopts rules to implement section 274(d), Cincinnati Bell would exempt ''any LEC with less

than 2% of the nation's access lines.'' MCI contends that the BOCs, in complying with section 274(d), must provide competitors with ''functional equality or service of equal quality relative to the services the BOCs provide their affiliates.''

193. In addition, the commenters generally agree that the *Computer III/ONA* nondiscrimination requirements are consistent with section 274(d), but they disagree on whether we should continue to apply these requirements to BOC intraLATA electronic publishing services. Some of the BOCs argue that application of the *Computer III/ONA* requirements is unnecessary because section 274 imposes a separate affiliate requirement on BOCs that is similar to the structural separation requirements of *Computer II.* Ameritech supports elimination of the *Computer III/ONA* requirements, claiming that they ''were, and are, simply a solution in search of a problem.'' Other commenters, in contrast, support retaining the *Computer III/ONA* requirements. Time Warner argues that, although the *Computer III/ONA* requirements ''have not been useful to enhanced service providers,'' these requirements will be more effective if combined with the structural separation and nondiscrimination requirements of section 274. MCI and AT&T observe that there is no evidence that Congress intended to displace the *Computer III/ONA* requirements for electronic publishing services, although MCI states that the requirements are ''inadequate to prevent discrimination.''

194. With regard to preferential rates, AT&T and Time Warner agree with our tentative conclusion that section 274(d) prohibits BOCs under common ownership or control with a separated affiliate or electronic publishing joint venture from providing volume and term discounts for network access and interconnections for basic telephone service to electronic publishers. They contend that, because the rates charged to one electronic publisher must not be higher on a ''per-unit basis'' than the rates charged to other electronic publishers, the statute requires uniform rates for such services. A number of BOCs, on the other hand, argue that volume and term discounts are permitted so long as the BOC offers the same discount to other electronic publishers on the same terms and conditions.

195. PacTel also argues that Congress did not define the term ''units'' for purposes of calculating per-unit rates. PacTel notes that it provides transport in units such as DS0, DS1, and DS3, which are priced differently based on its cost savings. PacTel further asserts that a group of minutes of use, when sold together as a block, could constitute a unit, which presumably would cost less than buying the minutes of use individually. It thus asserts that BOCs may continue to create reasonable units or groups of services, and must only offer such units to all electronic publishers at the same price.

196. Time Warner also argues that the requirement that rates be just and reasonable and nondiscriminatory should apply independently of any decision to reduce or eliminate tariff filing requirements. In order to enforce this requirement in the event of detariffing, Time Warner contends that the Commission should require BOCs to file with the Commission, and furnish to any electronic publisher upon request, a list of rates charged to electronic publishers. Several BOCs, on the other hand, argue that filing a rate list is unnecessary because, under section 274(b)(3)(B), if a particular service is not subject to tariffing requirements, the transaction must be reduced to writing and made publicly available. Moreover, some commenters note that, since section 274(d) does not require BOCs to file tariffs for services that are no longer subject to tariff filing requirements, a separate rate list requirement would be both inconsistent with the statute and overly regulatory.

197. PacTel and YPPA further argue that, once the rates for basic telephone service are no longer subject to regulation, section 274(d) is no longer applicable. These commenters contend that the Commission detariffs services when it determines that competition will keep rates just and reasonable, and therefore that the market, rather than tariff filings or other regulatory requirements, will ensure that rates are just and reasonable.

3. Discussion

198. We decline to adopt rules to implement section 274(d), based on the record before us; we will reconsider this decision if circumstances warrant. We find that the language of section 274(d) is sufficiently clear to ensure that BOCs provide unaffiliated electronic publishers with network access and interconnections for basic telephone service that are equal in quality, and at nondiscriminatory terms, relative to those it provides to electronic publishers affiliated with the BOC. We reject MCI's contention, however, that section 274(d) is a guarantee of functional equivalence for unaffiliated electronic publishers. We find that neither the statute nor its legislative history supports such an interpretation.

199. We also conclude that the *Computer III/ONA* requirements are consistent with the requirements of section 274(d). The parties have not indicated that there is any inconsistency between the nondiscrimination requirements of *Computer III/ONA* and section 274(d). Section 274(d), moreover, does not repeal or otherwise affect the *Computer III/ONA* requirements.

200. We recognize, however, that section 274(b) imposes certain structural separation requirements on BOC provision of electronic publishing services. Under our current regulatory regime, a BOC must comply fully with the *Computer II* separate subsidiary requirements in providing an information service to be relieved of the obligation to file a Comparably Efficient Interconnection (CEI) plan to provide that service on an integrated basis pursuant to *Computer III.* The record in this proceeding, however, is insufficient to support a finding, as NYNEX proposes, that BOC electronic publishing services that are offered through a section 274 separated affiliate satisfy all the relevant requirements of *Computer II.* Instead, we will consider this issue, as well as issues raised regarding the revision or elimination of the *Computer III/ONA* requirements, in the context of the *Computer III Further Remand* proceeding. We conclude, therefore, that *Computer II, Computer III,* and *ONA* requirements continue to govern the BOCs' provision of intraLATA electronic publishing services. We also note that the nondiscrimination requirements of section 274(d) apply to the BOCs' provision of both intraLATA and interLATA electronic publishing services.

201. We further conclude that section 274(d) prohibits preferential rates, including volume or term discounts. This section expressly requires that a BOC under common ownership or control with a separated affiliate or electronic publishing joint venture must provide other electronic publishers network access and interconnections for basic telephone service at rates ''that are not higher on a per-unit basis than those charged for such services'' to its own affiliates or other competing electronic publishers. We conclude from the plain language of the statute that Congress intended that BOCs under common ownership or control with a separated affiliate or electronic publishing joint venture must charge electronic publishers a uniform per-unit rate for a service. We find further support for this interpretation in a floor statement that Congressman Hyde made regarding the

purpose of the amendment that contained the ''not higher on a per-unit basis'' language:

> In the development of the manager's amendment to be offered by Chairman Bliley, the Judiciary Committee has worked closely with the Commerce Committee to improve H.R. 1555 in areas that are of particular concern to, and under the jurisdiction of the Judiciary Committee. * * * Under the manager's amendment, *the Bell companies will be required to provide services to small electronic publishers at the same per-unit prices that they give to larger publishers.* This will allow the small newspapers and other electronic publishers to bring the information superhighway to rural areas that might otherwise be passed by.

141 Cong. Rec. H8292–93 (daily ed. Aug. 2, 1995) (statement of Rep. Hyde, Chairman of the House Committee on the Judiciary) (emphasis added)

202. We conclude, however, that section 274(d) only prohibits discounts for network access and interconnections for basic telephone service used in the provision of electronic publishing services. Thus, under this section, BOCs may offer discounts for the provision of such services to an electronic publisher for use in any of its other non-electronic publishing activities. Otherwise, an entity that engages in electronic publishing as well as other activities would be prohibited from obtaining a volume discount or term discount for any basic telephone service it purchases for any of its activities, whether or not related to its electronic publishing services. There is no indication that Congress intended to prohibit such discounts for an electronic publisher's non-electronic publishing activities, thereby putting such electronic publisher at a competitive disadvantage vis-a-vis its non-electronic publishing competitors.

203. Moreover, we find that section 274(d) does not require a BOC under common ownership or control with a separated affiliate or electronic publishing joint venture to charge electronic publishers the same per-unit price for different services, particularly when those services use different facilities and impose different costs on the BOCs. Ignoring such cost disparities for providing different services would remove the incentive to use the most efficient service and could increase costs for all electronic publishers as well as hamper competition in the electronic publishing market.

204. We agree with PacTel that the statute does not define the term ''units,'' for purposes of calculating per-unit rates. BOCs, therefore, may charge a flat rate or, in the alternative, a rate based on usage for a service, each of which would have a different base unit. We reject, however, PacTel's argument that a group of minutes of use, for example, could constitute a unit, unless such a group of minutes is both the smallest unit of minutes offered to electronic publishers and accommodates the needs of small electronic publishers. In this manner, such a group of minutes would neither constitute a volume discount nor disadvantage small electronic publishers.

205. We also adopt our tentative conclusion that section 274(d) does not require BOCs to file tariffs for services that are not subject to rate regulation. Section 274(d) is clear that BOCs subject to the requirements in this section file tariffs for services only ''so long as rates for such services are subject to regulation.'' No commenter disagrees with this conclusion.

206. In addition, we reject the argument that, because competition will be sufficient to ensure that a detariffed service's rates are just and reasonable, section 274(d) is inapplicable to such services. We find that the ''just and reasonable'' and ''per-unit'' requirements in section 274(d) are independent of the requirement that rates be tariffed ''so long as rates for such services are subject to regulation.'' Thus, the section 274(d) nondiscrimination requirements will continue to apply, regardless of whether the service is tariffed or no longer subject to regulation, until the sunset date of this provision in February, 2000.

207. We decline at this time to address Time Warner's argument that the Commission should require BOCs to file rates for network access and interconnections for basic telephone service provided to electronic publishers even after elimination of tariff filing requirements. We note that BOCs currently are required to file state and federal tariffs for ONA services, which are the tariffed services generally used by enhanced service providers, such as electronic publishers, to provide their services to customers. The Commission will determine whether additional filing or regulatory requirements are necessary if and when a service that is currently subject to tariff filing requirements is detariffed. Further, several BOCs stated that section 274(b)(3)(B) eliminates the need for additional regulatory requirements because under that section, if a particular service is not subject to tariffing requirements, the transaction between a BOC and its separated affiliate or joint venture must be pursuant to a written contract that is publicly available. As discussed below, we are issuing a *Further NPRM* in this proceeding to seek additional comments on the meaning of section 274(b)(3)(B).

IV. Telemessaging

A. Application of Sections 260 and 272 to BOC InterLATA Telemessaging Services

1. Background

208. We stated in our *NPRM* that section 260 sets forth various requirements for the provision of telemessaging service by LECs subject to the requirements of section 251(c), *i.e.*, incumbent LECs. The Commission's current rules permit BOCs to provide telemessaging services on an integrated basis, subject to the *Computer III/ONA* requirements. Other LECs have been permitted to provide telemessaging services subject only to the requirements of sections 201 and 202, which apply to all common carriers, including the BOCs. The *NPRM* also recognized that section 260 does not distinguish between intraLATA and interLATA provision of telemessaging services. We therefore sought comment on whether section 260 applies to BOC provision of telemessaging services, both on an intraLATA and interLATA basis. We also noted that, in the *Non-Accounting Safeguards NPRM,* we tentatively concluded that telemessaging is an information service subject to the separate affiliate and nondiscrimination requirements of section 272 and, therefore, we tentatively concluded that BOC provision of interLATA telemessaging services is subject to the requirements of section 272 in addition to the requirements of section 260. We sought comment on whether, if we decided not to adopt this tentative conclusion, BOCs providing telemessaging services on either an intraLATA or interLATA basis would be subject only to the requirements of section 260.

2. Comments

209. Commenters generally agree that section 260 applies to all incumbent LEC provision of telemessaging, both on an intraLATA and interLATA basis. Commenters disagree, however, on whether BOC provision of interLATA telemessaging services is subject to both sections 272 and 260. MCI, U S WEST, and Voice-Tel state that BOC provision of interLATA services is subject to both sections 272 and 260, because telemessaging service is an ''information service'' and thus falls within the terms of section 272(a)(2)(C). BellSouth and PacTel agree with this point, but argue that Congress, in enacting a separate provision for telemessaging services, did not intend BOC provision of interLATA

telemessaging services to be subject to the requirements of section 272.

3. Discussion

210. We conclude that section 260 applies to all incumbent LEC provision of telemessaging services, both on an intraLATA and interLATA basis. We find that neither the statute nor its legislative history evinces an intent by Congress to distinguish between BOCs and other LECs, or between intraLATA and interLATA services. Moreover, because we concluded in the Commission's *Non-Accounting Safeguards Order* that telemessaging service is an ''information service,'' BOC provision of telemessaging service on an interLATA basis is subject to the requirements of section 272 in addition to the requirements of section 260.

B. Definition of ''Telemessaging Service''

1. Background

211. Section 260(c) defines ''telemessaging service'' as ''voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services.'' We sought comment in the *NPRM* on whether rules are necessary to clarify any ambiguities in this definition. We also sought comment on the types of services contemplated by the term ''ancillary services.''

2. Comments

212. None of the commenters identifies any ambiguities in the definition of ''telemessaging service'' in section 260(c). Some commenters state generally that the language of section 260 is clear and that no rules are needed to implement this provision. ATSI states that ''ancillary services'' are ''all value-added services in addition to those primary [telemessaging] services, offered by telemessagers to the communications customer.'' ATSI lists specific examples, but recommends against establishing a comprehensive list of primary or ancillary telemessaging services, since new services are created as technology and consumer demands change.

3. Discussion

213. We conclude that the definition of ''telemessaging service'' in section 260(c) is sufficiently clear and therefore decline to establish an exclusive list of ''telemessaging services'' or ''ancillary services.'' We note that BellSouth asks us to clarify that live operator services do not fall within the Commission's definition of ''enhanced'' services, because they do not employ ''computer processing applications.'' *See* BellSouth at 26. We concluded in the *Non-Accounting Safeguards Order* that live operator services ''are an example of one area in which the 'information service' definition is broader than that of 'enhanced services.' '' *Non-Accounting Safeguards Order* at ¶§ 145 n.342. We will determine whether any individual service is a ''telemessaging service'' or ''ancillary service'' as necessary on a case-by-case basis. We note that BellSouth asks us to clarify that live operator services do not fall within the Commission's definition of ''enhanced'' services, because they do not employ ''computer processing applications.'' *See* BellSouth at 26. We concluded in the *Non-Accounting Safeguards Order* that live operator services ''are an example of one area in which the 'information service' definition is broader than that of 'enhanced services.' ''

C. Nondiscrimination Requirements

1. Section 260(a)(2) and Sections 201 and 202

a. Background

214. Section 260(a)(2) provides that an incumbent LEC ''shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services.'' We sought comment in the *NPRM* on the extent to which section 260(a)(2) imposes greater obligations on LECs providing telemessaging services than currently exist under sections 201 and 202 of the Act.

b. Comments

215. Some commenters assert that section 260(a)(2) imposes greater obligations on LECs providing telemessaging services than currently exist under sections 201 and 202 of the Act, based on the broad, unqualified language in section 260(a)(2). Some of the BOCs, however, disagree, asserting that section 260(a)(2) merely duplicates the requirements of sections 201 and 202 for incumbent LEC provision of telemessaging services. Voice-Tel contends that, in complying with section 260(a)(2), ''it is not sufficient for the interconnections offered to be comparable if the result is that the competitor is put at any disadvantage.''

c. Discussion

216. As noted above, section 260(a)(2) states that an incumbent LEC ''shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services.'' Section 202(a), in contrast, prohibits ''any unjust or unreasonable discrimination * * *, or * * * any undue or unreasonable preference or advantage'' by common carriers providing interstate communications services. Because the section 260(a)(2) nondiscrimination bar, unlike that of section 202(a), is not qualified by the terms ''unjust and unreasonable,'' we conclude that Congress did not intend section 260(a)(2) to be synonymous with the nondiscrimination standard in section 202(a), but intended a more stringent standard. This conclusion is consistent with our interpretation of similar language in sections 251(c)(2) and 272(c)(1). We therefore reject claims that section 260(a)(2) merely duplicates the nondiscrimination bar of section 202(a) for the provision of telemessaging services by incumbent LECs.

217. We also conclude that section 260(a)(2) is not a guarantee of functional equivalence for unaffiliated telemessaging providers, as Voice-Tel contends. We find that neither the statute nor its legislative history supports such an interpretation. We note that the Joint Explanatory Statement states only that section 260(a)(2) prohibits incumbent LECs ''from discriminating against nonaffiliated entities with respect to the terms and conditions of any network services they provide to their own telemessaging operations.'' To the extent that competitors require different telecommunications services than the LEC provides to its own telemessaging operations, we note that other nondiscrimination requirements in the Act and analogous state nondiscrimination laws may apply to such requests. In addition, the Commission's *ONA* rules require the BOCs and GTE to unbundle network services useful to enhanced service providers.

2. Section 260(a)(2) and *Computer III/ONA* Requirements

a. Background

218. We concluded in the *NPRM* that the nondiscrimination requirements of *Computer III/ONA* should continue to apply to the extent they are not inconsistent with section 260(a)(2). We sought comment on whether the nondiscrimination provisions of *Computer III/ONA* are consistent with section 260(a)(2), and whether these provisions should be applied only to the BOCs or to all incumbent LECs to fulfill the requirements of section 260(a)(2).

b. Comments

219. Most commenters agree that the *Computer III/ONA* nondiscrimination requirements are consistent with section 260(a)(2) and assert that these requirements should continue to apply to BOC intraLATA telemessaging services. MCI and AT&T observe that there is no evidence that Congress intended to displace the *Computer III/ONA* requirements for telemessaging services. Similarly, ATSI asserts that ''[s]ection 260 is not limited by existing rules or other provisions of the Act.'' The commenters disagree, however, on whether the current scope of the *Computer III/ONA* requirements should be extended to include all incumbent LECs, not just the BOCs. Cincinnati Bell asserts that the *Computer III/ONA* requirements should not be extended beyond their current scope, while PacTel and U S WEST argue that they should be extended to include all incumbent LECs. AT&T would extend the *Computer III/ONA* requirements to all incumbent LECs ''possess[ing] substantial market power as a result of [their] bottleneck control over local exchange facilities in a significant service area (*e.g.*, SNET, GTE, and other Tier I LECs),'' while USTA would exempt small and mid-sized LECs from these requirements.

220. Several commenters argue that the *Computer III/ONA* requirements should be revised or eliminated. Although MCI supports continued application of the *Computer III/ONA* requirements, it states that they ''are inadequate to prevent access discrimination.'' Ameritech supports elimination of the *Computer III/ONA* requirements, claiming that they ''were, and are, simply a solution in search of a problem.'' Bell Atlantic argues that the *Computer III/ONA* rules are unnecessary, given that price caps and sections 202(a) and 251 ''fully protect against discrimination.''

c. Discussion

221. We conclude that the *Computer III/ONA* requirements are consistent with the requirements of section 260(a)(2). We affirm our conclusion, therefore, that *Computer III/ONA* requirements continue to govern the BOCs' provision of intraLATA telemessaging services. In addition, we note that the Commission's *Computer II* requirements also continue to govern BOC provision of intraLATA information services, including telemessaging. We also note that the nondiscrimination requirements of section 260(a)(2) apply to the BOCs' provision of both intraLATA and interLATA telemessaging services, as well as other incumbent LECs' provision of telemessaging services. The parties have not indicated that there is any inconsistency between the nondiscrimination requirements of *Computer III/ONA* and section 260(a)(2). Section 260(a)(2), moreover, does not repeal or otherwise affect the *Computer III/ONA* requirements. We will consider in the Commission's *Computer III Further Remand* proceeding whether the *Computer III/ONA* requirements need to be revised or eliminated. For the same reason, we also decline to extend the *Computer III/ONA* requirements to entities other than BOCs, as recommended by some commenters.

3. Section 260(a)(2) and Adoption of Rules

a. Background

222. We sought comment in the *NPRM* on whether and what types of specific regulations may be necessary to implement section 260(a)(2).

b. Comments

223. The BOCs argue that the language of section 260(a)(2) is sufficiently clear and thus there is no need for the Commission to adopt rules to implement this provision. ATSI and Voice-Tel, on the other hand, argue that the Commission should adopt rules to implement section 260(a)(2). Voice-Tel states that Commission rules will ensure that complaints of discrimination are treated consistently and will help the Commission administer the Act efficiently. SBC argues that any rules adopted by the Commission must apply to all incumbent LECs, while Cincinnati Bell would exempt any LEC with less than two percent of the nation's access lines.

224. Voice-Tel argues that the ''broad language'' of the nondiscrimination requirement in section 260(a)(2) ''makes *any* discrimination in pricing or other behavior unlawful,'' including the marketing of voice messaging services. Some BOCs, on the other hand, argue that the scope of section 260(a)(2) is limited to the provision of ''telecommunications services,'' which, as defined in section 3(46) of the Act, does not include marketing-related activities.

225. Voice-Tel also would require all incumbent LECs to establish a separate affiliate to provide telemessaging services, in order to ensure that incumbent LECs comply with section 260(a)(2). Voice-Tel claims that nothing in the Act prevents the Commission from imposing this measure. The BOCs argue, in contrast, that, if Congress had intended to establish a separate affiliate requirement, it would have expressly said so, as it did for certain information services in section 272 and for electronic publishing services in section 274.

c. Discussion

226. We conclude that no rules are necessary to implement section 260(a)(2), based on the record before us; we will reconsider this decision if circumstances warrant. We therefore decline to adopt the specific rules proposed by certain commenters.

227. In particular, we decline to impose a separate affiliate requirement on all incumbent LECs providing telemessaging services. We find that the safeguards expressly established by Congress in section 260 are sufficient to guard against discriminatory behavior by incumbent LECs in favor of their own telemessaging operations. In addition, we find it significant that Congress limited the separate affiliate requirement in section 272 to BOC provision of interLATA information services (including interLATA telemessaging services), interLATA telecommunications services, and manufacturing, and in section 274 to BOC provision of electronic publishing services.

228. Further, we conclude that the scope of section 260(a)(2) is limited, by its terms, to the provision of ''telecommunications services,'' which, as defined in section 3(46) of the Act, does not include marketing-related activities. Accordingly, we reject Voice-Tel's argument that marketing is included within the scope of 260(a)(2).

V. Final Regulatory Flexibility Certification

229. The Commission certified in the *NPRM* that the conclusions it proposed to adopt would not have a significant economic impact on a substantial number of small entities because the proposed conclusions did not pertain to small entities. No comments were submitted in response to the Commission's request for comment on its certification. For the reasons stated below, we certify that the conclusions adopted herein will not have a significant economic impact on a substantial number of small entities. This certification conforms to the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

230. The RFA provides that the term ''small business'' has the same meaning as the term ''small business concern''

under the Small Business Act. The Small Business Act defines a ''small business concern'' as one that is independently owned and operated; is not dominant in its field of operation; and meets any additional criteria established by the Small Business Administration (SBA). SBA has not developed a definition of ''small incumbent LECs.'' The closest applicable definition under SBA rules is for Standard Industrial Classification (SIC) code 4813 (Telephone Communications, Except Radiotelephone). The SBA has prescribed the size standard for a ''small business concern'' under SIC code 4813 as 1,500 or fewer employees.

231. The conclusions we adopt in this *Order* to implement section 274 apply only to the BOCs which, because they are large corporations that are dominant in their field of operation and have more than 1,500 employees, do not fall within the SBA's definition for a ''small business concern.'' The conclusions we adopt pursuant to section 260, however, apply to all incumbent LECs. Some of these incumbent LECs may have fewer than 1,500 employees and thus meet the SBA's size standard to be considered ''small.'' Because such incumbent LECs, however, are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of ''small entity'' and ''small business concerns.'' Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

232. With respect to section 260, the most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the conclusions adopted in this *Order*.

233. The Commission adopts the conclusions in this *Order* to ensure the prompt implementation of sections 260 and 274 of the Act. Section 260 permits incumbent LECs, including the BOCs, to provide telemessaging service subject to certain nondiscrimination safeguards. We certify that although there may be a substantial number of small incumbent LECs affected by the conclusions adopted in this *Order* to implement section 260, these conclusions will not have a significant economic impact on those affected small incumbent LECs.

234. We decline to elaborate on the definition of ''telemessaging service'' prescribed by Congress or to establish a list of services that fall within section 260(c), for the reasons set forth in Part IV.B. Because we take no action pursuant to section 260(c) in this *Order*, there will be no significant economic impact on a substantial number of small entities.

235. Our conclusion that section 260(a)(2) imposes a more stringent standard for determining whether discrimination is unlawful than that which already exists under sections 201 and 202 and applies to all incumbent LECs will not have a significant economic impact on small incumbent LECs. Incumbent LECs, including small incumbent LECs, are subject to other nondiscrimination requirements in the Act and state law and therefore already are required to respond to complaints of discriminatory behavior or limit their participation in discriminatory activities. We therefore find that the impact on incumbent LECs, including small incumbent LECs, of the more stringent standard of section 260(a)(2) will most likely be minimal.

236. Our decision not to extend the *Computer III/ONA* nondiscrimination requirements to all incumbent LECs, as well as our decision not to adopt rules implementing the nondiscrimination requirement of section 260(a)(2), as noted in Section IV.C, will prevent any significant economic impact on incumbent LECs, particularly small incumbent LECs. Thus, although their conduct will be subject to the requirements of section 260, small incumbent LECs will be spared the regulatory burdens and economic impact of complying with additional rules.

237. Section 274 of the Act allows BOCs to provide electronic publishing service disseminated by means of its basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture'' that meets the separation, joint marketing, and nondiscrimination requirements prescribed by that section. BOCs that were offering electronic publishing services at the time the 1996 Act was enacted have until February 8, 1997, to meet those requirements, which expire on February 8, 2000. Because section 274 applies only to BOCs, which, as noted above, do not fall within the SBA's definition for a ''small business concern,'' the conclusions we adopt in this *Order* implementing this section have no significant economic impact on a substantial number of small entities.

238. The Commission shall send a copy of this certification, along with this *Order*, in a report to Congress pursuant to the SBREFA, 5 U.S.C. 801(a)(1)(A). A copy of this certification will also be provided to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.

VI. Final Paperwork Reduction Analysis

239. As required by the Paperwork Reduction Act of 1995, Public Law 104–13, the *NPRM* invited the general public and the OMB to comment on proposed changes to the Commission's information collection requirements contained in the *NPRM*. Specifically, the Commission proposed to extend various reporting requirements, which apply to the BOCs under *Computer III*, to all incumbent LECs pursuant to section 260(a)(2). OMB approved all of the proposed changes to the Commission's information collection requirements in accordance with the Paperwork Reduction Act. In approving the proposed changes, OMB ''encourage[d] the [Commission] to investigate the potential for sunsetting these requirements as competition and other factors allow.''

240. In this *Order*, the Commission adopts none of the changes to our information collection requirements proposed in the *NPRM*. We therefore need not address the OMB's comment, although we note that our decision is consistent with the OMB's recommendation.

241. We conclude, however, that to the extent a BOC refers a customer to a separated affiliate, electronic publishing joint venture or affiliate during the normal course of its telemarketing operations, the BOC must refer that customer to all unaffiliated electronic publishers requesting the referral service, on nondiscriminatory terms. As part of this requirement, BOCs must provide the names of all such unaffiliated electronic publishers, as well as its own affiliated electronic

publishers, in random order, to the customer. Implementation of this requirement is subject to OMB approval as prescribed by the Paperwork Reduction Act.

VII. Ordering Clauses

242. Accordingly, *It is ordered* that pursuant to sections 1, 2, 4, 201, 202, 260, 274 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201, 202, 260, 274, and 303(r), the Report and Order is Adopted, and the clarification and interpretation contained herein will become effective March 24, 1997. The collection of information contained within is contingent upon approval by the OMB.

243. *It is further ordered* that the Secretary shall send a copy of this Report and Order, including the final regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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

Attachment—List of Commenters in CC Docket No. 96–152

Alarm Detection Systems, Inc.
Alarm Industry Communications Committee
Alert Holding Group, Inc.
Ameritech
Association of Directory Publishers (ADP)
Association of Telemessaging Services International (ATSI)
AT&T Corporation (AT&T)
Atlas Security Service, Inc.
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
Checkpoint Ltd.
Cincinnati Bell Telephone (Cincinnati Bell)
Commercial Instruments & Alarm Systems, Inc.
Commonwealth Security Systems, Inc.
ElectroSecurity Corporation
Entergy Technology Holding Company
George Alarm Company, Inc.
Information Industry Association (IIA)
Joint Parties (Bell Atlantic and Newspaper Association of America)
MCI Telecommunications Corporation (MCI)
Merchant's Alarm Systems
Midwest Alarm
Morse Signal Devices
National Security Service
New York State Department of Public Service (New York Commission)
Newspaper Association of America (NAA)
NYNEX Corporation (NYNEX)
Pacific Telesis Group (PacTel)
Peak Alarm
People of the State of California/California PUC (California Commission)
Per Mar Security Services
Post Alarm Systems
Rodriguez, Francisco
Safe Systems
Safeguard Alarms, Inc.
SBC Communications, Inc. (SBC)
SDA Security Systems, Inc.
Security Systems by Hammond, Inc.
Sentry Alarm Systems of America, Inc.
Sentry Protective Systems
Smith Alarm Systems
Superior Monitoring Service, Inc.
SVI Systems, Inc.
Time Warner Cable (Time Warner)
United States Telephone Association (USTA)
U S West, Inc. (U S WEST)
Valley Burglar & Fire Alarm Co., Inc.
Vector Security
Voice-Tel
Wayne Alarm Systems
Yellow Pages Publishers Association (YPPA)

[FR Doc. 97–4020 Filed 2–19–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 34
Thursday, February 20, 1997

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB30

Pre-Loan Procedures for Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing a minor amendment to its pre-loan procedures that will clarify that use of a conventional utility indenture as a security instrument for loans to power supply borrowers is permissible. This amendment will give these borrowers and RUS the flexibility to address the complex issues surrounding power supply loans in the rapidly changing electric industry. The rule will also enhance loan security and, by conforming more closely to private lending practice, allow easier access to private sector financing.

In the final rules section of this Federal Register, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a document will be published withdrawing the effective date of the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received March 24, 1997.

ADDRESSES: Written comments should be sent to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 2230–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours at Room 4034, South Building, U.S. Department of Agriculture, Washington, DC 20250 between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 2230–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. Telephone: 202–720–0736. FAX: 202–720–4120. E-mail: fheppe@rus.usda.gov.

SUPPLEMENTARY INFORMATION: See the Supplementary Information provided in the direct final rule located in the final rules section of this Federal Register for the applicable supplementary information on this action.

Authority: 7 U.S.C. 901 *et seq.*

Dated: February 10, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–3991 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AF53

Changes to Nuclear Power Plant Security Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to revise its regulations to delete certain security requirements associated with an internal threat. This action follows reconsideration by the NRC of nuclear power plant physical security requirements to identify those requirements that are marginal to safety, redundant, or no longer effective. This action would reduce the regulatory burden on licensees without compromising physical protection against radiological sabotage required for public health and safety.

DATES: Submit comments by May 6, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as discussed under Electronic Access in the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6261, e-mail sdf@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In a memorandum dated September 3, 1991 (COMFR–91–005), the Commission requested the NRC staff to re-examine the security requirements associated with an internal threat to nuclear power plants that are contained in 10 CFR Part 73, ''Physical Protection of Plants and Materials.'' The NRC staff completed its re-examination and recommended some changes in 10 CFR Part 73 to the Commission (SECY–92–272, August 4, 1992). In a Staff Requirements Memorandum dated November 5, 1992, the Commission directed the NRC staff to work with the Nuclear Management and Resources Council (NUMARC) now known as the Nuclear Energy Institute (NEI). Following three public meetings with NUMARC, the NRC staff recommended to the Commission (SECY–93–326, December 2, 1993) additional changes to

Part 73 that would provide significant relief to licensees without compromising the physical security of the plants. In a Staff Requirements Memorandum dated February 18, 1994, the Commission directed the NRC staff to proceed with a rulemaking.

Discussion

Seven areas in Part 73 were identified as candidates for modification through rulemaking. One of the recommended changes, relating to access of personnel and materials into reactor containments during periods of high traffic, has been addressed by a separate rulemaking. This recommended change was adopted in a final rule published on September 7, 1995 (60 FR 46497). Six other changes originally considered for this rulemaking were the subject of Generic Letter 96–02 issued February 13, 1996. This generic letter identified certain areas in which licensees might choose to revise their physical security plans without having to wait for issuance of the rule plan. One of these (discussed in detail later), an option to leave vital area doors unlocked provided certain compensatory measures are taken, has been reconsidered in light of recent tampering events. Consequently, that change is not being proposed in this rulemaking.

The five remaining changes being addressed in this proposed rulemaking are as follows:

1. Search requirements for on-duty guards, § 73.55(d)(1);
2. Requirements for vehicle escort, § 73.55(d)(4);
3. Control of contractor employee badges, § 73.55(d)(5);
4. Maintenance of access lists for each vital area, § 73.55(d)(7)(i)(A); and
5. Key controls for vital areas, § 73.55(d)(8).

1. Search Requirements for On-duty Guards (§ 73.55(d)(1)).

Under current regulations, armed security guards who leave the protected area as part of their duties must be searched for firearms, explosives, and incendiary devices upon re-entry into the protected area. Requiring a guard to go through an explosives detector or searching packages carried by the guard protects against the introduction of contraband. Because an armed guard carries a weapon on site, passage of the guard through the metal detector, the principal purpose of which is to detect firearms, serves little purpose. The guard has to either remove the weapon while passing through the detector or be subject to a hand search. Either approach makes little sense for the guard who is authorized to carry a weapon on site. Further, removing and handling the guard's weapon could present a personnel safety risk.

This proposed rule would allow armed security guards who are on duty and have exited the protected area on official business to reenter the protected area without being searched for firearms (by a metal detector). Unarmed guards and watchpersons would continue to meet all search requirements. All guards would continue to be searched for explosives and incendiary devices because they are not permitted to carry these devices into the plant.

2. Requirements for Vehicle Escort § (73.55(d)(4)).

The present requirement for a searched, licensee-owned vehicle within the protected area to be escorted by a member of the security organization, even when the driver is badged for unescorted access, does not contribute significantly to the security of the plant. Under the current regulations, all vehicles must be searched prior to entry into the protected area except under emergency conditions. Further, all vehicles must be escorted by a member of the security organization upon entry into the protected area except for ''designated licensee vehicles.'' Designated licensee vehicles are those vehicles that are limited in their use to onsite plant functions and remain in the protected area except for operational, maintenance, repair, security, and emergency purposes. Under this requirement, those licensee-owned vehicles that are not ''designated licensee vehicles'' must be escorted at all times while in the protected area even when they are driven by personnel with unescorted access.

This proposed rule would eliminate the requirement for escort of licensee-owned vehicles entering the protected area for work-related purposes provided that these vehicles are driven by licensee employees who have unescorted access. (This amendment would still preclude periodic entry of a delivery truck without an escort.) This change would provide burden relief to licensees without significantly increasing the level of risk to the plant.

3. Control of Contractor Employee Badges (§ 73.55(d)(5)).

Contractor employees with unescorted access are required to return their badges when leaving the protected area. Current regulatory practice allows licensee employees to leave the protected area with their badges if adequate safeguards are in place to ensure that the security of the badge is not jeopardized. Because contractors and licensees are subject to the same programs required for unescorted access, there is no reason to employ more stringent badge control requirements for contractor employees.

This proposed rule would allow contractor employees to take their badges offsite under the same conditions that apply to licensee employees.

4. Maintenance of Access Lists for Each Vital Area (§ 73.55(d)(7)(i)(A)).

Maintaining separate access lists for each vital area and reapproval of these lists on a monthly basis is of marginal value. At many sites, persons granted access to one vital area also have access to most or all vital areas. Therefore, licensees presently derive little additional benefit from maintaining discrete lists of individuals allowed access to each separate vital area in the facility. Also, licensee managers or supervisors are required to update the access lists at least once every 31 days to add or delete individuals from these lists when appropriate. There is also a requirement to reapprove the list every 31 days. However, reapproval of all individuals on the lists at least every 31 days, to validate that the lists have been maintained in an accurate manner is unnecessarily burdensome.

This rulemaking would replace separate access authorization lists for each vital area of the facility by a single listing of all persons who have access to any vital area.

The proposed rulemaking would also change the requirement that the list must be reapproved at least once every 31 days to quarterly. The reapproval consists of a review to ensure that the list is current and that only those individuals requiring routine access to a vital area are included. Because of the requirement for a manager or supervisor to update the list at least every 31 days, conducting this comprehensive reapproval every 31 days is of marginal value. Comments from the public are requested on the question of the benefits of separating the update and reapproval requirements.

5. Key Controls for Vital Areas (§ 73.55(d)(8)).

Under current regulations, licensees change or rotate all keys, locks, combinations, and related access control devices at least once every twelve months. Because the rule also requires that these be changed whenever there is a possibility of their being compromised, requiring change at least every 12 months has been determined

by the NRC to be only marginal to security.

This proposed rule would remove the requirement for change every 12 months while retaining the requirement for changing for cause, when an access control device has been compromised or there is a suspicion that it may be compromised.

Locking of Vital Areas

As noted earlier, Generic Letter 96–02, described, among other things, conditions under which licensees could leave vital areas unlocked. Specifically, to leave a vital area unlocked, the licensee would have had to ensure that the area is equipped with an alarmed access control system that will alarm on unauthorized entry; ensure that the doors to the area can be locked remotely; continue to maintain a record of personnel access; to examine for explosives, with equipment specifically designed for that purpose, all hand-carried packages entering any protected area within which there is an unlocked vital area; and to demonstrate a capability to protect against an external adversary.[1] This change was considered for inclusion in this rulemaking but as a result of recent events, it has been rejected. If vital areas are unlocked but alarmed, the response to an entry by an unauthorized individual could require a considerable time and level of effort to assure that important equipment was not damaged. Maintaining VA doors locked limits the number of people who have access to the area and ensures that personnel who enter are identified.

In July and August of this year, tampering events were discovered within vital areas of a reactor. The first search missed significant tampering with safety-related switches. If vital areas are unlocked but alarmed, an entry by an unauthorized individual, deliberate or inadvertent, could require a considerable level of effort to assure that important equipment was not damaged. It is also uncertain that such alarms would always initiate the level of response needed to evaluate the safety systems within the impacted vital area. In addition, most safety equipment is automatic and rapid access to vital areas is generally not required. Thus, this option of leaving a vital area unlocked is no longer being considered.

[1] Generic Letter 96–02 (February 13, 1996) identified those areas in which licensees might choose to revise their security plans without having to wait for the issuance of the rule changes. One change would have provided the option of not locking the doors to a vital area provided that the security of the plant would not be compromised.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555–0001, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Environmental Impact: Categorical Exclusion

The Commission has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will reduce existing information collection requirements, the public burden for this collection of information is expected to be decreased by 102 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The NRC is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for further reducing the burden, to the Information

and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0002), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by March 24, 1997. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC 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.

Regulatory Analysis

A discussion of each of the five changes proposed in this rule is provided in the supplementary information section. The costs and benefits for each of the changes proposed in this rulemaking are as follows:

1. Search Requirements for On-duty Guards (§ 73.55(d)(1)).

The regulatory burden on licensees would be reduced by eliminating unnecessary weapon searches of guards who are already allowed to carry a weapon, which would result in better utilization of licensee resources. There would be no reduction in plant security because the potential for reduction in security personnel hours does not impact the total size of the security force. Further, the potential safety risk to personnel caused by removing and handling a guard's weapon would be eliminated.

2. Requirements for Vehicle Escort (73.55(d)(4)).

The regulatory burden on licensees would be reduced by requiring fewer vehicle escorts which would allow personnel to be utilized more effectively. Resources could be redirected to areas in which they would be more cost effective. The decrease in security would be marginal because unescorted access would be restricted to vehicles owned by the licensee and driven by licensee employees with unescorted access.

Assuming the number of entries by licensee-owned vehicles driven by personnel having unescorted access is 10-per-day per-site, the average time needed for escort is 3 hours, and the cost per hour for security personnel is $30 (loaded), a rough estimate of the potential savings per site per year is about $330,000 (10 escorts/day/site × 365 days/year × 3 hrs/escort × $30/hr). With 75 sites, the savings to the industry per year would be approximately $24,000,000.

3. Control of Contractor Employee Badges (§ 73.55(d)(5)).

The regulatory burden on licensees would be reduced by more effective use of security personnel, who would no longer be needed to handle badges for contractor personnel who have unescorted access. There would be no reduction in plant security because adequate safeguards would be in place to ensure that the security of the badge is not jeopardized.

Assuming that one security person per working day (8 hours) is relieved from the duties of controlling contractor employees badges and that the cost per hour for security personnel is $30 (loaded), a rough estimate of the potential savings per site per year is about $88,000 (8 hours/day ×365 days/year ×$30 hr). With 75 sites, the savings to the industry per year would be approximately $6,600,000.

4. Maintenance of Access Lists for Each Vital Area (§ 73.55(d)(7)(i)(A)).

The regulatory burden on licensees would be reduced because licensees would have to keep only one access list for all vital areas and reapprove it quarterly, rather than keep individual access lists for each vital area that must be reapproved monthly.

Assuming that the time to reapprove each of the individual lists is 1 hour per month, that a combined list would take 1.5 hours per month, that the average number of vital areas per site is 10, and that the cost of a clerk including overhead is $30 per hour (loaded), a rough estimate of the potential savings per site per year is about $3,420 [(1×10 vital areas/month ×12 months/yr—1.5 ×1 combined vital area/quarter ×4 quarters/yr) ×$30/hr]. With 75 sites, the savings to the industry per year would be approximately $256,500.

5. Key Controls for Vital Areas (§ 73.55(d)(8)).

The regulatory burden on the licensees would be reduced because fewer resources would be needed to maintain the system.

Assuming that of the approximately 60 locks per year, half of them had been changed for cause, leaving 30 locks unchanged which would take a locksmith one day to change at a cost(including overhead) of $45 per hour. A rough estimate of the potential savings per site per year is about $360 (8 hrs/year ×$45/hr). With 75 sites, the savings to the industry per year would be approximately $27,000.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act as amended, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, or the Small Business Size Standards set out in regulations issued by the Small Business Administration Act, 13 CFR Part 121.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed amendment because this amendment would not impose new requirements on existing 10 CFR Part 50 licensees. The proposed changes to physical security are voluntary and should the licensee decide to implement this amendment, will be a reduction in burden to the licensee. Therefore, a backfit analysis has not been prepared for this amendment.

List of Subjects in 10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 sec. 1701, 106 Stat. 2951, 2952 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section

73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. Section 73.55 is amended by revising paragraphs (d)(1), (d)(4), (d)(5), (d)(7)(i)(A), and (d)(8) to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(d) * * *

(1) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals unless otherwise provided herein must be made and authorization must be checked at these points. The search function for detection of firearms, explosives, and incendiary devices must be accomplished through the use of both firearms and explosive detection equipment capable of detecting those devices. The licensee shall subject all persons except bona fide Federal, State, and local law enforcement personnel on official duty to these equipment searches upon entry into a protected area. Armed security guards who are on duty and have exited the protected area on official business may reenter the protected area without being searched for firearms.

* * * * *

(4) All vehicles, except under emergency conditions, must be searched for items which could be used for sabotage purposes prior to entry into the protected area. Vehicle areas to be searched must include the cab, engine compartment, undercarriage, and cargo area. All vehicles, except as indicated in this paragraph, requiring entry into the protected area must be escorted by a member of the security organization while within the protected area and, to the extent practicable, must be off loaded in the protected area at a specific designated materials receiving area that is not adjacent to a vital area. Escort is not required for designated licensee vehicles or licensee-owned vehicles entering the protected area and driven by licensee employees having unescorted access.

(5) A numbered picture badge identification system must be used for all individuals who are authorized access to protected areas without escort. Badges must be displayed by all individuals while inside the protected area. An individual not employed by the licensee but who requires frequent and extended access to protected and vital areas may be authorized access to such areas without escort provided that he or she displays a licensee-issued picture badge upon entrance into the protected area which indicates:

(i) Non-employee—no escort required;

(ii) Areas to which access is authorized; and

(iii) The period for which access has been authorized.

* * * * *

(7) * * *

(i) * * *

(A) Establish a current authorization access list for all vital areas. The access list must be updated by the cognizant licensee manager or supervisor at least once every 31 days and must be reapproved at least quarterly. The licensee shall include on the access list only individuals whose specific duties require access to vital areas during nonemergency conditions.

* * * * *

(d)(8) All keys, locks, combinations, and related access control devices used to control access to protected areas and vital areas must be controlled to reduce the probability of compromise. Whenever there is evidence or suspicion that any key, lock, combination, or related access control devices may have been compromised, it must be changed or rotated. The licensee shall issue keys, locks, combinations and other access control devices to protected areas and vital areas only to persons granted unescorted facility access. Whenever an individual's unescorted access is revoked due to his or her lack of trustworthiness, reliability, or inadequate work performance, keys, locks, combinations, and related access control devices to which that person had access must be changed or rotated.

* * * * *

Dated at Rockville, Maryland, this 14th day of February, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–4219 Filed 2–19–97; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB92

Resolution and Receivership Rules

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) the FDIC is proposing to amend its regulation addressing ''least cost resolutions'' to correct a typographical error. The provisions of the regulation relating to the security interests of Federal Home Loan Banks (Banks) in FDIC-administered receiverships, is being removed because of its limited applicability and the federal statutory protections provided to the Banks make it unnecessary to continue to address the issues contained therein by regulation. To the extent specific issues arise regarding the Banks' extensions of credit or security interests in FDIC-administered receiverships, they can be addressed on a case by case basis within the existing statutory structure.

DATES: Comments must be submitted on or before April 21, 1997.

ADDRESSES: Send written comments to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C., 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, N.W. 20429, on business days between 8:30 a.m. and 4:30 p.m.; sent by facsimile: (202) 898–3838; or by Internet: Comments@fdic.gov. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Mitchell Glassman, Deputy Director, Division of Resolutions and Receiverships, (202) 898–6525; Rodney D. Ray, Counsel, Legal Division, (202) 898–3556; Catherine A. Ribnick, Counsel, Legal Division, (202) 736–0117, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

As part of the FDIC's review of its regulations pursuant to section 303 of CDRIA, the FDIC reviewed its receivership regulations to assure that there was a need for their continued existence. If it was determined that a regulation should be retained, it also was reviewed for accuracy and clarity. As part of the review process, the FDIC determined that § 360.1 should be retained but amended to correct a typographical error. It was determined that § 360.2 should be removed because the regulation is of limited applicability and addresses only the concerns of a discrete and limited group of secured creditors, whose interests are already

addressed by federal statutes. Additionally, the regulation was the product of an increasing number of liquidating receiverships precipitated by the nation's thrift crisis, which has since subsided, making it unnecessary to continue to address the issues contained therein by regulation.

I. Section 360.1 Least-Cost Resolution

Section 13(c)(4)(E)(i) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1823(c)(4)(E)(i)) generally prohibits the FDIC, after August 31, 1994, from taking any action directly or indirectly, with respect to a depository institution which would have the effect of increasing losses to any deposit insurance fund by protecting the institution's uninsured depositors or other creditors. Section 360.1 was promulgated in compliance with the statutory mandate, contained in section 13(c)(4)(E)(ii) of the FDI Act (12 U.S.C. 1823(c)(4)(E)(ii)), that the FDIC issue regulations implementing clause (i) not later than January 1, 1994. Because the regulation was issued pursuant to statute, it is being retained.

Upon review, however, an erroneous statutory citation was discovered in § 360.1(b) and the regulation is being amended to change the reference from ''12 U.S.C. 13(c)(4)(A)'' to ''12 U.S.C. 1823(c)(4)(A)''.

II. Section 360.2 Federal Home Loan Banks as Secured Creditors

Section 360.2 was originally promulgated by the Federal Home Loan Bank Board (FHLBB) on April 27, 1989.[1] At the time, the FHLBB recognized that the incidence of liquidating receivership (liquidating receivership or liquidating receiverships) insurance actions was increasing. Against this background, the FHLBB determined that the regulation was needed, among other reasons, to set forth expressly the Banks' rights regarding collateral securing Federal Home Loan Bank (Bank) advances in situations where a receiver was appointed, not to effect a purchase and assumption agreement, but to liquidate the institution's assets over time, accompanied by a Federal Savings and Loan Insurance Corporation (FSLIC) deposit insurance payment of the deposit accounts.[2] The regulation was subsequently transferred to the FDIC, pursuant to section 402(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) Pub. L. 101–73, 103 Stat. 183 (1989), when the FHLBB and FSLIC were abolished. Since its transfer on August 9, 1989, the regulation has remained unchanged.

The section implements and amplifies upon the priority accorded to the Banks' security interests in section 306(d) of the Competitive Equality Banking Act of 1987, Pub. L. 100–86, 101 Stat. 552 (CEBA) (1988) (section 10(e), footnote 1, of the Federal Home Loan Bank Act (FHLB Act) (12 U.S.C. 1430(e), footnote 1).[3] Section 360.2(a) requires the receiver to recognize the priority of any security interest held by a Bank for a loan to a member or its affiliate, when the member is placed in receivership.[4] The remaining paragraphs, (b) through (e), address issues related to the Banks' security interests and collateral, which were not addressed in CEBA.

In addition to the priority accorded the Banks' security interests by CEBA, other federal statutory provisions were enacted subsequent to promulgation of the regulation which provide the Banks' extensions of credit and security interests additional receivership protections. For example, an amendment contained in section 212(a) of FIRREA excepted the Banks' extensions of credit or security interests from FIRREA's detailed provisions addressing contracts entered into before a receiver's or conservator's appointment.[5] Additionally, section 141(b) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) excepted the Banks' extensions of credit or security interests from section 11(d)(5) (12 U.S.C. 1821(d)(5)) of the receivership claims process.[6]

Based upon a review of the section and its history, it appears that the section is of limited applicability because the FHLBB intended for it to address issues related solely to the Banks' security interests in liquidating receiverships. Since the regulation was promulgated, Congress also has conferred significantly more benefits upon the Banks than are enjoyed by most other secured creditors in FDIC-administered receiverships. Finally, the section was the product of an increasing number of institutions being placed in liquidating receiverships in the late 1980's, when the nation was confronted with a crisis in the thrift industry, which has since subsided. Therefore, the Board of Directors has determined that there is insufficient justification for the section's continued existence and that the matters addressed therein can be adequately addressed on a case by case basis within the existing statutory structure. Although the regulation is being removed as part of the CDRIA process, however, the FDIC intends to continue to assist the Banks with the resolution of specific issues regarding their extensions of credit or security interests, on a case by case basis, as the need arises.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board of Directors certifies that the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Board of Directors action is being taken to correct a statutory citation in an existing regulation and to remove a section of the regulation addressing certain aspects of secured claims held by Banks in FDIC-administered receiverships. The Banks are not within the Regulatory Flexibility Act's definition of ''small entities''. Accordingly, the Act's requirements

[1] The regulation was originally designated 12 CFR 569c.8–1.

[2] *See* 54 FR 19155 (May 4, 1989).

[3] Section 10(e), footnote 1, provides:

Notwithstanding any other provision of law, any security interest granted to a Federal Home Loan Bank by any member of any Federal Home Loan Bank or any affiliate of any such member shall be entitled to priority over the claims and rights of any party (including any receiver, conservator, trustee, or similar party having rights of a lien creditor) other than claims and rights that

(1) Would be entitled to priority under otherwise applicable law; and

(2) Are held by actual bona fide purchasers for value or by actual parties that were secured by actual perfected security interests.

[4] The paragraph essentially tracks section 306(d) of CEBA but adds ''whether such security interest is in specifically designated assets or a blanket interest in all assets or categories of assets''.

[5] Section 212(a) of FIRREA amended section 11(c) through (j) of the FDI Act (12 U.S.C. 1821(c)–(j)). In the process, it added section 11(e)(13) (12 U.S.C. 1821(e)(13)) to the FDI Act, which states:

No provision of this subsection shall apply with respect to:

(A) Any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) Any security interest in the assets of the institution securing any such extension of credit.

[6] Section 141(b) of FDICIA amended section 11(d)(5)(D) (12 U.S.C. 1821(d)(5)(D)) of the FDI Act to add section 11(d)(5)(D)(iii) (12 U.S.C. 1821(d)(5)(D)(iii)), which states:

No provision of this paragraph shall apply with respect to:

(I) Any extension of credit from any Federal home loan bank or Federal Reserve bank to any institution described in paragraph (3)(A); or

(II) Any security interest in the assets of the institution securing any such extension of credit.

regarding an initial and final regulatory flexibility analysis are inapplicable.

List of Subjects in 12 CFR Part 360

Savings associations.

For the reasons set out in the preamble, part 360 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 continues to read as follows:

Authority: 12 U.S.C. 1821(d)(11), 1821(e)(8)(D)(i), 1823(c)(4); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

2. Section 360.1 is amended by revising paragraph (b) to read as follows:

§ 360.1 Least-cost resolution.

* * * * *

(b) Purchase and assumption transactions. Subject to the requirement of section 13(c)(4)(A) of the FDI Act (12 U.S.C. 1823(c)(4)(A)), paragraph (a) of this section shall not be construed as prohibiting the FDIC from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution, for which the FDIC has been appointed conservator or receiver, to acquire uninsured deposit liabilities of such institution as long as the applicable insurance fund does not incur any loss with respect to such uninsured deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

§ 360.2 [Removed and reserved]

3. Section 360.2 is removed and reserved.

By order of the Board of Directors.

Dated at Washington, D.C., this 4th day of February, 1997.

Federal Deposit Insurance Corporation

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–4019 Filed 2–19–97; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–106–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require an initial inspection of fastener holes on certain outer frames of the fuselage to detect fatigue cracking, and modification of this area by cold expanding these holes and installing oversized fasteners. This proposal is prompted by a report from the manufacturer indicating that, during full-scale fatigue testing of the test article, fatigue cracking was detected in the area where the center fuselage joins the wing. The actions specified by the proposed AD are intended to prevent fatigue cracking and consequent reduced structural integrity of this area, which could lead to rapid depressurization of the fuselage.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: 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:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–106–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received a report from the manufacturer indicating that fatigue cracks were detected during full-scale fatigue testing of the test article after 90,001 simulated flights. These cracks were found in fastener holes in the flange caps of outer right frame 40 and outer left frame 41, adjacent to Stringer 23; this is the area where the center fuselage joins the wing. This condition, if not prevented, consequently could reduce the structural integrity of this area, and lead to rapid decompression of the fuselage.

Explanation of Related and Relevant Service Information

Airbus has issued Service Bulletin A320–53–1026, dated August 5, 1994, which describes procedures for conducting repetitive eddy current rotating probe inspections of fastener holes on certain outer frames of the fuselage to detect fatigue cracking and repair, if necessary. These holes are located on the forward and aft faces of the flange caps on outer left and right frames 37 through 41, adjacent to Stringer 23; this is the area where the center fuselage joins the wing.

Airbus also has issued Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994, which describes procedures for conducting an initial eddy current rotation probe inspection of these fastener holes to detect fatigue cracking, and for modification of this area by cold expanding certain holes and installing oversized fasteners. This modification, which would improve the resistance of this area to fatigue cracking, would eliminate the need for repetitive eddy current inspections of this area.

The DGAC classified Airbus Service Bulletin A320–53–1026 as mandatory and issued French airworthiness directive (CN) 95–101–69(B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France. The DGAC classified Airbus Service Bulletin A320–53–1025 as ''recommended,'' but indicated in CN 95–101–69(B) that accomplishment of this service bulletin would terminate the repetitive eddy current inspections required by that C/N.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an initial eddy current rotation probe inspection to detect fatigue cracking in certain fastener holes in the area where the center fuselage joins the wing, and a modification to improve the resistance of this area to fatigue cracking. The modification entails the cold expansion of certain fastener holes and the installation of oversized fasteners in these holes. The actions would be required to be accomplished in accordance with the Airbus service bulletins described previously.

Differences Between the Proposed Rule and the French CN

Under the FAA's proposed AD, operators would be required to modify the area where the center fuselage joins the wing by cold expanding certain fastener holes and installing oversized fasteners in these holes. The DGAC has not mandated this modification, but instead, has mandated repetitive inspections of the area.

The adequacy of inspections needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections, and more emphasis on design improvements and material replacement. Thus, the FAA has decided to require, whenever practicable, modifications necessary to remove the source of the problem addressed. The modification requirement of this proposed AD is in consonance with that decision.

Cost Impact

The FAA estimates that 24 Airbus Model A320 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 25 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $557 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $49,368, or $2,057 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 96–NM–106–AD.

Applicability: Model A320 series airplanes as listed in Airbus Service Bulletin A320–53–1026, dated August 5, 1994; on which modifications 21281P1495 and 21680P1818 have 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 fatigue cracking in the area where the center fuselage joins the wing, which could reduce the structural integrity of this area and consequently result in rapid decompression of the fuselage, accomplish the following:

(a) Prior to the accumulation of 16,000 total landings, or within 6 months after the effective date of this AD, whichever occurs

later, perform an eddy current rotating probe inspection to detect fatigue cracking in the fastener holes of the outer frame flanges of left and right fuselage frames 37 through 41, adjacent to Stringer 23, in accordance with Airbus Service Bulletin A320–53–1026, dated August 5, 1994.

Note 2: Prior to the effective date of this AD, accomplishment of any modification in accordance with Airbus Service Bulletin A320–53–1025, dated August 5, 1994, is considered acceptable for compliance with the modification requirements of paragraphs (b), (c)(1)(i), (c)(2) and (d) of this AD.

(b) If the inspection required by paragraph (a) of this AD detects no cracking in any hole: Prior to the accumulation of 6,000 landings after this inspection, modify each hole in accordance with Paragraph 2.B.(5) of Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994. Thereafter, no further action is required by this AD.

(c) If the inspection required by paragraph (a) of this AD detects any cracking in no more than one hole per frame cap, accomplish the requirements of paragraph (c) (1) and (c)(2) of this AD:

(1) Prior to further flight, repair this cracked hole and conduct another rotating probe inspection of this hole to detect cracking, in accordance with Paragraph 2.B.(6) of Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994.

(i) If no cracking of this repaired hole is detected: Prior to further flight, modify this hole in accordance with Paragraph 2.B.(6)(c) of this service bulletin. Thereafter, no further action with regard to this hole is required by this AD.

(ii) If any cracking of this repaired hole is detected: Prior to further flight, repair this hole in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Thereafter, no further action with regard to this hole is required by this AD.

(2) Prior to the accumulation of 6,000 landings after the inspection required by paragraph (a) of this AD; modify all other holes in accordance with Paragraph 2.B.(5) of Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994. Thereafter, no further action is required by this AD with respect to these holes.

(d) If the inspection required by paragraph (a) of this AD detects any cracking in more than one hole per frame cap, or if this inspection detects any cracking in any frame: Prior to further flight, repair the discrepant area in a manner approved by the Manager, Standardization Branch, ANM–113; and modify all other holes in accordance with Paragraph 2.B.(5) of Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994. Thereafter, no further action is 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, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 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.

(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.

Issued in Renton, Washington, on February 12, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4101 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–222–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking that proposed a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes. That action would have required inspections to detect loose attach fitting bolts of the door actuator of the main landing gear (MLG), inspections to determine whether serrations are fully mated, and various follow-on corrective actions. It also would have provided operators the option of terminating all of the requirements of the AD either by replacing the aluminum rib fitting with a new steel rib fitting, or by modifying the rib fitting assembly and performing various follow-on actions. The requirements of that proposed AD were intended to prevent an airplane from landing with one MLG partially extended. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has issued separate rulemaking to require these same actions. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, was published in the Federal Register as a Notice of Proposed Rulemaking (NPRM) on April 1, 1996 (61 FR 14269). The NPRM would have revised AD 93–01–14, amendment 39–8468 (58 FR 5574, January 22, 1993). It would have continued to require the actions that were originally mandated by AD 93–01–14, including: inspections to detect loose attach fitting bolts of the door actuator of the main landing gear (MLG), inspections to determine whether serrations are fully mated, and various follow-on corrective actions. The NPRM would have added the option of terminating all of the requirements of the AD either by replacing the aluminum rib fitting with a new steel rib fitting, or by modifying the rib fitting assembly and performing various follow-on actions.

That action was originally prompted by reports of loose attach fitting bolts of the door actuator of the MLG. The requirements of the proposed AD were intended to prevent an airplane from landing with one MLG partially extended.

Actions that Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the FAA has issued AD 97–02–09, amendment 39–9894 (62 FR 3988, January 28, 1997), which supersedes both AD 93–01–14 as well as AD 90–02–19 [amendment 39–6433 (55 FR 601, January 8, 1990)]. It requires:

1. Repetitive eddy current or dye penetrant inspections to detect cracking of an expanded area of the actuator rib fitting,
2. Inspections to detect loose attach fitting bolts of the door actuator,
3. Inspections to determine whether fitting serrations are fully mated,
4. and various follow-on corrective actions.

It also provides an optional terminating action for the inspections, which consists of replacing the aluminum rib fitting with a new steel rib fitting.

That AD was prompted by a report of a fractured rib fitting that had been reworked previously in accordance with one of the existing AD's. The actions specified by AD 97–02–09 are intended to prevent damage to the airplane caused by a failure of the landing gear to extend due to a fractured rib fitting.

FAA's Conclusions

Because AD 97–02–09 now incorporates, as part of its required actions, the same actions that were proposed in Docket 95-NM–222-AD, the FAA finds that the previously proposed

action is no longer necessary. Accordingly, the NPRM is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 95–NM–222–AD, published in the Federal Register on April 1, 1996 (61 FR 14269), is withdrawn.

Issued in Renton, Washington, on February 12, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4100 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–ANE–24]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. and Rajay Inc. Oil Scavenge Pumps

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. oil scavenge pumps, Part Numbers (P/Ns) 101633–01 and –02 and Rajay Inc. oil scavenge pumps, P/Ns 1025–1 and –2. This proposal would require initial and repetitive inspections of the oil scavenge pump for the security of the snap ring installation, snap ring and washer wear, and shaft groove wear, and replacement, if necessary, with serviceable parts. This proposal is prompted by reports of severe wear on the end plate of the oil scavenge pump. The actions specified by the proposed AD are intended to prevent oil scavenge pump snap ring failure causing severe wear on the pump end plate, which could result in loss of engine oil and subsequent engine shutdown.

DATES: Comments must be received by April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, *Attention:* Rules Docket No. 96–ANE–24, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@dot.faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, WA 98055–4056; telephone (206) 227–2597, fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–24.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–24, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of severe wear on the pump end plate of AlliedSignal Inc. oil scavenge pumps, Part Numbers (P/Ns) 101633–01 and –02 and Rajay Inc. oil scavenge pumps, P/Ns 1025–1 and –2. The investigation revealed that the pump end plate failure was caused by failure of the snap ring that locates the pump rotor along the longitudinal axis of the pump. Further investigation revealed an incident where the pump end plate was worn completely through, resulting in loss of engine oil and subsequent engine shutdown. This condition, if not corrected, could result in oil scavenge pump snap ring failure causing severe wear on the pump end plate, which could result in loss of engine oil and subsequent engine shutdown.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive inspections of the oil scavenge pump for security of the snap ring installation, snap ring and washer wear, and shaft groove wear, and replacement, if necessary, with serviceable parts. The FAA has determined that changes in pump design may warrant future rulemaking.

The FAA estimates that 3,000 pumps installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA estimates that it would take approximately 4 work hours per oil scavenge pump to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts, if the scavenge pump requires replacement, would cost approximately $1,000 per oil scavenge pump. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,720,000.

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

proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Allied Signal Inc. and Rajay Inc.: Docket No. 96–ANE–24.

Applicability: AlliedSignal Inc. oil scavenge pumps, Part Numbers (P/Ns) 101633–01 and –02 and Rajay oil scavenge pumps, P/Ns 1025–1 or –2, installed on Teledyne Continental Motors IO–470 and TSIO–520 series, and Textron Lycoming O-360, IO–360, and IO–540 series reciprocating engines. These engines are installed on but not limited to reciprocating engine powered aircraft manufactured by Aerostar Aircraft Corporation, Cessna, Curtiss-Wright Corporation (Travel Air), Helio Enterprises, Inc., The New Piper Aircraft Corporation, Revo Inc. (Lake), and Twin Commander.

Note 1: This airworthiness directive (AD) applies to each oil scavenge pump 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 oil scavenge pumps 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 oil scavenge pump snap ring failure causing severe wear on the pump end plate, which could result in loss of engine oil and subsequent engine shutdown, accomplish the following:

(a) Within 25 hours time in service (TIS) after the effective date of this AD, inspect oil scavenge pumps in accordance with the following instructions or Aerostar Aircraft Corporation Service Bulletin (SB) No. SB600–131, dated June 14, 1996.

(1) Remove the oil scavenge pump and inspect for security of the snap ring installation.

(2) Remove the snap ring and washer between the snap ring and bearing, and inspect the snap ring and washer for wear, consisting of thinning or bevelling at the inside diameter. If any wear visible to the naked eye is detected, replace with a serviceable snap ring and washer prior to further flight.

(3) Inspect the shaft groove for round wear on the spline side of the groove. If any wear visible to the naked eye is detected, replace with a serviceable shaft prior to further flight.

(4) If the snap ring is not in the shaft groove, disassemble the entire scavenge pump and inspect for internal damage prior to further flight. If any internal damage is found, replace the oil scavenge pump with a serviceable oil scavenge pump prior to further flight.

(b) Thereafter, at each 100-hour and annual inspection, perform repetitive inspections, and, if necessary, replace with serviceable parts, in accordance with paragraph (a) of this AD.

(c) Accomplishment of the procedures described in Aerostar Aircraft Corporation Service Bulletin No. SB600–131, dated June 14, 1996, constitutes an acceptable alternative method of compliance for the actions required by this AD.

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

(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 aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 4, 1997.

James C. Jones,

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

[FR Doc. 97–4144 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–190–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH 125–1A, –3A, and –400A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Raytheon Model DH 125–1A, –3A, and –400A series airplanes. This proposal would require a one-time inspection to detect scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, and repair, if necessary. This proposal is prompted by reports indicating that scoring of the upper fuselage skin had been detected in that area. The actions specified by the proposed AD are intended to detect and correct scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, which could result in reduced structural integrity of the fuselage, and consequent cabin depressurization.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–190–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–120W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–190–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–190–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface has occurred on Raytheon Model DH 125–1A, –3A, and –400A series airplanes. Investigation revealed that the scoring was due to the use of sharp instruments to remove excess sealant during the four-year inspection cycle of the fuselage skin under the canopy blister. Use of sharp instruments to remove excess sealant is contrary to the instructions contained in Chapter 20 of the Airplane Maintenance Manual (AMM). Scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, if not corrected, could result in reduced structural integrity of the fuselage skin, and consequent cabin depressurization.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB.53–93, dated May 16, 1996, which describes procedures for a one-time detailed visual inspection to detect scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface. The service bulletin also describes repair procedures for scoring that is within the specified limits.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time detailed visual inspection to detect scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, and repair, if necessary. The visual inspection and repair of scoring that is within certain limits would be required to be accomplished in accordance with the service bulletin described previously. Repair of scoring that is outside certain limits would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 200 Model DH 125–1A, –3A, and –400A series airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $27,600, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddeley, et al.): Docket 96–NM–190–AD.

Applicability: All Model DH 125–1A, –3A, and –400 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.

Note 2: Raytheon Model DH 125–1B, –3B, and –400B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which the Model DH 125–1B, –3B, and –400B series airplanes are approved for operation should consider adopting corrective action, applicable to those models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, which could result in reduced structural integrity of the fuselage skin, and consequent cabin depressurization; accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time detailed visual inspection to detect scoring of the upper fuselage skin around the periphery of the cockpit canopy blister interface, in accordance with Raytheon Service Bulletin SB.53–93, dated May 16, 1996.

(b) If no scoring is detected during the inspection required by paragraph (a) of this AD, no further action is required by this AD.

(c) If any scoring is detected during the inspection required by paragraph (a) of this AD, prior to further flight, determine the maximum location and details of each score, including the edge distance and material thickness, in accordance with Service Bulletin SB.53–93, dated May 16, 1996.

(1) If any scoring is found that is within the limits specified in the service bulletin, prior to further flight, repair in accordance with the service bulletin.

(2) If any scoring is found that is outside the limits specified in the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(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, Wichita ACO. 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.

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

Issued in Renton, Washington, on February 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4197 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ACE–17]

Proposed Alteration of Class E Airspace at Muscatine, IA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Proposed rule, withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed to change the Class E airspace area at Muscatine, IA. The NPRM is being withdrawn due to the delay in the installation of the Port City Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME).

DATES: The proposed rule is withdrawn February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On December 20, 1995 (60 FR 65601), a Notice of Proposed Rulemaking was published in the Federal Register to change the Class E airspace at Muscatine, IA. The delay in obtaining the necessary equipment has resulted in delaying the installation and commissioning of the VOR/DME until late 1997 or early 1998.

Conclusion

In consideration of the aforementioned delay in installation and commissioning of the Port City VOR/DME, action is being taken to withdraw the proposed amendment of the Class E airspace area at Muscatine, IA. If necessary, a new NPRM will be prepared at a later date.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 95–ACE–17, as published in the Federal Register on December 20, 1995 (60 FR 65601), is hereby withdrawn.

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

Issued in Kansas City, MO, on January 27, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–3747 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASW–21]

Proposed Revision of Class E Airspace; Silver City, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Silver City, NM. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 26 at Silver City-Grant County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 26 at Silver City, NM.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–21, Forth Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Forth Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 1601 Meacham Boulevard, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Forth Worth, TX 76193–0530; telephone (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 96–ASW–21.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Forth Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Silver City, NM. A new GPS SIAP to RWY 26 at Silver City-Grant County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 26 at Silver City-Grant County Airport, Silver City, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW NM E5 Silver City, NM [Revised]

Silver City-Grant County Airport, NM
(lat. 32°38′11″N., long. 108°09′23″W.)
Silver City Localizer
(lat. 32°37′57″N., long. 108°09′59″W.)
Cozey LOM
(lat. 32°37′55″N., long. 108°03′48″W.)
Silver City VORTAC
(lat. 32°38′16″N., long. 108°09′40″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Silver City-Grant County Airport and within 2.2 miles south and 7 miles north of the Silver City Localizer east course extending from the 6.8-mile radius to 14.4 miles east of the airport and within 1.9 miles each side of the 107° bearing from the Cozey LOM extending from the 6.8-mile radius to 8.2 miles southeast of the airport and within 8 miles west and 4 miles east of the 141° radial of the Silver City VORTAC extending from the 6.8-mile radius to 19.7 miles southeast of the airport.

* * * * *

Issued in Forth Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4217 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASW–22]

Proposed Revision of Class E Airspace; Perry, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Perry, OK. A new Global Positioning System (GPS) Standard Instrument Approach procedure (SIAP) to Runway (RWY) 17 at Perry Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 17 at Perry Municipal Airport, Perry, OK.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–

ASW–22, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Work, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 96–ASW–22.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Perry, OK. A new GPS SIAP to RWY 17 at Perry Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 17 at Perry Municipal Airport, Perry, OK.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Perry, OK [Revised]

Perry Municipal Airport, OK
(lat. 36°23′08″ N., long. 97°16′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Perry Municipal Airport and within 2 miles each side of the 359° bearing from the airport extending from the 6.5-mile radius to 10.5 miles north of the airport.

* * * * * *

Issued in Fort Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4216 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASW–23]

Proposed Revision of Class E Airspace; Socorro, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Socorro, NM. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 33 at Socorro Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 33 at Socorro Municipal Airport, Socorro, NM.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–23, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace docket No. 96–ASW–23.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Socorro, NM. A new GPS SIAP to RWY 33 at Socorro Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 33 at Socorro Municipal Airport, Socorro, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW NM E5 Socorro, NM [Revised]

Socorro Municipal Airport, NM
(lat. 34°01′19″ N., long. 106°54′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Socorro Municipal Airport and within 1.4 miles each side of the 164° bearing from the airport extending from the 6.7-mile radius to 7.1 miles south of the airport excluding that airspace west of long. 107°00′02″.

* * * * *

Issued in Fort Worth, TX, on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4215 Filed 2–19–97; 8:45 am]

BILLING CODE 4913–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASW–24]

Proposed Revision of Class E Airspace; Jasper, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Jasper, TX. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 18 at Jasper County-Bell Field

has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 18 at Jasper County-Bell Field, Jasper, TX.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–24, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193-0530; telephone (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 96–ASW–24.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Jasper, TX. A new GPS SIAP to RWY 18 at Jasper County-Bell Field has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 18 at Jasper County-Bell Field, Jasper, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Jasper, TX [Revised]

Jasper, Jasper County-Bell Field, TX
(lat. 30°53′29″ N., long. 94°02′02″ W.)
Jasper RBN
(lat. 30°57′17″ N., long. 94°02′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Jasper County-Bell Field and within 2.6 miles each side of the 001° bearing from the Jasper RBN extending from the 6.4-mile radius to 10.9 miles north of the airport.

* * * * *

Issued in Forth Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4214 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASW–25]

Proposed Revision of Class E Airspace; Brinkley, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward

from 700 feet above ground level (AGL) at Brinkley, AR. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Frank Federer Memorial Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS–A SIAP at Frank Federer Memorial Airport, Brinkley, AR.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–25, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 96–ASW–25.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Brinkley, AR. A new GPS–A SIAP at Frank Federer Memorial Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS–A SIAP at Frank Federer Memorial Airport, Brinkley, AR.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW AR E5 Brinkley, AR [Revised]

Brinkley, Frank Federer Memorial Airport, AR
(lat. 34°52′49″ N., long. 91°10′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Frank Federer Memorial Airport and within 2.5 miles each side of the 011° bearing from the airport extending from the 6.4-mile radius to 7.3 miles north of the airport.

* * * * *

Issued in Fort Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4213 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASW–26]

Proposed Revision of Class E Airspace; Longview, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Longview, TX. A new VHF Omnidirectional Range (VOR) or Tactical Air Navigation (TACAN) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13 at Gregg County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the VOR or TACAN SIAP to RWY 13 at Gregg County Airport, Longview, TX.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–26, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 96–ASW–26.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Longview, TX. A new VOR or TACAN SIAP to RWY 13 at Gregg County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the VOR or TACAN SIAP to RWY 13 at Gregg County Airport, Longview, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Longview, TX [Revised]

Longview, Gregg County Airport, TX
(lat. 32°23′05″ N., long. 94°42′42″ W.)
Gregg County VORTAC
(lat. 32°25′04″ N., long. 94°45′11″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Gregg County Airport and within 1.5 miles each side of the 133° radial of the Gregg County Airport extending from the 7.1-mile radius to 10.9 miles southeast of the airport and within 3.1 miles each side of the 305° radial of the Gregg County VORTAC

extending from the 7.1-mile radius to 10.3 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4212 Filed 2–19–97; 8:45 am]

BILLING CODE 4913–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASW–27]

Proposed Revision of Class E Airspace; Athens, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Athens, TX. A new Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 35 at Athens Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the NDB SIAP to RWY 35 at Athens Municipal Airport, Athens, TX.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–AWS–27, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 96–ASW–27.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Athens, TX. A new NDB SIAP to RWY 35 at Athens Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB SIAP to RWY 35 at Athens Municipal Airport, Athens, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is no minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Athens, TX [Revised]

Athens Municipal Airport, TX

(lat. 32°09′50″N., long. 95°49′42″W.)
Athens, Lochridge Ranch Airport, TX
(lat. 31°59′22″N., long. 95°57′04″W.)
Crossroads RBN
(lat. 32°03′49″N., long. 95°57′27″W.)
Athens NDB
(lat. 32°09′34″N., long. 95°49′49″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Athens Municipal Airport and within 2.5 miles each side of the 177° bearing of the Athens NDB extending from the 6.5-mile radius to 7.3 miles south of the Athens Municipal Airport and within a 6.5-mile radius of Lochridge Ranch Airport and within 4 miles each side of the 356° bearing of the Crossroads RBN extending from the 6.5-mile radius to 9.2 miles north of the RBN.

* * * * *

Issued in Forth Worth, TX on February 12, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–4208 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97-AAL-1]

RIN: 2120-AA66

Proposed Modification and Renaming of En Route Domestic Airspace; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Browerville/Barter Island En Route Domestic Airspace Area by removing that portion of the area protected by controlled airspace known as Federal Airway 438 (V–438). This action would redefine the remaining Browerville/Barter Island, AK, En Route Domestic Airspace Area and rename Browerville/Barter Island, AK, to Barter Island, AK.

DATES: Comments must be received on or before March 31, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 97–AAL–1, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AL 99533. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, 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: Bil 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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AAL–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) by modifying the Browerville/Barter Island, AK, En Route Domestic Airspace Area. This action would remove that portion of the area protected by controlled airspace known as V–438. En Route domestic airspace areas are used for en route navigation requiring en route air traffic control services outside of controlled airspace. This action would redefine the remaining area and rename Browerville/Barter Island, AK, to Barter Island, AK. En route domestic airspace areas are published in paragraph 6006 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 en route domestic airspace area listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace

Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6006—Domestic En Route Airspace Areas

* * * * *

Barter Island, AK [Revised]

From the Put River, AK, NDB 12 AGL to Barter Island, AK, NDB.

* * * * *

Issued in Washington, DC, on February 5 1997.

Jeff Griffith,

Program Director for Air Traffic, Airspace Management.

[FR Doc. 97–4206 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

RIN 1076–AD14

25 CFR Part 290

Tribal Revenue Allocation Plans

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed Rule; Extension of Comment Period.

SUMMARY: This notice extends the comment period for the proposed rule, which would establish procedures for submission, review, and approval of tribal plans for distributing revenues from gaming activities.

DATES: Comments must be received on or before March 24, 1997.

ADDRESSES: Mail comments to George Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, 1849 C Street NW, MS 2070–MIB, Washington, DC 20240. Comments may be hand-delivered to the same address from 9:00 a.m. to 4:00 p.m. Monday through Friday or sent by facsimile to 202–273–3153.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Management Analyst, Indian Gaming Management Staff, at 202–219–4068.

SUPPLEMENTARY INFORMATION: On Friday, June 7, 1996, the Bureau of Indian Affairs published a proposed rule, 61 FR 29044, concerning Tribal Revenue Allocation Plans. The deadline for receipt of comments was August 6, 1996. Six comments were received after August 6, 1996. Several of these comments raise substantive issues that may result in modification of the proposed rule. The comment period is reopened to allow consideration of the comments received after August 6, 1996, and additional comments received on or before the March 7, 1997.

Dated: February 12, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4077 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 7

[Notice No. 846; Ref. Notice No. 844]

RIN 1512–AB50

Use of Distilled Spirits Terms in Labeling and Advertising of Malt Beverages; Use of the Term ''Margarita'' in Labeling Distilled Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of Petition; reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice No. 844, a Notice of Petition published in the Federal Register on November 7, 1996. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received by March 7, 1997.

ADDRESSES: Send written comments to: Chief, Wine, Bear, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; Attention: Notice No. 844. Comments not exceeding three pages may be submitted by facsimile transmission to (202) 927–8602.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226; telephone (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1996, ATF published a Notice of Petition in the Federal Register at 61 FR 57597 which outlined the proposals made in a petition submitted by Heublein, Inc. Heublein's petition seeks changes in regulations relating to the labeling and advertising of malt beverages which would prohibit the use of ''Pina Colada,'' ''Daiquiri,'' ''Margarita,'' and similar terms in the labeling of malt beverage products. Heublein's petition also seeks to amend regulations relating to the labeling and advertising of distilled spirits to prohibit the term ''Margarita'' from being used in the labeling of any product unless that product is made with Tequila.

The comment period for Notice No. 844 was scheduled to close on February 5, 1997. Prior to the close of the Comment Period, ATF received a request from the National Association of Beverage Importers, Inc. (NABI), a trade association representing importers of alcoholic beverages, to extend the comment period for 30 days. In requesting the extended comment period, NABI stated that the petition had raised considerable controversy within the industry, and that its members required additional time to reach a position on the issues raised by the petition.

In consideration of this request, ATF finds that a reopening of the comment period is warranted. Thus, the comment period is being reopened for a period of 30 additional days until March 7, 1997.

Disclosure

Copies of Heublein's petition and written comments received in response to the petition and to Notice No. 844 will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 6300, 650 Massachusetts Avenue NW, Washington, DC.

Drafting Information

The author of this notice is Charles N. Bacon, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer , Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority

This notice is issued under the authority of 27 U.S.C. 205.

Signed: February 13, 1997.

Director.

John W. Magaw,

[FR Doc. 97–4289 Filed 2–19–97; 8:45 am]

BILLING CODE 4810–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, 53, and 58

[AD–FRL–5692–1]

National Ambient Air Quality Standards for Ozone and Particulate Matter, Proposed Decision; Requirements for Designation of Reference and Equivalent Methods for $PM_{2.5}$ and Ambient Air Quality Surveillance for Particulate Matter, Proposed Decision; Interim Implementation Policy on New or Revised Ozone and Particulate Matter National Ambient Air Quality Standards, Proposed Policy; and Implementation of New or Revised Ozone and PM NAAQS and Regional Haze Regulations, Advanced Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period and announcement of availability of additional reports.

SUMMARY: The EPA is announcing the extension of the public comment period on the proposed revisions to the national ambient air quality standards (NAAQS) for ozone (O_3) (61 FR 65716) and particulate matter (PM) (61 FR 65638), and proposed requirements for designation of reference and equivalent methods for $PM_{2.5}$ and ambient air quality surveillance for PM (61 FR 65780), all of which were published on December 13, 1996. The period of time for submitting written statements for the public hearing record for these proposals is also being extended. This document also extends the public comment period for the proposed interim implementation policy on new or revised O_3 and PM NAAQS (61 FR 65752), and the advance notice of proposed rulemaking (ANPR) for implementation of new or revised O_3 and PM NAAQS and regional haze regulations (61 FR 65764), published on December 13, 1996.

DATES: Written comments must be received on or before March 12, 1997. Written statements for inclusion in the public hearing record must be received on or before March 12, 1997.

ADDRESSES: Submit comments in duplicate if possible on the proposed actions to: Office of Air and Radiation Docket and Information Center (6102), Attention: U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In addition, please add the appropriate docket number as follows: Proposed PM NAAQS, A–95–54; proposed O_3 NAAQS, A–95–58; proposed requirements for designation of reference and equivalent methods for $PM_{2.5}$ and ambient air quality surveillance for PM, A–96–51; and interim implementation policy on new or revised O_3 and PM NAAQS and the ANPR for implementation of new or revised O_3 and PM NAAQS and regional haze regulations, A–95–38. The dockets may be inspected at the above address between 8:00 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Part 50 notice on O_3 NAAQS—Dr. David McKee, Air Quality Strategies and Standards Division (MD–15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5288.

Part 50 document on PM NAAQS—Ms. Patricia Koman, same address, telephone (919) 541–5170.

Part 51 document on interim implementation policy on new or revised O_3 and PM NAAQS and the ANPR for implementation of new or revised O_3 and PM NAAQS and regional haze regulations—Ms. Sharon Reinders, same address, telephone (919) 541–5284.

Parts 53 and 58 documents on requirements for designation of reference and equivalent methods for $PM_{2.5}$ and ambient air quality surveillance for PM—Mr. Neil Frank, Monitoring and Quality Assurance Group (MD–14), Emissions, Monitoring, and Analysis Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5560.

SUPPLEMENTARY INFORMATION: On February 10, 1997, the court order entered in *American Lung Association* v. *Browner*, CIV–93–643–TUC–ACM (D. Ariz., October 6, 1994), as modified, was further modified (1) by changing the date specified for the close of the public comment period in the review of the PM NAAQS to March 12, 1997, and (2) by changing the date for publication of a final decision to July 19, 1997.

In the order making these modifications, the Court stated that no further extensions will be granted. Because of the importance of progressing the O_3 and PM NAAQS reviews on the same schedule, EPA is making corresponding changes to the schedule for the O_3 NAAQS review and associated requirements for designation of reference and equivalent methods for monitoring $PM_{2.5}$ and ambient air quality surveillance for PM. In response to requests from the public, EPA is also extending the public comment period on the proposal of the interim implementation policy of new or revised O_3 and PM NAAQS and the advance notice of proposed rulemaking on the implementation of new or revised O_3 and PM NAAQS and regional haze regulations. Thus, EPA is extending the public comment period on the 40 CFR parts 50, 51, 53, and 58 proposals from February 18, 1997, to March 12, 1997.

Availability of Related Information

EPA has placed supplemental reports analyzing human exposure and health risk associated with the proposed and several alternative O_3 standards and estimating health risks associated with the proposed and alternative PM standards into the O_3 and PM dockets, respectively. The three documents are:

(1) January 1997 supplement to ''Estimation of Ozone Exposures Experienced by Outdoor Children in Nine Urban Areas Using a Probabilistic Version of NEM (April 1996),'' (2) A Probabilistic Assessment of Health Risks Associated with Short-term Exposure to Tropospheric Ozone: A Supplement, January 1997, and (3) December 1996 supplement to ''A Particulate Matter Risk Assessment for Philadelphia and Los Angeles (Revised, November 1996).''

These supplemental reports are also available to the public through the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Bulletin Board System (BBS) in the Clean Air Act Amendments area, under Title I, Policy/Guidance Documents. To access the bulletin board, a modem and communications software are necessary. To dial up, set your communications software to 8 data bits, no parity and one stop bit. Dial (919) 541–5742 and follow the on-screen instructions to register for access. After registering, proceed to choice ''<T> Gateway to TTN Technical Areas'', then choose ''<E> CAAA BBS.'' From the main menu, choose ''<1> Title I: Attain/Maint of NAAQS,'' then ''<P> Policy Guidance Documents.'' To access these documents through the World Wide Web, click on ''TTN BBSWeb,'' then proceed to the Gateway to TTN Technical areas, as above. If assistance is needed in

accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC.

Dated: February 13, 1997.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–4330 Filed 2–18–97; 1:50 pm]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–152, FCC 97–35]

Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Further Notice of Proposed Rulemaking (FNPRM), released February 7, 1977, seeks comment on the meaning of certain terms in section 274 of the Telecommunications Act of 1996, (Act), which governs Bell Operating Companies' provision of electronic publishing services. The intent of the FNPRM is to compile a record in sufficient detail for us to determine the meaning of those terms in this context.

DATES: Comments are due on or before April 4, 1997 and reply comments are due on or before April 25, 1997. Written comments by the public on the proposed and/or modified information collections are due April 4, 1997 and reply comments must be submitted no later than April 25, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before April 21, 1997.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D. C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D. C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D. C. 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, 1919 M Street, N.W., Room 234, Washington, D. C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 725—17th Street, N.W.,10236 NEOB, Washington, D. C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lisa Sockett, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this FNPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's FNPRM adopted February 6, 1997 and released February 7, 1997 (FCC 97–35). This FNPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. The OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The full text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., Room 239, N.W., Washington, D. C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc9735.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., N.W., Suite 140, Washington, D. C. 20037.

Paperwork Reduction Act: This FNPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB notification of action is due April 21, 1997. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Section 274(b)(3)(B)—Written Contracts Filed with the Commission and Made Publicly Available (CC Docket No. 96–152, FNPRM).

Form No.: N/A.

Type of Review: New collection.

Information Collection	No. of respondents (approx.)	Estimated time per response	Total annual burden
Written contracts filed with the Commission	7	¼ hour per contract	3—150 hours per respondent (21—1050 hours total).
Written contracts made publicly available	7	¾ hour per contract	9—450 hours per respondent (63—3150 hours total).

Total Annual Burden: 21—3,150 hours for all respondents.

Respondents: Businesses or other for profit.

Estimated costs per respondent: $0.

Needs and Uses: The Commission proposes the information collections to implement section 274(b)(3)(B) of the Act. The information may be used by the Commission, unaffiliated electronic publishing providers competing with electronic publishing providers affiliated with the BOC, and any other member of the public interested in monitoring the BOCs' compliance with the Act.

Synopsis of Further Notice of Proposed Rulemaking

I. Further Notice of Proposed Rulemaking

A. Meaning of ''Control'' and ''Financial Interest''

1. We concluded above, in Part III.A, that a BOC engaged in the provision of electronic publishing is subject to section 274 only to the extent that it controls, or has a financial interest in, the content of the information being disseminated over its basic telephone services. The record compiled in this proceeding, however, does not provide sufficient detail for us to determine the meaning of ''control'' and ''financial interest'' in this context. By clarifying these terms, we believe we will be in a better position to determine when, and under what circumstances, a BOC's participation in a service constitutes BOC provision of electronic publishing service subject to the requirements of section 274.

i. Meaning of ''Control''

2. The term ''control'' in section 274(i)(4) is defined according to regulations promulgated by the Securities and Exchange Commission implementing the Securities Exchange Act of 1934. As defined thereunder, the term ''control'' means ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.'' We tentatively conclude that this definition, which defines the term ''control'' in a corporate context, is inappropriate for determining the meaning of ''control'' in the present context, *i.e.*, when a BOC has ''control'' of the content of information transmitted via its basic telephone service. We therefore seek comment on how we should determine whether a BOC has ''control'' of the content of the information being disseminated under section 274.

3. For example, we seek comment on whether an ownership interest is required for a BOC to have ''control'' of the content of the information. If so, we seek comment on the percentage of ownership interest necessary for the BOC to be deemed to be in ''control'' of the content of the information. Alternatively, we seek comment on whether ''control'' should be broadly interpreted to include the ability of a BOC, when acting as a gateway provider, to limit the types of information to which its gateway connects. NYNEX suggests that this ability does not imply the type of ''control'' over the underlying information being transmitted and, therefore, does not constitute electronic publishing. We seek comment on this interpretation.

ii. Meaning of ''Financial Interest''

4. We also seek comment on the meaning of the term ''financial interest.'' We tentatively conclude that a BOC has a ''financial interest'' in the content of the information when the BOC owns the information or has a direct or indirect equity interest in the information being disseminated via its basic telephone services. We seek comment on this tentative conclusion. We also seek comment on other forms of BOC participation that should be considered indicia of ''financial interest.'' For example, NYNEX maintains that a ''financial interest'' in the content of the information should not be interpreted to include receipt of compensation by a BOC for managing and presenting the content of unaffiliated entities as part of its gateway services. Alternatively, PacTel contends that a ''financial interest'' must be a legally protected property interest.'' We seek comment on these interpretations.

5. In addition, we seek comment on whether we should establish a *de minimis* exception to the financial interest requirement once financial interest has been established. For example, if a BOC has a financial interest in only one percent of the content of the information, should it be required to provide the electronic publishing service through a ''separated affiliate'' or ''electronic publishing joint venture''? If not, should the BOC be required to do so if it has a financial interest of ten percent? We seek comment on the percentage of financial interest in an electronic publishing service, as defined in section 274(h), that makes a BOC subject to the requirements of section 274.

B. Meaning of ''Transaction'' in Section 274(b)(3) and the Requirements of Section 274(b)(3)(B)

6. Section 274(b)(3) provides that a separated affiliate or electronic publishing joint venture established pursuant to section 274(a) and the BOC with which it is affiliated shall ''carry out transactions (A) in a manner consistent with such independence, (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (C) in a manner that is auditable in accordance with generally accepted accounting standards.'' We note that the clause in section 274(b)(3)(B), ''pursuant to written contracts or tariffs that are filed with the Commission,'' can be read to require the filing of both contracts and tariffs with the Commission, or only the filing of tariffs. In addition, the phrase ''and made publicly available,'' could refer only to ''tariffs'' or also to ''written contracts.'' Although the *Accounting Safeguards NPRM* (61 FR 40161 (August 1, 1996)) sought comment on section 274(b)(3), no commenters in that proceeding specifically addressed these issues regarding section 274(b)(3)(B).

7.''*Filed with the Commission*.'' We seek comment on whether BOCs should be required under section 274(b)(3)(B) to file both written contracts and tariffs on Commission premises. We note that, pursuant to existing practice, BOCs are already required to file tariffs with the Commission. We also note that section 211 of the Communications Act imposes a general requirement on common carriers to ''file with the Commission'' copies of ''contracts, agreements, or arrangements with other carriers, or with common carriers not subject to the provisions of [the Communications Act]'' relating to communications traffic. Our rules implementing this section, however, require only that certain carriers file certain types of contracts with the Commission.'' As to the remaining contracts within the scope of section 211, carriers are permitted to comply with section 211 by keeping the contracts on their premises such that they are ''readily accessible to Commission staff and members of the public upon reasonable request.'' We invite parties to comment on whether we can and should adopt these procedures to implement the statutory language in section 274(b)(3)(B).

8. ''*Made Publicly Available*.'' We tentatively conclude that section 274(b)(3)(B) requires that both written contracts and tariffs be made ''publicly available.'' As noted above, BOCs are already required to make their tariffs and certain written contracts with other carriers publicly available by filing them with the Commission and make others contracts accessible upon reasonable request. We find that interpreting this section to require all contracts, as well as tariffs, to be made ''publicly available,'' is necessary to ensure that BOCs are complying with the nondiscrimination and accounting safeguards of the Act and to enable competitors to detect discrimination and potential improper cost allocations by the BOCs. We seek comment on this tentative conclusion.

9. Assuming that section 274(b)(3)(B) does not require BOCs to file all their written contracts with separated affiliates or electronic publishing joint ventures on Commission premises, we

seek comment on the means by which a BOC and its separated affiliate or electronic publishing joint venture must make their contracts ''publicly available'' pursuant to section 274(b)(3)(B). In interpreting a similar requirement in section 272(b)(5), which requires that BOCs and their section 272 affiliates reduce their transactions to writing and make them available for public inspection, we found that a BOC must make information ''available for public inspection'' pursuant to that section by making it available at its corporate headquarters and not the RBOC corporate headquarters or the corporate headquarters of the BOC's holding company. We stated that this information must include a certification statement identical to the certification statement currently required to be included with all Automated Reporting and Management Information System (''ARMIS'') reports. We also concluded that detailed written descriptions of transactions between BOCs and their section 272 affiliates must be made available to the public on the Internet within ten days of the transaction. We therefore seek comment on whether, for written contracts within section 274(b)(3)(B) that we decide need not be filed on Commission premises, we should interpret the ''publicly available'' requirement of this section in the same manner as we interpreted the ''available for public inspection'' requirement in section 272(b)(5). Commenters disagreeing with this approach should explain why, and propose alternative approaches.

10. *Meaning of ''Transaction.''* We also seek comment on what constitutes a ''transaction'' for purposes of section 274(b)(3). We note that, for purposes of section 272(b)(5), we concluded that only once the BOC and its affiliate have agreed upon the terms and conditions for telephone exchange and exchange access does the agreement constitute a ''transaction.'' We also found that an agreement between a BOC and its affiliate for the provision of unbundled elements and facilities pursuant to explicit terms and conditions also constitutes a ''transaction.'' We seek comment here on whether we should adopt similar conclusions in the context of section 274(b)(3). We note, however, that section 274(d) requires BOCs to provide ''network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to rate regulation).'' We therefore tentatively conclude that, although section 274(b)(3)(B) provides that transactions must be carried out pursuant to ''written contracts or tariffs,'' the specific transactions described in section 274(d) may only be carried out pursuant to tariff (so long as such services are subject to rate regulation). We seek comment on this tentative conclusion.

C. Procedural Matters

i. Ex Parte Presentations

This *FNPRM* is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed as required.

ii. Regulatory Flexibility Certification

12. Section 603 of the Regulatory Flexibility Act, (RFA) as amended, requires an initial regulatory flexibility analysis in notice and comment rulemaking proceedings, unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' A ''small entity'' is an entity that is independently owned and operated; is not dominant in its field of operation; and meets any additional criteria established by the Small Business Administration (SBA). SBA regulations define small telecommunications entities in SIC code 4813 (Telephone Companies Except Radio Telephone) as entities with fewer than 1,500 employees. This proceeding pertains to the BOCs which, because they are dominant in their field of operation and have more than 1,500 employees, do not qualify as small entities under the RFA. We also note that none of the BOCs is a small entity because each BOC is an affiliate of a Regional Holding Company (RHC), and all of the BOCs or their RHCs have more than 1,500 employees. We therefore certify, pursuant to section 605(b) of the RFA, that the tentative conclusions, if adopted, will not have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this *FNPRM*, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the Federal Register.

iii. Initial Paperwork Reduction Act of 1995 Analysis

13. This *FNPRM* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the OMB to take this opportunity to comment on the information collections contained in this *FNPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *FNPRM*; OMB comments are due 60 days from the date of publication of this *FNPRM* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

iv. Comment Filing Procedures

14. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 4, 1997, and reply comments on or before April 25, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C., 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C., 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., 20554.

15. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. *See* 47 CFR 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length. This summary may be paginated separately from the rest of

the pleading (*e.g.*, as ''i, ii''). We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written materials filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

16. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to, and not a substitute for, the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

17. Written comments by the public on the proposed and/or modified information collections are due April 4, 1997, and reply comments must be submitted not later than April 25, 1997. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C., 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C., 20503 or via the Internet to fain__t@al.eop.gov.

II. Ordering Clauses

18. It is ordered that pursuant to sections 1, 2, 4, 201, 202, 274 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201, 202, 274, and 303(r), the further notice of proposed rulemaking is adopted.

19. It is further ordered that the Secretary shall send a copy of the further notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4027 Filed 2–19–97; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 62, No. 34
Thursday, February 20, 1997

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

February 14, 1997.

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.

Animal and Plant Health Inspection Service

Title: Asian Long Horned Beetle.

OMB Control Number: 0579—New.

Summary: Compliance agreements appeal letters, certificates, inspections, limited permits, container markings, and 48-hour notices will be needed to allow regulated articles to move interstate from quarantined areas in New York.

Need and Use of the Information: The information is needed to control and monitor the movement of the Asian long horned beetle. The regulations quarantine certain areas within the State of New York.

Description of Respondents: Farms: Farms; Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 225.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 132.

Emergency processing of this submission has been requested by February 14, 1997.

Office of the Secretary

Title: Customer Survey Activities.

OMB Control Number: 0505–0020.

Summary: Executive Order 12862 requires Federal Departments to establish and implement customer service standards. This ''Generic Clearance'' encompasses all information collection activities within USDA that will be conducted in order to satisfy the requirements of the Executive Order.

Need and Use of the Information: The results obtained from the various customer satisfaction surveys will be disseminated to key policy and management officials, USDA employees, stakeholders, the Congress and the public. The data will be used in a variety of ways to improve customer service.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 50,000.

Donald Hulcher,
Deputy Departmental Clearance Officer.
[FR Doc. 97–4166 Filed 2–19–97; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Marketing Service

[Docket No. PY–96–002]

Tentative Voluntary Poultry Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; extension of test-market period.

SUMMARY: On February 15, 1996, the Agricultural Marketing Service (AMS) published a notice in the Federal Register (61 FR 5975) announcing a one-year test-market period for USDA grade identified cooked, boneless-skinless poultry products without added ingredients, based on tentative grade standards. AMS is extending the test-market period beyond its scheduled end, February 15, 1997, until it makes a final determination about the tentative standards.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, Poultry Division, 202–720–3271.

SUPPLEMENTARY INFORMATION: On February 15, 1996, the Agricultural Marketing Service (AMS) published a notice in the Federal Register (61 FR 5975) announcing a one-year test-market period for USDA grade identified cooked, boneless-skinless poultry products without added ingredients, based on tentative grade standards. The test-market period is scheduled to end February 15, 1997, after which AMS will evaluate the test results. If AMS decides to amend the current poultry grade standards, a proposal with a comment period will be published in the Federal Register.

AMS is currently evaluating the test-market results of two other sets of tentative grade standards for ready-to-cook products to determine if changes should be made to the standards. Those test-markets were for boneless-skinless poultry legs and drumsticks (60 FR 16428) and boneless-skinless poultry products without added ingredients (60 FR 30830), for which tentative standards were published in the Federal Register

on March 30, 1995, and June 12, 1995, respectively. AMS has determined that it is appropriate to extend the test-market period for cooked products until a final determination is made regarding changes to the standards for both ready-to-cook and cooked products. This will also allow additional time for the industry to utilize the tentative standards for cooked, boneless-skinless products.

Dated: February 13, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–4111 Filed 2–19–97; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

[Docket No. 97–003N]

President's National Food Safety Initiative

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) and Research, Education, and Economics; The Department of Health and Human Services' Food and Drug Administration (FDA) and Centers for Disease Control; and the Environmental Protection Agency (EPA) will convene a public meeting to discuss the ''President's National Food Safety Initiative.'' At this meeting, participants will be briefed on the purpose of the President's initiative and on the agenda for a second public meeting to be held in April. The goal of the April meeting will be to discuss and develop, for the President, comprehensive recommendations for reducing, to the greatest extent possible, the annual incidence of foodborne illness by enhancing the safety of the Nation's food supply.

DATES: The meeting will be held from 9:00 a.m. until 1:00 p.m. on March 5, 1997.

ADDRESSES: The meeting will be held at the Jefferson Auditorium, 1400 Independence Ave, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Lisa Parks at (202) 501–7138, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com. For questions about the meeting or to obtain copies of a draft report, contact Mr. Charles Danner, FSIS at (202) 501–7138 or Ms. Caren Carson, FDA at (202) 205–5140. Copies of the draft report also are available from the following: FSIS at http://www.usda.gov/fsis or FDA at http://vm.cfsan.fda.gov/list.html.

SUPPLEMENTARY INFORMATION: On January 25, 1997, the President directed the Secretaries of USDA and HHS and the Administrator of the EPA to work with consumers, producers, industry, States, universities, and the public to identify ways to further improve the safety of our food supply through government and private sector action, including public private partnerships, and make recommendations to the President. The President requested that the recommendations identify steps to further improve surveillance, inspection, research, risk assessment, education, and coordination among local, State, and Federal health authorities.

To carry out the President's initiative, two public meetings will be held. At the first meeting, government officials will discuss the current thinking on the President's six areas of concern. They also will discuss the agenda and goal of the meeting to be held in April.

At the April meeting, participants will be asked to identify problems and provide recommendations related to the President's six areas of concern. A second Federal Register notice will be published that provides additional information about the time, location, and focus of the April meeting.

Done at Washington, DC, on: February 13, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–4124 Filed 2–14–97; 9:54 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

FOREIGN-TRADE ZONES BOARD

[Docket 6–97]

Foreign-Trade Zone 182—Fort Wayne, Indiana Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Fort Wayne, Indiana, grantee of Foreign-Trade Zone 182, requesting authority to expand its zone in the Fort Wayne, Indiana area. The Fort Wayne International Airport is a Customs user fee airport facility designated by the U.S. Customs Service. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 5, 1997.

FTZ 182 was approved on December 23, 1991 (Board Order 549, 57 F.R. 1450, 1/14/92). The general-purpose zone currently consists of three sites: *Site 1* (16,000 sq. ft.)—public warehouse at 315 East Wallace Street, Fort Wayne; *Site 2* (17,500 sq. ft.)—public warehouse at 2122 Bremer Road, Fort Wayne; and, *Site 3* (50 acres)—Air Trade Center at the Fort Wayne International Airport, Fort Wayne.

The applicant is now requesting authority to expand Site 3 to include the entire Air Trade Center and to add an additional site to its zone project. *Site 3* at the Air Trade Center, adjacent to the Fort Wayne International Airport would be expanded to cover 443 acres; and, proposed *Site 4* would cover 41 acres on 3 contiguous parcels at 1515 Riverfork Drive West, approximately 20 miles from the Fort Wayne International Airport, Huntington. Stride Rite Children's Group, Inc. (a subsidiary of Stride Rite Corporation), will be leasing one of the parcels for its warehousing needs. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 21, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 6, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Huntington Chamber of Commerce, 305 Warren Street, Huntington, IN 46750

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: February 10, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–4220 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

Foreign-Trade Zones Board

[Order No. 868]

Expansion of Foreign-Trade Zone 27 Boston, MA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Massachusetts Port Authority, grantee of Foreign-Trade Zone 27, for authority to expand its general-purpose zone in Boston, Massachusetts, was filed by the Board on April 23, 1996 (FTZ Docket 33–96, 61 FR 19259, 5/1/96); and,

Whereas, notice inviting public comment was given in Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 27 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 10th day of February 1997.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–4221 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 870]

Expansion of Foreign-Trade Zone 40 Cleveland, OH, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone No. 40, for authority to expand its general-purpose zone at sites in the Cleveland, Ohio, area, within the Cleveland Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on March 12, 1996 (Docket 21–96, 61 FR 12060, 3/25/96);

Whereas, notice inviting public comment was given in the Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations would be satisfied, and that the proposal would be in the public interest provided approval is subject to a 2,000-acre activation limit;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28, and subject to a 2,000-acre activation limit.

Signed at Washington, DC, this 10th day of February 1997.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–4222 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 3–97]

Foreign-Trade Zone 206—Medford-Jackson County, OR Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board by Jackson County, Oregon, grantee of Foreign-Trade Zone 206, requesting authority to expand its zone in the Medford-Jackson County, Oregon area. The Medford-Jackson County Airport has been designated a Customs user fee port facility by the U.S. Customs Service. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 15, 1997.

FTZ 206 was approved on January 11, 1995 (Board Order 719, 60 FR 5165, 1/26/95). The general-purpose zone currently consists of six sites (528 acres) in the Cities of Medford, White City and Eagle Point (Jackson County): *Site 1* (95 acres)—3650 Biddle Road, Medford; *Site 2* (38 acres)—King Business Center, Lear Way, Cardinal Avenue and Commerce Drive, Medford; *Site 3* (54 acres)—North Medford Business Center, Bulcrest Drive, Gruman Drive and Kingsley Drive, Medford; *Site 4* (215 acres)—North Medford Business Center, Avenue H and 11th Street, White City (Jackson County); *Site 5* (23.33 acres)—Light Valley site, 10440 South Fork Little Butte Creek Road, Eagle Point (Jackson County); and, *Site 6* (103 acres)—KOGAP Business Center, 2080 South Pacific Highway, Medford.

The applicant is now requesting authority to expand the general-purpose zone to include one additional site in Jackson County and five sites in adjoining Josephine County: *Site 7* (112 acres)—Lake Creek Agribusiness Center, adjacent to Highway 140, Eagle Point (Jackson County); *Site 8* (47 acres, 6 parcels)—within the 77-acre North Valley Industrial Park, near Interstate 5, Grants Pass (Josephine County), 25 miles north of the Medford-Jackson County Airport; *Site 9* (19 acres, 4 parcels)—within the 213-acre Grants Pass Parkway Development Zone, Grants Pass (Josephine County); *Site 10* (20 acres)—within the 152-acre Illinois River Valley Airport, 125 Ringuette Street, Grants Pass (Josephine County); *Site 11* (10 acres)—within the 319-acre Grants Pass Airport, Grants Pass (Josephine County); and, *Site 12* (4 acres)—Highway 199 Industrial Park, Highway 199, Cave Junction (Josephine County). All of the sites will be operated by the Ore-Cal Trade Corporation, except for Site 7 which will be managed by its operator. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 21, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 6, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

County Administrator's Office, Jackson County, Oregon, 10 S. Oakdale, Medford, OR 97501.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: January 22, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–4225 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 58–95]

Foreign-Trade Zone 35; Philadelphia, PA; Amended Application for Subzone; Tosco Corporation (Oil Refinery Complex); Delaware County, PA

Notice is hereby given that the application of the Philadelphia Regional Port Authority, grantee of FTZ 35, requesting special-purpose subzone status for the oil refinery complex of Tosco Corporation (Tosco), in Delaware County, PA (Doc. 58–95, 60 FR 53164, 10/12/95) has been amended to reflect certain changes to the refinery's operations subsequent to its purchase by Tosco from BP Exploration & Oil Inc.

Upon taking over the refinery on February 2, 1996, Tosco requested that the processing of the pending subzone application be put on hold until further notice. Tosco now has requested that the processing of the application, as amended, be resumed. It plans to restart refinery operations on May 1, 1997.

The refinery (185,000 barrels per day, 360 employees) will be used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates, residual fuels, and naphthas. Petrochemical feedstocks and refinery by-products may include methane, ethane, butane, propane, toluene, benzene, xylene, petroleum coke, asphalt and carbon black. LPG (liquified petroleum gas) recovery facilities and two 15,000 barrel tanks have been added enabling all the LPG produced in the refinery to be recovered and sold.

The application remains otherwise unchanged.

The comment period is reopened until March 24, 1997.

Copies of the application and the amendment are available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, Suite 1501, 615 Chestnut St., Philadelphia, PA 19106.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: February 13, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–4223 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 4–97]

Foreign-Trade Zone 84—Houston, Texas Area Application for Expansion of Subzone 84L California Microwave—Microwave Network Systems, Inc.; Stafford, Texas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting authority to relocate Subzone 84L, authorized for California Microwave—Microwave Network Systems, Inc. (microwave telecommunications products), to a larger facility in Stafford, Texas, within the Houston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 22, 1997.

Subzone 84L was approved on 12/28/94 (Board Order 722, 60 FR 2377, 1/9/95) for the microwave radio/telecommunications products manufacturing facility (3.5 acres, 240 persons) of Microwave Networks, Inc. (MNI), located in Harris County, Texas. Approval was subject to the restriction requiring that the company elect privileged foreign status on foreign components admitted to the subzone. MNI was acquired in 1996 by California Microwave, Inc. and now operates under the name of California Microwave—Microwave Network Systems, Inc. (CMMNS).

The zone grantee is now requesting authority on behalf of CMMNS to relocate the subzone from the currently authorized manufacturing plant to a larger manufacturing facility (16 acres, 355 employees), located at 4000 Greenbriar Drive in Stafford, Texas. The application includes a request for an expanded level of manufacturing authority but the scope of the products made under FTZ procedures will not change (microwave radios for use in cellular and other telecommunications networks). FTZ authority would remain subject to the restrictions approved in Board Order 722.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 21, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 6, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 500 Dallas, Suite 1160, Houston, Texas 77002

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230

Dated: January 30, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–4224 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Application for Designation of a Fair

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 the 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 April 21, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Linda Harbaugh, ITA's Tourism Industries, Room 1860, 1400 Constitution Ave, NW, Washington, DC 20230; phone: (202) 482–4601, and fax: (202) 482–2887.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's, Tourism Industries office offers trade fair guidance and assistance to trade fair organizers, trade fair operators, and other travel and trade oriented groups. These fairs open doors to promising travel markets around the world. These trade fairs provide an

opportunity for showcasing quality exhibits and products from around the world. The ''Application for Designation of a Fair'' is a questionnaire that is prepared and signed by an organizer to begin the certification process. It asks the fair organizer to provide details as to the date, place, and sponsor of the fair, as well as license, permit, and corporate backers, and countries participating. To apply for the U.S. Department of Commerce sponsorship, the fair organizer must have all of the components of the application in order. Then, with the approval, the organizer is able to bring in their products in accordance with Customs laws. Articles which may be brought in, include, but are not limited to, actual exhibit items, pamphlets, brochures, and explanatory material in reasonable quantities relating to the foreign exhibits at a fair, and material for use in constructing, installing, or maintaining foreign exhibits at a fair.

II. Method of Collection

The request is sent to the Department of Commerce, Tourism Industries, to the Trade Fair Chairperson in written form.

III. Data

OMB Number: New Collection—no number assigned.

Form Number: Not applicable.

Type of Review: Regular submission of a collection in use without OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 100 hours.

Estimated Total Annual Cost: No start up costs are involved. It is estimated to cost respondents a total $1,515.00 to comply.

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: February 13, 1997.

Linda Engelmeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–4169 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DR–P

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, March 11, 1997 from 8:30 a.m. to 5:15 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; report on NIST facilities program, report on Advanced Technology Program (ATP) and the ATP Focused Program: Materials Processing for Heavy Manufacturing, presentation on mobile robots, discussion of the Institute budget, and a NIST laboratory tour. The discussion on the Institute budget scheduled to begin at 4:30 p.m. and end at 5:15 p.m., on March 11, 1997, will be closed.

DATES: The meeting will convene March 11, 1997, at 8:30 a.m. and will adjourn at 5:15 p.m. on March 11, 1997.

ADDRESSES: The meeting will be held in the Employees Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 23, 1997, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Manufacturing Extension Partnership and the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasions of personal privacy.

Dated: February 13, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–4148 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Northwest 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 April 21, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, 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 William L. Robinson, NMFS, 7600 Sand Point Way NE, Seattle WA 98112, 206–526–6140.

SUPPLEMENTARY INFORMATION:

I. Abstract

Data collections dealing with Federal reporting requirements for processing vessels affect participants in the groundfish fishery off Washington, Oregon, and California (WOC). The data collections involve: (1) vessel reports; (2) catch or receipt reports and logbooks; and (3) transfer/offloading reports and logbooks. The data collections apply to groundfish processing vessels over 125'(38.5 meters) in length and catcher vessels delivering to them.

Vessel reports indicate when a vessel has started and stopped operations, and is needed to ensure catch/receipt reports have been received, for observer deployment, and for monitoring the fishery.

Logbooks are the basis for reports submitted to NMFS. The logbooks for processing vessels are used to keep daily and cumulative totals of the catch (or fish received from a catcher vessel), species, disposition, and numbers and species of prohibited species (salmon, halibut, Dungeness crab). Reports of species and amounts caught are submitted on a weekly or daily basis, depending on the duration of the season. Logbooks also are kept by fishing vessels to record specific haul or set information. Logbooks also are used to record transfers or offloading of fish or fish products which facilitates enforcement.

II. Method of Collection

These are written data collections that are prepared and submitted by the vessel owner or operator to the National Marine Fisheries Service, Northwest Regional Office, by mail, fax, electronic mail, or in person.

III. Data

OMB Number: 0648–0271

Form Number: None

Type of Review: Regular Submission

Affected Public: This data collection involves owners and operators of vessels that fish for or process groundfish in ocean waters 0–200 nautical miles offshore Washington, Oregon, and California.

Estimated Number of Respondents: Fewer than 100 vessels are expected to be affected.

Estimated Time Per Response: This is variable depending on the action taken. The expected daily average for vessel reports is about 1.25 minutes; for entering information in catch/receipt logbooks is 13–26 minutes; for weekly reports of fish caught or received is 4.3 minutes per day; for transfer logs is 0.5 minutes.

Estimated Total Annual Burden Hours: The public is expected to spend less than 1,803 total hours complying with these data collections.

Estimated Total Annual Cost to Public: The direct cost to the public is estimated to be less than $10,000 annually to the fleet, averaging about $100 per vessel. These estimates do not include time spent preparing submissions.

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: February 13, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–4170 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–22–P

National Oceanic and Atmospheric Administration

[I.D. 021197B]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee, the Scientific and Statistical Committee (SSC), the Advisory Panel (AP) and the Habitat Advisory Panel (HAP) will hold meetings.

DATES: The meetings will be held on March 18-20, 1997.

ADDRESSES: All meetings will be held at the Marriott's Frenchman's Reef Beach Resort, St. Thomas, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-2577; telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 91st regular public meeting to discuss the Third Amendment to the Reeffish Fishery Management Plan (FMP) and the First Amendment to the Coral FMP, among other topics.

The Administrative Committee will meet on Tuesday, March 18, 1997, from 10:00 a.m. to 5:00 p.m., to discuss administrative matters regarding Council operation.

The Council will convene on Wednesday, March 19, 1997, from 9:00 a.m. to 5:00 p.m. through Thursday, March 20, 1997, from 9:00 a.m. to noon, approximately.

The SSC, AP and HAP will meet on March 19, 1997, from 1:00 p.m. to 3:00 p.m., to discuss the presentation of Dr. Downs and provide their comments to the Council.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

There will be simultaneous translation (English-Spanish) at the AP meeting only, from 10:00 a.m. to 3:00 p.m., on March 19, 1997.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón at the Council (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: February 13, 1997.

Gary C. Matlock

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4156 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

February 13, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being reduced for carryforward applied in 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58041, published on November 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 13, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on February 20, 1997, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
336/636	421,491 dozen.
338/339	1,044,973 dozen.
347/348	442,861 dozen.
638/639	433,722 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–4168 Filed 2–19–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Update of Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of update of petition for exemption from the prohibition on dual trading in affected contract markets.

SUMMARY: Chicago Board of Trade (''CBT'' or ''Exchange'') has submitted an update of its October 25, 1993 petition for exemption from the prohibition against dual trading in thirteen contract markets. The Exchange had re-submitted a corrected petition on December 2, 1993 and also submitted March 25, 1994, May 13, 1994 and August 2, 1994 supplements to add three more affected markets. Upon CBT's request, the Commission informed the Exchange that it could submit updated audit trail data by March 31, 1997. Copies of the entire file, including any future submissions, will be available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file are available from the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the CBT dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Rachel Berdansky, Staff Attorney, or Andrew Baer, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder, a board of trade may submit a petition to the Commodity Futures Trading Commission (''Commission'') to exempt any of its affected contract markets (markets with an average daily volume of over 8,000 contracts traded for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

CBT originally submitted a petition for dual trading exemption on October 25, 1993. After the Commission requested additional information, the Exchange submitted a corrected petition on December 2, 1993. That petition was made available to the public by a notice of availability published in the Federal Register on December 22, 1993. Thereafter, the Exchange submitted March 25, 1994 and May 13, 1994 supplements plus an August 2, 1994 report.

Pursuant to a request from the Commission, CBT submitted a dual trading exemption petition update dated January 17, 1997 for its contract markets in wheat, corn, soybeans, soybean meal, soybean oil, U.S. Treasury Bonds, 10-Year Treasury Notes, and 5-Year Treasury Notes futures contracts and its options on soybeans, corn, U.S. Treasury Bond futures, 5-Year Treasury Notes and 10-Year Treasury Notes futures contracts. Upon CBT's request, the Commission informed the Exchange that it could submit updated audit trail data by March 31, 1997.

Copies of the file containing all these materials and any future submissions, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 1155 21st Street, NW, Washington, DC

20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to CBT's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

The CBT timely submitted its original petition before October 26, 1993, the effective date of the dual trading prohibition. Therefore, application of the prohibition against the contract markets covered by the petition has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

Issued in Washington, DC, on February 12, 1997.

Jean A. Webb,

Secretary.

[FR Doc. 97–4165 Filed 2–19–97; 8:45 am]

BILLING CODE 6351–01–M

Chicago Mercantile Exchange Update of Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of update of petition for exemption from the prohibition on dual trading in affected contract markets.

SUMMARY: Chicago Mercantile Exchange (''CME'' or ''Exchange'') has submitted an update of its October 22, 1993 petition for exemption from the prohibition against dual trading in eight contract markets. The Exchange had re-submitted a corrected petition on December 2, 1993. Upon CME's request, the Commission informed the Exchange that it could submit updated audit trail data by March 31, 1997. Copies of the entire file, including any future submissions, will be available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file are available from the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the CME dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Shauna Turnbull, Special Counsel, or Evan Davis, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder, a board of trade may submit a petition to the Commodity Futures Trading Commission (''Commission'') to exempt any of its affected contract markets (markets with an average daily volume of over 8,000 contracts traded for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

CME originally submitted a petition for dual trading exemption on October 22, 1993. After the Commission requested additional information, the Exchange submitted a corrected petition on December 2, 1993. That petition was made available to the public by a notice of availability published in the Federal Register on December 22, 1993.

Pursuant to a request from the Commission, CME submitted a dual trading exemption petition update dated January 21, 1997 for its contract markets in Deutsche Mark, Eurodollar, Japanese Yen, Live Cattle, Standard & Poor's 500, and Swiss Franc futures contracts, and options on Eurodollar and Standard & Poor's 500 futures contracts. Upon CME's request, the Commission informed the Exchange that it could submit updated audit trail data by March 31, 1997.

Copies of the file containing all these materials and any future submissions, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 1155 21st Street, NW, Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to CME's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

The CME timely submitted its original petition before October 26, 1993, the effective date of the dual trading prohibition. Therefore, application of the prohibition against the contract markets covered by the petition has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

Issued in Washington, DC, on February 12, 1997.

Jean A. Webb,

Secretary.

[FR Doc. 97–4164 Filed 2–19–97; 8:45 am]

BILLING CODE 6351–01–M

New York Cotton Exchange Petition for Exemption From the Dual Trading Prohibition in an Affected Contract Market

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for exemption from the prohibition on dual trading in an affected contract market.

SUMMARY: New York Cotton Exchange (''NYCE'' or ''Exchange'') submitted a petition for exemption from the prohibition against dual trading in one contract market on September 28, 1995. The Exchange submitted a supplement to its original petition, which the Commission received on November 21, 1995. The Commission has initiated an audit trail test. NYCE will be given an opportunity to update its petition. Copies of the entire file, including the eventual results of the audit trail test and any future submissions, will be available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file containing all these materials, the eventual retest results and any future submissions are available from the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the NYCE dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Duane Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW,

Washington, DC 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder, a board of trade may submit a petition to the Commodity Futures Trading Commission (''Commission'') to exempt any of its affected contract markets (markets with an average daily volume of over 8,000 contracts traded for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

NYCE originally submitted a petition for dual trading exemption for its Cotton 2 futures contract on September 28, 1995, within 30 days after the contract market became an affected market. After the Commission requested additional information, the Exchange submitted a supplement on November 21, 1995.

The Commission is currently testing the Exchange's audit trail system to determine its accuracy. In conjunction with this test, the Exchange will be given an opportunity to update its petition.

Copies of the file and any future updates, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 1155 21st Street, NW, Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to NYCE's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Application of the prohibition against the contract market covered by the petition has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

Issued in Washington, DC, on February 12, 1997.

Jean A. Webb,

Secretary.

[FR Doc. 97–4162 Filed 2–19–97; 8:45 am]

BILLING CODE 6351–01–M

The Comex Division of the New York Mercantile Exchange's Update of Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of update of petition for exemption from the prohibition on dual trading in affected contract markets.

SUMMARY: The Comex Division of the New York Mercantile Exchange (''Comex'' or ''Exchange'') has submitted an update of its October 21, 1993 petition for exemption from the prohibition against dual trading in two contract markets (which was submitted by its predecessor Commodity Exchange, Inc). The Exchange had resubmitted a corrected petition on November 30, 1993 and also submitted a supplement on January 5, 1994. Copies of the entire file are available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file are available from the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581. Reference should be made to the Comex dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Duane Andresen, Special Counsel, or Evan Davis, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4j(a)(3) of the Commodity Exchange Act and Regulation 155.5 thereunder, a board of trade may submit a petition to the Commodity Futures Trading Commission (''Commission'') to exempt any of its affected contract markets (markets with an average daily volume of over 8,000 contracts traded for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

Comex originally submitted a petition for dual trading exemption on October 21, 1993. After the Commission requested additional information, the Exchange submitted a corrected petition on November 30, 1993. That petition was made available to the public by a notice of availability published in the Federal Register on December 22, 1993. Thereafter, Comex submitted a January 5, 1994 supplement. Pursuant to a request from the Commission, Comex submitted a dual trading exemption petition update dated January 17, 1997 for its contract markets in gold and silver futures contracts.

Copies of the file containing all these materials, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, 1155 21st Street NW., Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to Comex's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Comex timely submitted its original petition before October 26, 1993, the effective date of the dual trading prohibition. Therefore, application of the prohibition against the contract markets covered by the petition has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

Issued in Washington, DC, on February 12, 1997.

Jean A. Webb,

Secretary.

[FR Doc. 97–4163 Filed 2–19–97; 8:45 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, March 7, 1997.

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. 97–4382 Filed 2–18–97; 3:56 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, March 14, 1997.

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. 97–4383 Filed 2–18–97; 3:56 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, March 21, 1997.

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,

Jean A. Webb, 202–418–5100.

Secretary of the Commission.

[FR Doc. 97–4384 Filed 2–18–97; 3:56 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, March 28, 1997.

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. 97–4385 Filed 2–18–97; 3:56 pm]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps: State, National, Indian Tribes, and U.S. Territories Programs

AGENCY: Corporation for National and Community Service.

ACTION: Notice of Availability of Funds for New and Renewal Grants, Notice of Availability of 1997 Application Guidelines, and Responses to Public Comments.

SUMMARY: The Corporation for National and Community Service (Corporation) announces the availability of funds for new and renewal AmeriCorps program grants in the approximate amounts of: (1) $162 million for AmeriCorps State program grants (CFDA # 94.003); (2) $40 million for AmeriCorps National program grants (CFDA # 94.004); and (3) $5 million for AmeriCorps Indian Tribes and U.S. Territories program grants (CFDA # 94.004). The application forms and guidelines for completing these applications are contained in the (1) ''1997 AmeriCorps Guidelines and Instructions for State Commissions'', (2) the ''AmeriCorps National 1997 Application Guidelines'', and (3) the ''1997 AmeriCorps Application Guidelines for Indian Tribes and U.S. Territories'' respectively.

The second section of this notice addresses comments submitted in response to the Corporation notice published in the Federal Register on August 6, 1996, which described proposed changes to Corporation grant-making guidelines, policies, and priorities for 1997, and invited comments with regard to its AmeriCorps State, National, Indian Tribes, and U.S. Territories programs. The changes proposed for the Fiscal Year 1997 grant cycle were non-regulatory in nature. In response to this notice, the Corporation received comments from eleven organizations.

DATES: All AmeriCorps State program applications must be received by 3:30 p.m. (E.S.T.), April 15, 1997. Although AmeriCorps State program applications must be received at the Corporation by that date, applicants seeking AmeriCorps funds from State Commissions should contact their respective State Commissions since individual State Commissions set their own deadlines. Applicants for new AmeriCorps National grants must be received by 3:30 p.m. (E.S.T.), April 1, 1997. Notice regarding the renewal application deadline for AmeriCorps National grants will be provided to existing grantees at a later date. All AmeriCorps Indian Tribe and U.S. Territory applications must be received by 3:30 p.m. (E.S.T.), April 15, 1997.

ADDRESSES: All applications should be submitted to the Corporation for National Service, 1201 New York Avenue, NW, Box AS (for AmeriCorps States), Box ACD (for AmeriCorps National), Box ITT (for AmeriCorps Indian Tribes and U.S. Territories), Washington, D.C. 20525. Facsimiles will not be accepted.

FOR FURTHER INFORMATION CONTACT: Questions about the AmeriCorps State application process should be directed to the State Commission offices. Copies of the ''AmeriCorps National 1997 Application Guidelines'' and ''1997 AmeriCorps Application Guidelines for Indian Tribes and U.S. Territories'' should be requested by calling (202) 606–5000, extension 260. If potential applicants have questions about the AmeriCorps National and AmeriCorps Indian Tribes and U.S. Territories application guidelines or the application process, they should contact the Corporation for National Service, AmeriCorps Direct, 1201 New York Avenue, NW, Washington, D.C. 20525. Phone: (202) 606–5000, extension 125. Organizations interested in applying for the AmeriCorps National program funds may participate in conference calls on February 27, 1997, and March 7, 1997, during which Corporation staff will provide technical assistance to potential applicants. Both calls will commence at 10 AM and end at 12 PM (E.S.T.). To register for these calls, please contact Baqiya Adam at (202) 606–5000, extension 549. The Corporation staff will also conduct conference calls to provide technical assistance to potential applicants seeking AmeriCorps Indian Tribes and U.S. Territories program funds on March 3, 1997, and March 10, 1997. All calls will commence at 2 pm (E.S.T.). To register for these calls, please contact Rosa Harrison at (202)–606–5000, extension 433.

SUPPLEMENTARY INFORMATION: The Corporation's requirements for AmeriCorps programs are set forth in the Corporation's authorizing statute (42 U.S.C. section 12501 *et seq.*), its implementing regulations (45 CFR Part 2500 et seq.), and grant application guidelines. In addition to being thoroughly familiar with the statute and its implementing regulations,

prospective applicants should read the application carefully because, in some cases, more specific information is provided there.

I. AmeriCorps Program Fund Availability

AmeriCorps engages thousands of Americans on a full and part-time basis to help communities address their toughest challenges while earning support for college, graduate school, or job training.

A. AmeriCorps State

Approximately $74.5 million in program funds are available for new and renewal grants to States under State allotments, and approximately $87.5 million in program funds are available to States for new and renewal grants on a competitive basis.

The Corporation is committed to supporting only high-quality AmeriCorps programs, and State allotments are not entitlements.

(1) Eligible applicants.

States, the District of Columbia, and Puerto Rico, through a Corporation-approved State Commission or Alternative Administrative Entity (AAE), are eligible to submit a State application to the Corporation for funds available through the AmeriCorps State program.

(2) Estimated amount and quantity of awards.

The following chart details the amount of funding for which each State may apply. The chart also lists the number of new program applications that each State may submit for funding on a competitive basis.

State	Formula allotment	Number of allowable competitive submissions
Alabama	$1,142,224	8
Alaska	450,000	5
Arizona	1,132,813	8
Arkansas	667,066	7
California	8,483,903	29
Colorado	1,006,221	8
Connecticut	879,476	7
Delaware	450,000	6
District of Columbia	450,000	5
Florida	3,804,449	16
Georgia	1,933,942	10
Hawaii	450,000	6
Idaho	450,000	6
Illinois	3,177,168	14
Indiana	1,558,639	9
Iowa	763,213	7
Kansas	688,970	7
Kentucky	1,036,739	8
Louisiana	1,166,221	8
Maine	450,000	6
Maryland	1,354,248	9
Massachusetts	1,631,174	9
Michigan	2,564,671	12
Minnesota	1,237,987	8
Mississippi	724,399	7
Missouri	1,429,739	9
Montana	450,000	6
Nebraska	450,000	6
Nevada	450,000	6
New Hampshire	450,000	6
New Jersey	2,133,870	11
New Mexico	452,648	6
New York	4,870,809	19
North Carolina	1,932,399	11
North Dakota	450,000	0
Ohio	2,994,693	13
Oklahoma	880,289	7
Oregon	843,467	7
Pennsylvania	3,242,136	14
Puerto Rico (1995)	1,008,515	8
Rhode Island	450,000	6
South Carolina	986,535	8
South Dakota	450,000	0
Tennessee	1,411,618	9
Texas	5,028,705	19
Utah	524,090	6
Vermont	450,000	5
Virginia	1,777,493	10
Washington	1,458,588	9
West Virginia	490,984	6
Wisconsin	1,375,850	9
Wyoming	450,000	5
Total	74,545,951	446

B. AmeriCorps National

Approximately $40 million is available for new and renewal grants through the AmeriCorps National program competition.

(1) Eligible applicants.

National nonprofit organizations, Indian Tribes, public or private nonprofit organizations (including labor organizations), subdivisions of states, and institutions of higher education are eligible to apply for AmeriCorps National program funds. For the purpose of this grant process, a national nonprofit organization is any nonprofit organization whose mission, membership, activities, or constituencies are national in scope. However, an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), that engages in lobbying activities is not eligible to apply, serve as a host site for Member placements, or act in any type of supervisory role in the program.

Eligible applicants that propose programs in more than one State are encouraged to seek funding directly from the Corporation. These applicants may operate programs directly or provide subgrants to local chapters or affiliates. The Corporation strongly encourages applicants that propose programs in a single State to apply to that State's Commission on National and Community Service.

(2) Estimated amount and quantity of awards.

The Corporation expects to make fewer than forty (40) awards for new AmeriCorps National operating programs in Fiscal Year 1997 grant cycle. The grant size will vary by circumstance, need, and program model. The Corporation anticipates that it will not be able to fund AmeriCorps National programs at the same level as it has in the past because of a congressionally-imposed cap and a lack of available carryover funds. For this reason, grantees that have previously received AmeriCorps funding should consider significantly reducing the amount of requested support.

C. AmeriCorps Indian Tribes and U.S. Territories

Approximately $2.5 million is available for new and renewal AmeriCorps Indian Tribe program grants, and approximately $2.5 million is available for new and renewal AmeriCorps U.S. Territories program grants under a population-based formula.

(1) Eligible applicants.

Eligible applicants include Indian Tribes and U.S. Territories. For the purposes of this grant program an Indian Tribe is an: (a) Indian Tribe, band, nation, or other organized group or community, including any Native village, as defined in 43 U.S.C. section 1602(c), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act,'' 26 U.S.C. section l461 *et seq.*); (b) any Regional Corporation or Village Corporation, as defined in 43 U.S.C. section 1602 (g) or (j), respectively, that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and (c) any tribal organization controlled, sanctioned, or chartered by an entity described in (a) or (b) of this paragraph. For the purposes of this grant program, U.S. Territories are (a) American Samoa, (b) the Commonwealth of the Northern Mariana Islands, (c) Guam, and (d) the U.S. Virgin Islands.

(2) Estimated amount and quantity of awards.

Eligible applicants may apply for operating funds to establish AmeriCorps programs. The Corporation expects to make fewer than ten (10) AmeriCorps Indian Tribe program grants, and fewer than ten (10) AmeriCorps U.S.

Territories program grants. The average award under each program will be under $300,000.

II. Education Awards

On September 4, 1996, the Corporation published a *Notice of availability of education awards* that describes the AmeriCorps Education Award program. Applicants for AmeriCorps State, National, and Tribes and U.S. Territories program grants are advised that instead of applying through the AmeriCorps Education Award program, they may include in their AmeriCorps State, National, or Tribes and U.S. Territories applications a request for positions for participants who receive only education awards from the Corporation. AmeriCorps State, National, or Indian Tribes and U.S. Territories programs that include these positions are subject to all of the requirements that apply to AmeriCorps State, National, or Indian Tribes and U.S. Territories programs.

III. Professional Corps

The Corporation particularly invites applications for professional corps programs. A professional corps program is defined in 42 U.S.C. section 12572(a)(8). These programs must be sponsored by public or private nonprofit employers who agree to pay 100 percent of AmeriCorps Members' salaries and benefits (excluding the national service education award which is provided by the Corporation). Members' salaries may exceed the maximum living allowance in other national service programs.

IV. 16-Year-Old AmeriCorps Participants

In general, an individual must be at least 17 years of age at the time he or she begins the term of service in order to be eligible for receipt of an education award. However, certain 16-year-olds may enroll as AmeriCorps participants. Applicants who have an interest in enrolling 16-year-olds are advised that the participant must be an ''out of school youth'' as defined in 42 U.S.C. section 12511(16) and serve in one of two types of youth corps programs described in the authorizing statute. (See 42 U.S.C. section 12572(a)(2) and (a)(9)).

V. Responses to Public Comments on Proposed Changes to Corporation Grant Making Guidelines

A. Renewals, Re-competition and New Applications 1997 Issue Area Priorities

The Corporation received one comment requesting that specific language be added to permit existing or former operating sites of AmeriCorps National grantees to apply for new grant funds through State Commissions while continuing their contractual relationship for training and technical assistance with the AmeriCorps National grantee organization. The Corporation decided not to add the language because any grantee or subgrantee can currently contract with any other national, State or local organization for technical assistance. Therefore, we do not need to specifically state this for operating sites or subgrantees of AmeriCorps National grantees only.

B. 1997 Priorities

The Corporation received several comments on the Corporation's new FY97 focus on children and youth within the four issue areas of educational, public safety, environmental and other human needs. The comments were divided equally between those favoring the new priorities and those suggesting that the priorities needed some clarification and should not be focused so narrowly. The Corporation has decided to maintain its focus on children and youth for the 1997 priorities. However, clarifying language was added to recognize that some high quality programs have different expertise and would dilute their effectiveness if they redesign their programs to focus on children and youth. Those programs are encouraged to apply if they are high quality programs and can demonstrate compelling needs. Applicants who received funding from the Corporation for the first time in 1995 or 1996 are considered renewals and therefore, may continue to address areas covered by the 1995 or 1996 priorities and need not change their focus to meet the Corporation's new priority focus on children and youth.

C. Summer Programs

The Corporation received several comments requesting some clarification on summer programs and a recommendation that the applicants be encouraged to apply for summer programs that are operated as components of AmeriCorps programs, rather than as free-standing programs. The Corporation added clarifying language to this section of the grant application guidelines indicating that the Corporation encourages, but does not require, applicants to operate summer programs as a component of their year-round AmeriCorps programs and to ensure that a summer component is consistent with the overall mission of the applying organization and its AmeriCorps programs.

D. State Coordination with AmeriCorps National Applicants

The Corporation received four comments about the grant application guideline language related to coordination between State Commissions and AmeriCorps National applicants. The comments were equally divided between concurrence with the language and requests for changes. Based on the comments received, the Corporation decided not to change the requirements for coordination and to continue such requirements. Additional language was added to the grant application guidelines describing the Corporation's expectations of AmeriCorps National applicants and of State Commissions with regard to better coordination between the two.

E. Issue Area Specialization

The Corporation received three comments suggesting that limiting programs to one issue area may restrict their ability to raise match funds and fulfill program objectives. The Corporation's experience is that when programs try to meet many needs at once, it is more difficult to demonstrate impact and fulfill program objectives. Therefore, the Corporation will continue to encourage programs to focus their efforts on one issue area. The grant application guidelines do recognize that certain types of programs (e.g., volunteer generator models or programs operating in rural areas) may not be able to focus on singles issues. Programmatic needs or designs that lead an applicant to focus on multi-issues will be taken into consideration during the grant application review and selection processes.

F. Program Focus and Service Ethic

Several responders suggested that language in the grant application guidelines which indicates that the Corporation will not fund programs whose primary focus is job training should be softened. However, given the requirements in the National and Community Service Act of 1990, as amended, and its implementing regulations, the emphasis on imparting the service ethic and providing service to communities is appropriate. The Corporation did change the word ''primary'' to ''major'' to clarify the Corporation's intent to continue to support programs that do assist participants in job development activities, so long as it is not the major focus of the program.

G. Living Allowance

Four responders recommended that the Corporation continue its current

flexibility concerning the amount of living allowances provided to AmeriCorps members. This recommendation suggests a misunderstanding of the Corporation's intent. The current language does not require programs to pay the lowest living allowance. It only encourages it. The Corporation has emphasized this in the final grant application guidelines, but continues to encourage programs to offer the minimum statutorily permitted living allowances—not more than the average annual subsistence allowance provided to VISTAs.

H. Corporation Cost per Member

All responders addressed this issue in their recommendations. Some indicated that lowering the allowable cost per Member would have a negative impact on program quality and the Corporation should take varying local conditions and program designs into account and allow for some flexibility. Others felt the reduction in Member costs is within reason, but wanted some clarification concerning what was included in the calculation.

The Corporation cannot increase the limit on the Corporation share of the cost per Member, but it does provide flexibility to applicants by allowing them to meet the target as an average across all programs within the application rather than as an absolute number for each program. For example, a single State must meet the Corporation's required maximum cost per member as its average cost per member in that State. In addition, the Corporation only limits the cost per member of the Corporation share. Programs are free to have a higher cost per member so long as it comes from a funding source other than the Corporation. The Corporation also delineated in the grant application guidelines all items included in the calculation of cost per Member.

I. Timelines

Only one responder requested that the deadlines for grant applications be extended. Other responders expressed appreciation that the Corporation is providing more time between grant application deadlines and actual program start-up. One responder asked that the grant application deadlines remain the same, but that the Corporation make final decisions at least two months before programs are expected to begin.

The Corporation cannot change the grant application deadlines and still meet a reasonable timeline for final decisions. Therefore, the grant application deadlines will remain as published in the Federal Register and reflected in this notice. Currently, the Corporation does notify potential grantees of decisions at least two months before programs are expected to begin. However, the actual grant award letters may not reach the grantee two months ahead of start dates.

J. Application Evaluation and Selection of New Programs

The Corporation received several comments concerning the ''ability to monitor'' section of the review criteria. Several felt that the Corporation needed to reexamine its assessment that individual placements are ''hard to monitor'' and suggested that the ''ability to monitor'' criterion be dropped from the application review criteria. In addition, one responder recommended that the Corporation base its peer review criteria on results rather than systems.

The Corporation considered these comments and their bases and decided not to eliminate the ''ability to monitor'' criterion, and to add language in the grant application guidelines asking applicants with individual placements to describe what they will do to ensure that they would be able to monitor their sites effectively despite their geographically-dispersed locations.

The Corporation has not changed its overall review criteria because those criteria do place a heavy emphasis on results. Currently, the Corporation's review criteria base 65 percent of the evaluation on results related to getting things done, strengthening communities and developing Members, and the ability of the program to evaluate those results.

K. Miscellaneous

The Corporation also received other comments requesting some clarification on how the selection criteria will be applied and whether or not organizations that have already received funding will be eligible to apply. Additional language was added to indicate that organizations that have already received three years of funding from the Corporation are eligible to apply but will be competed as new applicants rather than renewal applicants. The Corporation also added language that distinguishes the Corporation's request for individual programs to focus on fewer priority areas from the Corporation's need to ensure that we select programs that meet priorities in all four issue areas within the overall group of selected programs. The language states that, while we encourage individual programs to focus on an issue area, the Corporation will ensure that it has diversity among priorities across the programs that it funds.

Dated: February 14, 1997.

Barry W. Stevens,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–4192 Filed 2–19–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee

AGENCY: U.S. Army War College.

ACTION: Notice of Meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Date of Meeting: April 7, 8, and 9, 1997.

Place: Root Hall, U.S. Army War College, Carlisle Barracks, Pennsylvania.

Time: 8:30 A.M.–5:00 P.M.

Proposed Agenda: Receive information briefings, view facilities, observe classes, conduct discussions with faculty and students, and provide guidance concerning accreditation and areas for improvement.

FOR FURTHER INFORMATION CONTACT: Colonel Terry J. Young, Box 118, U.S. Army War College, Carlisle Barracks, PA 17013 or phone (717) 245–3907.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee after receiving advance approval for participation. To request advance approval or obtain further information, contact Colonel Terry J. Young at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–4171 Filed 2–19–97; 8:45 am]

BILLING CODE 3710–08–M

CGSC Advisory Committee

AGENCY: U.S. Army Command and General Staff College.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Meeting: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Dates of Meeting: 30 April—2 May 1997.

Place: Bell Hall, Room 113, Fort Leavenworth, Kansas 66027–1352.

Time: 1700–2200, 30 April 1997; 0730–2100, 1 May 1997; 0730–2100, 2 May 1997.

Proposed Agenda:

1700–2200, 30 April: Review of CGSC educational program.
0730–2100, 1 May: Continuation of review.
0730–1030, 2 May: Continuation of review.
1030–1130, 2 May: Executive Session.
1300–1400, 2 May: Report of Commandant.

FOR FURTHER INFORMATION CONTACT: Philip J. Brookes, USACGSC Advisory Committee, One Reynolds Ave., Bell Hall, Room 123, Fort Leavenworth, Kansas 66027–1352; Phone (913) 684–2741.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary: Philip J. Brookes at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–4173 Filed 2–19–97; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Cherry Creek Dam Safety Evaluation Denver, Colorado

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Cherry Creek Dam was constructed in the 1940's by the Corps of Engineers primarily to provide flood control for the City of Denver. Although the project became operational in 1950, the facility was operated without a permanent pool until 1958. The State of Colorado, through its Department of Parks and Outdoor Recreation, operates the project as Cherry Creek State Park. A 1993 reconnaissance-level report by the Corps revealed that the dam does not meet the level of safety currently required for such a project when located upstream from a major metropolitan area. The proposed action is to provide increased flood storage capacity, an increase in emergency spillway capacity, or a combination of the two, so as to bring the project up to current dam safety guidelines/requirements.

In accordance with the National Environmental Policy Act of 1969 and implementing regulations, an environmental impact statement will be prepared to analyze the impacts of the proposed action and alternatives. Public scoping meetings have been scheduled to solicit comments regarding the scope of the environmental studies.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Environmental Impact Statement should be directed to: Ms. Candace M. Thomas, Chief, Environmental Analysis Branch,U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978; telephone (402) 221–4598, FAX (402) 221–4886.

SUPPLEMENTARY INFORMATION: A selected plan has yet to be defined. A number of possible alternatives were identified in the 1993 report; it is planned to refine the number of alternatives in the current study. The alternatives most likely to be studied in detail in the EIS are as follows:

- No Federal Action.
- A dam rise.
- A supplemental spillway.
- A combination of dam raise and addition of a supplemental spillway.
- Supplemental upstream storage.
- Other, partial solutions such as closing the existing spillway and/or changes to the existing outlet works capacity.

An afternoon public open house and evening scoping meeting have been scheduled for March 4, 1997 at 2:00 p.m. and 7:00 p.m. respectively at the Holiday Inn Denver Southwest, 3200 South Parker Road, Aurora, Colorado. The purpose of these meetings is to solicit input on issues, alternatives to be evaluated, and potential environmental effects. Written comments will also be solicited.

Potential significant environmental issues include possible impacts to threatened and endangered species, wetlands, upstream areas of special biological significance, and social and economic impacts to upstream and downstream residences and businesses.

Other applicable and pertinent environmental review and consultation requirements will be undertaken simultaneously with the NEPA process, including requirements of the Endangered Species Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, Clear Water Act, Clear Air Act, and others.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–4172 Filed 2–19–97; 8:45 am]

BILLING CODE 3710–62–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 26, 1997. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 2:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 11:00 a.m. at the same location and will include a presentation on the Christina River Basin point and nonpoint study; a demonstration on the New Castle County GIS program; discussion of proposed amendments to the Southeastern Pennsylvania Ground Water Protected Area Regulations and a review of Basin States' policies on discharges to intermittent streams.

In addition to the subjects listed below which are scheduled for public hearing at the business meeting, the Commission will also address the following matters: Minutes of the January 22, 1997 business meeting; announcements; General Counsel's report; report on Basin hydrologic conditions, a resolution concerning funding in connection with the Christina Basin study and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. New York State Department of Environmental Conservation (NYSDEC) D–77–20 CP (Revision No. 3). An application to add the schedule of experimental augmented conservation releases for Cannonsville Reservoir to the current experimental augmented conservation release program of the Pepacton and Neversink Reservoirs. Along with the Cannonsville Reservoir program, the applicant requests an

extension of the existing experimental augmented conservation release program for Pepacton and Neversink Reservoirs for a three year period. New release valves at the Cannonsville Reservoir allow a more flexible release schedule and make it feasible to reserve additional storage for thermal stress release when needed. The Neversink Reservoir is located in Sullivan County and the Cannonsville and Pepacton Reservoirs are located in Delaware County, all in New York State.

2. *Merrill Creek Owners Group (MCOG) D–77–110 CP (Amendment No. 10).* An application for inclusion of PECO Energy Company's Fairless Hills Generating Station (a 72 megawatt combustion turbine facility formerly owned by U.S. Steel and approved for operation by PECO via Docket No. D–96–63 on January 22, 1997) as a Designated Unit to Table A (Revised) of the Merrill Creek Reservoir project. This action will allow releases from the reservoir to make up consumptive water use of the plant during drought periods. MCOG expects the Fairless Hills Generating Station to have maximum monthly consumptive water uses of 385,000 gallons per day (gpd) during winter, 124,000 gpd during summer, and 324,000 gpd during spring and fall. The plant is located at the existing U.S. Steel Fairless Hills plant site in Falls Township, Bucks County, Pennsylvania.

3. *Pennsylvania-American Water Company D–85–86 CP RENEWAL 2.* An application for the renewal of a ground water withdrawal project, previously approved under the ownership of Pocono Farms East Water Company, to supply up to 4.68 million gallons (mg)/30 days of water to the applicant's Whispering Glen and Hickory Glen systems from Well Nos. 2E, 3E and 4E. Commission approval on April 24, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 4.68 mg/30 days. The project is located in Coolbaugh Township, Monroe County, Pennsylvania.

4. *Crystal Water Supply Company, Inc. D–86–22 CP RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 11.23 mg/30 days of water to the applicant's distribution system from Well Nos. A, B and 1. Commission approval on December 11, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 11.23 mg/30 days. The project is located in the Town of Thompson, Sullivan County, New York.

5. *Lake Wynonah Municipal Authority D–91–20 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 12 mg/30 days of water to the applicant's distribution system from Well Nos. 1, 2, 3 and 6. Commission approval on August 14, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 12 mg/30 days. The project is located in South Manheim and Wayne Townships, Schuylkill County, Pennsylvania.

6. *City of Coatesville Authority D–96–16 CP.* An application to amend the City of Coatesville Authority (CCA) Docket by extension of the time for compliance with Docket DECISION II.e. which requires the CCA to submit an Operating Plan for conjunctive use of its West Branch Brandywine Creek withdrawal with its multiple-source water supply system including the Rock Run and Hibernia (renamed Chambers Lake) Reservoirs. The project withdrawal is located in West Caln Township, Chester County, Pennsylvania.

7. *Borough of West Grove D–96–26 CP.* An application to replace the withdrawal of water from Well Nos. 1 and 6 in the applicant's water supply system which has been contaminated by leakage of gasoline from an underground storage tank. The applicant requests that the withdrawal from replacement Well No. 4 (Harmony Road) be limited to 4.5 mg/30 days, and that the total withdrawal from all wells remain limited to 10.8 mg/30 days. The project is located in West Grove Borough, Chester County, Pennsylvania.

8. *Paunnacussing Founders, Inc. D–96–42.* An application for approval of a ground water withdrawal project to supply up to 6.0 mg/30 days of water to the applicant's Look-A-Way Golf Club from new Well Nos. 2 and 3, and to limit the withdrawal from all wells to 6.0 mg/30 days. The project is located in Buckingham Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

9. *Fox Valley Community Services, Inc. D–96–60.* A project to modify and rerate the applicant's existing sewage treatment plant (STP) from 0.056 million gallons/day (mgd) to 0.074 mgd. The STP will continue to provide secondary biological treatment via the extended aeration activated sludge process; after modification to equalize flow (and other minor modifications), the STP will be able to increase its capacity to 0.074 mgd. The STP will continue to serve the Fox Valley residential development in Concord Township, Delaware County, Pennsylvania. The project is located in Concord Township just south of U.S. Route 1 and north of the West Branch Chester Creek to which it will continue to discharge.

10. *Simpson Paper Company D–97–3.* An application for approval of an existing combined ground water and surface water withdrawal project to supply up to 60 mg/30 days of water to the applicant's paper mill from existing Well Nos. 1 and 2 and Bubbling Springs, and to limit the withdrawal from the wells to 42 mg/30 days, and from Bubbling Springs to 60 mg/30 days. The project withdrawals are located in Whitemarsh Township, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area. Bubbling Springs is situated on Spring Mill Run, a tributary of the Schuylkill River.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: February 10, 1997.

Susan M. Weisman,

Secretary.

[FR Doc. 97–4093 Filed 2–19–97; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, March 5, 1997: 5:30 p.m.—9:00 p.m.

ADDRESSES: Community College of Southern Nevada (Cheyenne Avenue Campus), High Desert Conference and Training Center, Room 1422, 3200 East Cheyenne Avenue, North Las Vegas, Nevada 89030–4296, 702–651–4294.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

February Agenda

5:30 pm Call to Order
5:40 pm Presentations
7:00 pm Public Comment/Questions
7:30 pm Break
7:45 pm Review Action Items
8:00 pm Approve Meeting Minutes
8:10 pm Committee Reports
8:45 pm Public Comment
9:00 pm Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on February 14, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–4147 Filed 2–19–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MT97–3–000]

El Paso Natural Gas Company; Notice of Tariff Filing

February 13, 1997.

Take notice that on February 3, 1997, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Fourth Revised Sheet No. 357, to become effective March 5, 1997.

El Paso states that the tendered tariff sheet revises the identification of marketing affiliates to state that affiliate contract information is provided on El Paso's Electronic Bulletin Board.

El Paso states that copies of the filing have been served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

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, Washington, DC 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 as provided in 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4128 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–13–004]

K N Interstate Gas Transmission Company; Notice of Filing

February 13, 1997.

Take notice that on February 7, K N Interstate Gas Transmission Company (KNI) submitted a response to the Commission's December 24, 1996 order.[1]

KNI states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding. 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 28, 1997. 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.

[1] 77 FERC ¶61,309 (1996).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4127 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–320–007]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1997.

Take notice that on February 10, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet, to be effective February 5, 1997:

Substitute Second Revised Sheet No. 29

Koch states that the above-mentioned tariff sheet is being filed to correct an administrative error on Second Revised Sheet No. 29 filed in Docket No. RP96–320 on February 5, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's regulations. All such protest must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4129 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–250–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1997.

Take notice that on February 10, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, to be effective May 1, 1997:

Second Revised Sheet No. 170
Original Sheet No. 170A
Second Revised Sheet No. 280
Original Sheet No. 280A
First Revised Sheet No. 282
Original Sheet No. 282A
Original Sheet No. 360

Original Sheet No. 361
Original Sheet No. 361A
Original Sheet No. 362

NGT states that the filing revises the capacity release provisions of NGT's FERC Gas Tariff to provide for a Form of Master Capacity Release Service Agreement (MCRSA) and Addendum to be executed by replacement Shippers. Currently, a replacement Shipper must execute a Service Agreement under the appropriate Rate Schedule for each individual release.

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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed as provided in 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4133 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–237–000]

Panhandle Eastern Pipeline Company and Southwest Gas Storage Company; Notice of Application

February 13, 1997.

Take notice that on February 7, 1997, Panhandle Eastern Pipe Line Company (Panhandle) and Southwest Gas Storage Company (Southwest), both located at P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP97–237–000 an application, pursuant to Sections 7(b) and (c) of the Natural Gas Act, authorizing (1) Panhandle to abandon its Howell (Michigan), Waverly Illinois), and North Hopeton (Oklahoma) storage fields, including all cushion gas and appurtenant facilities, along with the cushion gas supplied by Panhandle to Southwest's Borchers North (Kansas) Storage Field, by transfer to Southwest; (2) Panhandle to abandon the lease of cushion gas to Southwest under Rate Schedule LS–1; (3) Southwest to acquire and operate all of Panhandle's storage field assets; and (4) Southwest to abandon storage service provided to Panhandle under Rate Schedule S–1, all as more fully set forth in the application, which is on file with the Commission and open for public inspection.

It is indicated that Southwest is a wholly-owned subsidiary of Panhandle. It is also indicated that Panhandle will transfer the assets at net book value. Also, it is stated that Southwest would provide 35 Bcf of storage service to Panhandle under Rate Schedule FSS in Panhandle's field zone from the North Hopeton and Borchers North Storage Fields. It is indicated that Southwest would also provide 21.4 Bcf of storage service to Panhandle in Panhandle's market zone from the Waverly and Howell Storage fields. Panhandle states that it would in turn continue to provide unbundled, open-access storage and transportation to its customers using storage capacity provided by Southwest and third parties.

Southwest states that the existing injection and withdrawal profiles in its tariff are based on the performance of its single storage field, Borchers North Storage Field. It is indicated that, with the addition of the three storage fields, Southwest must modify the injection and withdrawal profiles by combining the Borchers North and North Hopeton areas as the West Area Storage Facilities and the Waverly and Howell storage fields as the East Area Storage Facilities. Southwest also proposes to modify its Rate Schedule FSS to reflect the addition of the East Area Storage facilities and a new delivery point for West Area Storage Facilities and to make minor modifications to Rate Schedules FSS and ISS. Southwest also proposes to institute a fuel tracker mechanism within Rate Schedules FSS and ISS to allow Southwest to track projected fuel requirements against actual fuel usage from the combined storage fields, with bi-annual adjustments to the fuel reimbursement rate at April 1 and November 1 of each year to coincide with the beginning of the injection and withdrawal periods, respectively.

It is stated that the Commission's approval of the abandonment and certificate authorization would permit Panhandle to further streamline its business operations in conjunction with the industry's restructuring under Order No. 636 and allow all of Panhandle's storage facilities to be owned by a single, non-jurisdictional company.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 6, 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 taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle or Southwest to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4126 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–185–002]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

February 13, 1997.

Take notice that on February 10, 1997, 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, proposed to be effective January 9, 1997. Panhandle asserts that the purpose of this filing is to comply with the Commission's order issued January 9, 1997 in docket No. RP97–185–000, 78 FERC ¶ 61,011 (1997).

Panhandle states that this compliance filing (1) deletes the indemnification clause in the exhibits to the negotiated

rate service agreements and (2) clarifies that the provision allowing agreed-to billing adjustments of payment obligations and the crediting mechanism for releasing shippers with negotiated rates does not permit Panhandle to negotiate terms and conditions of service.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4131 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–346–002]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1997.

Take notice that on February 10, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, (Tariff) the following tariff sheets to become effective February 23, 1997:

First Substitute Third Revised Sheet No. 140
First Substitute First Revised Sheet No. 140a
First Substitute Second Revised Sheet No. 141
Fourth Revised Sheet No. 142

Southern also proposed to withdraw Second Revised Sheet No. 139a submitted in its August 23, 1996 filing in the instant proceeding.

Southern states that its filing is in compliance with the Commission's January 30, 1997 order approving changes to its cashout procedure and directing Southern to file revised tariff sheets consistent with its order.

Southern states that copies of the filing will be served upon all parties designated on the official service list compiled by the Secretary in these proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 first Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4130 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–7–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1997.

Take notice that on February 7, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2 and transportation services purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. The tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff and Section 4 of Transco's Rate Schedule FT–NT.

Transco states that included in Appendices B and C attached to the filing are explanations of the rate changes and details regarding the computation of the revised Rate Schedule S–2 and FT–NT rates.

Transco states that copies of the filing are being mailed to each of its S–2 and FT–NT customers and interested State Commissions.

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, 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 as provided in 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4134 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–186–002]

Trunkline Gas Company; Notice of Compliance Filing

February 13, 1997.

Take notice that on February 10, 1997, 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, proposed to be effective January 9, 1997. Trunkline asserts that the purpose of this filing is to comply with the Commission's order issued January 9, 1997 in Docket No. RP97–186–000, 78 FERC ¶ 61,012 (1997).

Trunkline states that this compliance filing (1) deletes the indemnification clause in the exhibits to the negotiated rate service agreements; (2) modifies Section 11.2(b) of the General Terms and Conditions to recognize that rollover rights apply to negotiated rates that ''equal or'' exceed the maximum rate; and (3) clarifies that the provision allowing agreed-to billing adjustments of payment obligations and the crediting mechanism for releasing shippers with negotiated rates does not permit Trunkline to negotiate terms and conditions of service.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4132 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1422–000, et al.]

PECO Energy Company, et al; Electric Rate and Corporate Regulation Filings

February 11, 1997.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER97–1422–000]

Take notice that on January 23, 1997, PECO Energy Company (PECO) filed a Service Agreement dated January 14, 1997 with Plum Street Energy Marketing, Inc. (PLUM STREET) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds PLUM STREET as a customer under the Tariff.

PECO requests an effective date of January 14, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to PLUM STREET and to the Pennsylvania Public Utility Commission.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER97–1423–000]

Take notice that on January 23, 1997, PECO Energy Company (PECO) filed a Service Agreement dated January 14, 1997 with Southern Energy Trading & Marketing, Inc. (SET&M) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds SET&M as a customer under the Tariff.

PECO requests an effective date of January 14, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to SET&M and to the Pennsylvania Public Utility Commission.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER97–1424–000]

Take notice that on January 23, 1997, PECO Energy Company (PECO) filed a Service Agreement dated January 15, 1997 with Duke/Louis Dreyfus L.L.C. (DUKE/DREYFUS) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds DUKE/DREYFUS as a customer under the Tariff.

PECO requests an effective date of January 15, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to DUKE/DREYFUS and to the Pennsylvania Public Utility Commission.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company

[Docket No. ER97–1425–000]

Take notice that on January 23, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Sonat Power Marketing, L.P. (Sonat). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Sonat.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER97–1427–000]

Take notice that on January 24, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements with numerous parties, under the AEP Companies' Point-to-Point Transmission Service Tariffs. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after December 30, 1996.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER97–1429–000]

Take notice that on January 24, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Southern Indiana Gas and Electric Company.

Cinergy and Southern Indiana Gas and Electric Company are requesting an effective date of January 27, 1997.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ER97–1430–000]

Take notice that on January 24, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Kansas City Power and Light Company for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. PEC Energy Marketing, Inc.

[Docket No. ER97–1431–000]

Take notice that on January 24, 1997, PEC Energy Marketing, Inc. (PEC), tendered for filing, pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

PEC intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where PEC sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in the petition, PEC is an affiliate of General Public Utilities Corporation, a public utility holding company and the parent company of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. DePere Energy Marketing, Inc.

[Docket No. ER97–1432–000]

Take notice that on January 24, 1997, DePere Energy Marketing, Inc. (DePere), tendered for filing, pursuant to Rule 205, 18 CFR 385.205, a petition for

waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

DePere intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where DePere sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in the petition, DePere is an affiliate of General Public Utilities Corporation, a public utility holding company and the parent company of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company

[Docket No. ER97–1434–000]

Take notice that on January 24, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing executed Non-Firm Point-to-Point Transmission Service Agreements between LG&E and Commonwealth Edison Company and between LG&E and Michigan Public Power under LG&E's Open Access Transmission Tariff. LG&E originally filed these agreements unexecuted in Docket No. ER97–1126–000.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Power Company

[Docket No. ER97–1435–000]

Take notice that on January 30, 1997, Duke Power Company (Duke), tendered for filing Schedule MR quarterly transaction summaries for service under Duke's FERC Electric Tariff, Original Volume No. 3 for the quarter ended December 31, 1996.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER97–1436–000]

Take notice that on January 30, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a service agreement for additional native load transmission service between SCS, as agent for Southern Companies, and Southern Wholesale Energy, a department of SCS, as agent for Southern Companies, under Southern Companies Open Access Transmission Tariff.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Company Services, Inc.

[Docket No. ER97–1437–000]

Take notice that on January 30, 1997, Southern Company Services, Inc., acting on behalf of Gulf Power Company filed a Service Agreement by and among itself, as agent for Gulf Power Company, and Florida Public Utilities Company, pursuant to which Gulf Power Company will make wholesale power sales to Florida Public Utilities Company for a term in excess of one (1) year.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER97–1438–000]

Take notice that on January 29, 1997, 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 Indiana Municipal Power Agency.

Cinergy and Indiana Municipal Power Agency are requesting an effective date of January 16, 1997.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corporation

[Docket No. ER97–1439–000]

Take notice that on January 29, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements with numerous parties, under the AEP Companies' Point-to-Point Transmission Service Tariffs. The Transmission Tariff has been designated as FERC Electric Tariff Original volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after January 1, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER97–1440–000]

Take notice that on January 30, 1997, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as ''Southern Companies''), submitted a report of short-term transactions that occurred under the Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) during the period October 1, 1996 through December 31, 1996.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Power & Light Company

[Docket No. ER97–1441–000]

Take notice that on January 30, 1997, Puget Sound Power & Light Company tendered for filing a Residential Exchange Termination Agreement. A copy of the filing was served upon the Bonneville Power Administration.

Puget states that the Termination Agreement terminates a Residential Purchase and Sale Agreement between Puget and Bonneville.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Yadkin, Inc.

[Docket No. ER97–1442–000]

Take notice that on January 30, 1997, Yadkin, Inc., tendered for filing a summary of activity for the quarter ending December 31, 1996.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER97–1443–000]

Take notice that on January 29, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Consolidated Edison of New York, under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to Consolidated Edison of New York.

NUSCO requests that the Service Agreement become effective January 1, 1997.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Indiana Gas and Electric Company

[Docket No. ER97–1444–000]

Take notice that on January 29, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing summary information on transactions that occurred during the period October 1, 1996 through December 31, 1996, pursuant to its Market Based Rate Sales Tariff accepted by the Commission in Docket No. ER96–2734–000.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. The Dayton Power and Light Company

[Docket No. ER97–1445–000]

Take notice that on January 25, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Southern Indiana Gas & Electric Company as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Southern Indiana Gas & Electric Company and the Public Utilities Commission of Ohio.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation

[Docket No. ER97–1446–000]

Take notice that on January 29, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation (OVEC)), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission service, dated January 27, 1997 (the Service Agreement) between Enron Power Marketing, Inc. (EPMI) and OVEC. OVEC proposes an effective date of January 27, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to EPMI.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

A copy of this filing was served upon EPMI.

Comment date: February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Great Bay Power Corporation

[Docket No. ER97–1433–000]

Take notice that on January 28, 1997, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Central Vermont Public Service Corporation and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The revised form of service agreement is proposed to be effective January 23, 1997.

Comment date: February 25, 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. 97–4123 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2438–007 New York]

Seneca Falls Power Corporation; Notice of Availability of Final Environmental Assessment

February 13, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for license for the Waterloo and Seneca Falls Hydroelectric Project, located in Seneca, Yates, Schuyler, and Ontario Counties, New York, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of relicensing the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4158 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1984–056–Wisconsin; Project No. 11162–002]

Wisconsin River Power Co. & Wisconsin Power & Light Co.; Notice of Intent to Conduct Public Scoping Meetings and Site Visits

February 13, 1997.

The Federal Energy Regulatory Commission (FERC or the Commission) will hold public and agency scoping meetings on March 4, 6, and 7, 1997, for the preparation of an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) for the proposed relicensing of the Petenwell/Castle Rock Project No. 1984–056, and the issuance of an original license for the Prairie du Sac Project No. 11162–002. The two projects are located on the lower Wisconsin River in Dane, Sauk, Columbia, Adams, Juneau, and Wood Counties, Wisconsin.

In the December 31, 1996, Federal Register, the Commission published a notice of its intent to prepare an EA for the above listed projects.

Scoping Meetings

FERC staff will conduct two public scoping meetings and one agency scoping meeting. The public scoping meetings are primarily for public input while the agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns. All interested individuals, organizations, and agencies are invited to attend one or all of the meetings, and assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Public Scoping Meeting 1, Tuesday March 4, 1997, 7:00 p.m. to 10:00 p.m., Prairie du Sac Village Hall, 280

Washington Street, Prairie du Sac, WI 53578
Public Scoping Meeting 2, Thursday March 6, 1997, 7:00 p.m. to 10:00 p.m., Adams-Columbia Electric Cooperative, 401 E. Lake Street, Friendship, WI
Agency Scoping Meeting, Friday March 7, 1997, 8:30 a.m., Holiday Inn, 655 Frontage Road—Exit 87, Wisconsin Dells, WI 53965

To help focus discussions, a preliminary scoping document (Scoping Document 1) outlining subject areas to be addressed at the meeting will be distributed by mail to the parties on the FERC mailing list for each project. Copies of Scoping Document 1 will also be available at the scoping meetings.

Site Visits

Site visits will be held at the two projects; anyone with questions regarding the site visits should contact the appropriate contact person below. All participants must furnish their own transportation. The date and time of the site visits are as follows:

Date/Time	Project/Dev.	Contact
Monday March 3, 1997, 2:00 p.m.	Prairie du Sac	Linda Hinseth, WPLCo, (608) 252–3341.
Tuesday March 4, 1997, 8:30 a.m.	Prairie du Sac	Linda Hinseth, WPLCo, (608) 252–3341.
Wednesday March 5, 1997, 8:30 a.m.	Castle Rock Development	Dick Hilliker, WRPCo, (715) 422–3722.
Thursday March 6, 1997, 8:30 a.m.	Petenwell Development	Dick Hilliker, WRPCo, (715) 422–3722.

The location of the site visits will be as follows:

Project/Dev.	Location
Prairie du Sac	Wisconsin Power and Light Co. Prairie du Sac Dam Site Directions: From STH 78, turn east on Dam Road, continue east to project site.
Castle Rock	Castle Rock Development Dam Site Wisconsin River Power Co. Directions: From CTH Z, travel west on Edgewood Dr. to dam access road, continue west to project site.
Petenwell	Petenwell Development Dam Site Wisconsin River Power Co. Directions: From STH 21, travel north on 18th Ave., to dam access road, continue north to project site.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the planned EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the relative depth of analysis for issues to be addressed in the EA; and (5) identify resource issues that are of lesser importance, and, therefore, do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the projects under consideration. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record. Speaking time for attendees at the evening meetings will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be field with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. All such filings should conform with the requirements outlined in detail in Scoping Document 1.

For further information, please contact Frank Karwoski of (202) 219–2782.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4125 Filed 2–19–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5691–4]

Request for Comments: Implementation of the Oil Pollution Act Facility Response Plan Requirements; Agency Information Collection Activities up for Renewal (OMB Control Number: 2050–0135)

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 21, 1997.

ADDRESSES: Oil Program Center, 401 M Street SW (5203G), Washington, DC 20460. Materials relevant to this ICR may be inspected by visiting Public Docket No. SPCC–5, located at 1235 Jefferson Davis Highway (ground floor), Arlington, Virginia. The docket is available for inspection between 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. Appointments are necessary and can be made by calling (703) 603–9232. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Bobbie Lively-Diebold, (703) 356–8774. Facsimile number: (703) 603–9116. Electronic address:

lively.barbara@epamail.epa.gov. Note that questions, but not comments, will be accepted electronically.

SUPPLEMENTARY INFORMATION:

Affected Entities

The Oil Pollution Prevention regulation (40 CFR Part 112) applies only to non-transportation-related fixed facilities that could reasonably be expected to discharge oil into or upon the navigable waters of the U.S. or adjoining shorelines, and that have: (1) a total underground buried storage capacity of more than 42,000 gallons; or (2) a total aboveground oil storage capacity of more than 1,320 gallons, or an aboveground oil storage capacity of more than 660 gallons in a single container. All such facilities are required to conduct an initial screening to determine whether they are required to develop a facility response plan in accordance with the regulation.

Only those facilities that could cause ''substantial harm'' to the environment must prepare and submit a response plan. A facility is screened as ''substantial harm'' if one or both of the following criteria are met:

(1) The facility has a total oil storage capacity greater than or equal to 42,000 gallons and transfers oil of any kind over water to or from vessels; or

(2) The facility's total oil storage capacity is greater than or equal to one million gallons, and any of the following is true:

- The facility is located at a distance such that an oil discharge from the facility could shut down a public drinking water intake; or
- The facility is located at a distance such that an oil discharge from the facility could cause injury to fish and wildlife and sensitive environments, as described in Appendices I, II, and III of the Department of Commerce (DOC) Guidance for Facility and Vessel Response Plans; or
- At least one tank at the facility does not have adequate secondary containment; or
- The facility has had a reportable oil spill greater than or equal to 10,000 gallons within the last five years.

In addition, the Regional Administrator (RA) has the authority to require any facility subject to the Oil Pollution Prevention regulation to prepare a response plan.

The specific private industry sectors subject to this action include but are not limited to: (1) Petroleum Bulk Stations and Terminals (SIC 517); (2) Oil and Gas Extraction (SIC 13); (3) Trucking and Warehousing (SIC 42); (4) Electrical Utility (SIC 49); (5) Commercial/Institutional Building (SIC 651); (6) Fuel Oil Dealers (SIC 598); and (7) Miscellaneous Manufacturing (SIC 20–39).

Title

Implementation of the Oil Pollution Act Facility Response Plan Requirements, OMB Control Number: 2050–0135. EPA Control Number: 1630.03. Expiration Date: July 31, 1997.

Abstract

The authority for EPA's response plan requirements is derived from Section 311 of the Clean Water Act as amended by the Oil Pollution Act of 1990 (OPA). EPA's regulation, which is codified at 40 CFR 112.20, requires that owners and operators of facilities that could cause ''substantial harm'' to the environment by discharging oil into navigable water bodies or adjoining shorelines prepare plans for responding, to the maximum extent practicable, to a worst case discharge of oil, to a substantial threat of such a discharge, and, as appropriate, to discharges smaller than worst case discharges.

Each facility response plan is submitted to EPA. The Agency, in turn, reviews and approves plans from facilities identified as having the potential to cause ''significant and substantial harm'' to the environment from oil discharges. Other low-risk, regulated facilities that are not required to prepare facility response plans are required to document their determination that they do not meet the ''substantial harm'' criteria.

Facility response plans enhance EPA's ability to protect navigable waters and sensitive environments when oil discharges occur and reduce the cost of spills to the regulated community and society. Response plans reduce such costs by ensuring that discharges are controlled and cleaned up swiftly and efficiently. Facilities that are prepared to respond to incidents are more likely to contain the spread of a spill before it reaches navigable waters and to mitigate the effects of a spill on the environment. In an emergency, On-Scene Coordinators, local emergency response officials such as fire chiefs, and outside oil spill response contractors may consult a facility's response plan.

None of the information to be gathered for this collection is believed to be confidential. The specific activities and reasons for the information collection are described below.

Initial Screening and Certification

Only those facilities regulated under the Oil Pollution Prevention regulation that could cause ''substantial harm'' to the environment must prepare and submit response plans. Owners or operators of all facilities subject to the Oil Pollution Prevention regulation must familiarize themselves with the rule to determine whether their facility meets the ''substantial harm'' criteria. Under § 112.20(e), facilities that do not meet the ''substantial harm'' criteria must document this determination by completing the ''Certification of Substantial Harm Determination Form,'' provided in Appendix C of the regulation.

Response Plan Development

Under § 112.20(a), facilities that meet the ''substantial harm'' criteria must prepare and submit to EPA a response plan. Preparation of a response plan involves several tasks conducted by the facility's technical staff and/or hired contractors. Facility personnel must use background information such as the location, quantities, and types of material stored and a geographic description of the site (maps, schematic diagrams, latitude and longitude) available from the facility's Spill Prevention, Control, and Countermeasure Plan required by 40 CFR Part 112). The response plan also must include a discussion of detection and notification procedures at the facility as well as a list of response equipment. A facility must designate a qualified individual to serve as the facility response coordinator who will have full authority to implement and terminate response actions. Roles and responsibilities of other members of the response team (both company responders and outside parties) also must be clearly established. A facility may wish to enter into an arrangement with an outside response contractor. If so, that response contractor's role must be clearly defined.

To develop a response plan, the facility performs a hazard analysis, which involves identifying potential hazards based on facility background information, determines the vulnerability of the surrounding area given the hazard, and assesses the risk of a release. The results of the hazard analysis are used to develop spill scenarios. For one scenario, the facility calculates the volume of a worst case discharge and develops an effective response to such a discharge. All aspects of an effective response must be included in the response plan, including containment, countermeasure, and mitigation procedures for different types of incidents, and the provision for proper cleanup and disposal of contaminated material.

Response Plan Maintenance

Under § 112.20(g), facilities must periodically review their response plans to ensure consistency with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and Area Contingency Plans (ACPs). Consequently, owners or operators who have prepared response plans must review relevant portions of the NCP and the applicable ACPs annually and update their facility response plan as appropriate.

Regulated facilities also are required to perform periodic drills and exercises in order to test the effectiveness of their response plan. Under § 112.20(h)(8), facility response plans must include information about facility self-inspection, drills/exercises, and response training, including descriptions of training and drill/exercise programs and documentation of tank inspections, equipment inspections, response training meetings, response training sessions, and drills/exercises. Consequently, facility response plans may be revised based on evaluations of the facility drills and exercises.

In addition, under § 112.20(d)(1), the owner or operator of a facility determined to have the potential to cause ''significant and substantial harm'' to the environment must resubmit revised portions of their response plan after each material change. Material changes include changes in the amount or location of oil storage, changes in spill prevention equipment and capabilities, and other changes that affect the potential for a discharge to cause ''significant and substantial harm'' to the environment.

Recordkeeping

Facilities subject to the Oil Pollution Prevention regulation, which determine that the response planning requirements under 40 CFR 112.20 do not apply to their facility, must certify and maintain a record of this determination. Facilities that are subject to the response planning requirements at 40 CFR 112.20 are required to maintain the response plan at the facility. The determination of applicability and the preparation of a response plan are one-time activities. Facilities with response plans also are required to maintain updates to the plan to reflect material changes to the facility and to log activities such as discharge prevention meetings, response training, and drills and exercises.

Purpose of Data Collection

The primary user of the facility response plan will be the facility. Facility-specific response plans will help facility owners and operators develop a response organization or identify the necessary resources to adequately respond to an oil spill in a timely manner. Successful plans will be scenario-based and developed by the preparation of risk analyses of the areas in question; identification of several scenarios that require different levels of response; development of strategies to respond to each scenario; and identification and provision of resources necessary to respond to each scenario. If implemented effectively, the plans will reduce the impact and severity of oil spills and may prevent spills due to the identification of risks at the facility.

EPA reviews and approves response plans for those facilities whose discharges may cause ''significant and substantial harm'' to the environment in order to ensure that facilities believed to pose the highest risk have adequate resources and procedures in place to respond to a spill. EPA conducts two type of reviews for response plans submitted by ''significant and substantial harm'' facilities. First, EPA performs initial reviews of response plans submitted by ''significant and substantial harm'' facilities that are: newly-constructed (i.e., come into existence after the effective date of the regulation); existing facilities that become subject to the response plan requirements as the result of a change in operations (after the effective date of the regulation); and facilities newly-designated by the Regional Administrator as ''significant and substantial harm.'' Second, EPA is required to periodically review the response plans of ''significant and substantial harm'' facilities that already have submitted a response plan to the Agency, provided that the period between plan reviews does not exceed five years. The Agency will require amendments to any response plan that does not meet the requirements.

EPA also will use the facility-specific information provided in the response plans to continue to update ACPs as required by the OPA. Certain plan information, such as provisions for adequate response capability to respond to a worst case discharge, will help EPA and other government agencies to better understand the distribution and capacity of the response contractor industry and more appropriately allocate government resources to complement existing private-sector capacity.

Regional, State and local response authorities also will benefit from information contained in facility response plans. Area Committees, which are established under OPA section 4202(a), may make use of the facility response plans in the preparation and update of ACPs. Local Emergency Planning Committees (LEPCs) under the direction of the State Emergency Planning Committee (SERC) also can use facility-specific information to help develop local contingency plans required under SARA Title III Community Right-to-Know provisions. Once information contained in the response plans is made available, local and Regional response authorities will better understand the potential hazards and response capabilities in their area, thus reducing risk to the community.

Burden Statement

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide the information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems to collect, validate, and verify information, process and maintain information, and disclose and provide information; adjust methods to comply with any new requirements and instructions; 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.

This notice provides the Agency's estimated burden to facilities to perform the required actions under 40 CFR 112.20. The burden to regulated facilities is estimated in terms of the time (hours) spent by facility and other personnel to review the rule, conduct an initial screening to determine if plan preparation is required and, if necessary, prepare and maintain facility response plans. The Agency developed the burden hours estimates for facilities based on consultations with facility engineers familiar with Oil Pollution Prevention compliance and with EPA Regional staff involved directly with the implementation of the program. The burden hours calculated for each action are taken from the current ICR and EPA anticipates using these burden hour estimates in the ICR renewal. The Agency is soliciting public comment on these burden estimates.

In calculating the burden on all facilities subject to the response plan requirements, EPA uses a model-facility approach to characterize the diverse nature of regulated facilities. For purposes of this ICR, facilities are categorized according to size and type of facility operations. EPA's size categories are based on the oil storage capacity

categories provided in the Agency's ''Spill Prevention, Control, and Countermeasure Facilities Study'' (January 1991), which are defined as follows: (1) Small facility—total aboveground storage capacity greater than 1,320 gallons (or 660 gallons in a single tank) but less than or equal to 42,000 gallons; (2) Medium facility—total aboveground or underground storage capacities greater than 42,000 gallons but less than or equal to one million gallons; and (3) Large facility—total storage capacity greater than one million gallons. The current ICR also classifies facilities into three additional categories based on how oil is used at the facility: consumption of oil as a raw material or end-use product (storage/consumption); marketing and distribution of oil as a wholesale or retail good (storage/distribution); or pumping oil from the ground as part of exploration or production activities (production).

Exhibit 1 provides EPA's estimate of burden hours for facilities to read the regulation, make a determination of whether the response planning requirements apply to their facility, and complete the certification form as necessary. This is a one time event for a facility regulated by the Oil Pollution Prevention regulation.

EXHIBIT 1—BURDEN HOURS TO READ RULE, MAKE DETERMINATION, AND COMPLETE CERTIFICATION

Size category of facility	Hours required			
	Management	Technical	Clerical	Total
Small	0.25	0	0	0.25
Medium	1	0	0.5	1.5
Large	2	4	0.5	6.5

Most regulated facilities already have made this one-time determination. The burden hour estimates include facility personnel in the following labor categories: management, technical, and clerical.

Exhibits 2 and 3 provide the Agency's estimate of the burden hours required to prepare a response plan for medium and large facilities, respectively. Given the screening criteria for ''substantial harm,'' the number of small facilities expected to be required to prepare a facility response plan is assumed to be negligible. Preparation of a response plan is a one-time event for a facility that meets the ''substantial harm'' screening criteria. The burden described in Exhibits 2 and 3 would apply to facilities who have not previously submitted response plans because they are new or recently identified by the RA as being ''substantial harm'' or ''significant and substantial harm'' facilities. The burden hour estimates include facility personnel and consultants in the following labor categories: Management, technical, clerical, foreman, and labor.

Exhibit 4 provides the Agency's estimate of the burden hours required to maintain a response plan (i.e., subsequent year burdens following initial year plan preparation burden) for medium and large facilities. The estimates in Exhibit 4 apply to existing facilites with response plans. The burden hour estimates include facility personnel and consultants in the following labor categories: Management, technical, clerical, foreman, and labor.

EXHIBIT 2—ESTIMATED FIRST-YEAR BURDEN HOURS FOR FACILITIES REQUIRED TO PREPARE FACILITY RESPONSE PLANS: MEDIUM FACILITIES

	Model Facility Category					
	Storage/Consumption		Storage/Distribution		Production	
	Rule familiarization	Facility response plan	Rule familiarization	Facility response plan	Rule familiarization	Facility response plan
Facility Personnel Burden (Hours)						
Management	3.0	16.75	6.0	20.25	3.0	15.75
Technical	6.0	34.5	3.0	39.5	6.0	33.5
Clerical	1.0	7.0	1.0	7.0	1.0	6.0
Foreman	0.0	10.0	0.0	10.0	0.0	10.0
Labor	0.0	16.0	0.0	16.0	0.0	16.0
Contractor Personnel Burden (Hours)						
Management	N/A	13.5	N/A	14.5	N/A	7.5
Technical	N/A	48.0	N/A	53.0	N/A	40.0
Clerical	N/A	9.5	N/A	10.5	N/A	6.5
Unit Burden Subtotal (Hours)	10	155.25	10	170.75	10	135.25
Total Unit Burden	165.25 hours		180.75 hours		145.25 hours	

N/A—Not Applicable.

Recordkeeping—The regulation does not include significant recordkeeping requirements. However, it can be assumed that the clerical labor indicated in this exhibit involves recordkeeping-related activities.

EXHIBIT 3—ESTIMATED FIRST-YEAR BURDEN HOURS FOR FACILITIES REQUIRED TO PREPARE FACILITY RESPONSE PLANS: LARGE FACILITIES

	Model facility category			
	Storage/Consumption		Storage/Distribution	
	Rule familiarization	Facility response plan	Rule familiarization	Facility response plan
Facility Personnel Burden (Hours)				
Management	4.0	30.5	4.0	35.5
Technical	8.0	54.25	8.0	63.25
Clerical	1.0	12.0	1.0	12.0
Foreman	0.0	22.0	0.0	22.0
Labor	0.0	64.0	0.0	64.0
Contractor Personnel Burden (Hours)				
Management	N/A	23.25	N/A	25.25
Technical	N/A	102.0	N/A	128.0
Clerical	N/A	20.0	N/A	21.0
Unit Burden Subtotal (Hours)	13.0	328.0	13.0	371.0
Total Unit Burden	341 hours		384 hours	

N/A—Not Applicable.
Recordkeeping—The regulation does not include significant recordkeeping requirements. However, it can be assumed that the clerical labor indicated in this exhibit involves recordkeeping-related activities.

EXHIBIT 4—ESTIMATED BURDEN HOURS FOR MAINTAINING FACILITY RESPONSE PLANS

	Medium facilities			Large facilities	
	Storage/ consumption	Storage/ distribution	Production	Storage/ consumption	Storage/ distribution
Facility Personnel Burden (Hours)					
Management	7.5	7.5	7.5	9.0	9.0
Technical	18.5	19.5	18.5	21.0	22.0
Clerical	2.0	2.0	2.0	2.0	2.0
Foreman	10.0	10.0	10.0	22.0	22.0
Labor	16.0	16.0	16.0	64.0	64.0
Contractor Personnel Burden (Hours)					
Management	0.0	0.0	0.0	6.0	8.0
Technical	0.0	0.0	0.0	24.0	36.0
Clerical	0.0	0.0	0.0	6.0	8.0
Total Unit Burden (Hours)	54.0	55.0	54.0	154.0	171.0

N/A—Not Applicable.
Recordkeeping—The regulation does not include significant recordkeeping requirements. However, it can be assumed that the clerical labor indicated in this exhibit involves recordkeeping-related activities.

In estimating the total burden of the information collection on the regulated community in the renewal ICR, EPA will calculate the per facility (unit) burden for each model facility category by multiplying the estimated burden hours by the wage rates established for each labor category. EPA then will multiply the unit burden estimates for each model facility category by the total number of affected facilities in that category. The total burden of the information collection on the regulated community will be the sum of the total burden estimates for each model facility category for screening and certification, response plan development, and response plan maintenance activities. Screening and certification and the development of response plans are expected only for new facilities or facilities identified by the RA as being either a ''substantial harm'' or ''significant and substantial harm'' facility. The bulk of facilities required to prepare plans in accordance with 40 CFR 112.20 will be faced only with response plan maintenance activities for the three-year approval period for this ICR renewal.

The hourly rates used in the current ICR, adjusted to 1993 dollars using the Employment Cost Index (ECI), are: $53.49 for management, $36.66 for technical, and $16.72 for clerical labor. The hourly rates for foremen and laborers are based on average wage rates in the construction industry. The rates, which include direct salary and fringe benefits (calculated at 40 percent of direct salary) but do not include any overhead costs are: $30.82 for foreman and $20.55 for laborer. The consultant hourly rates, in 1993 dollars, are: $105.06 for management, $72.00 technical, and $32.85 for clerical labor. In the renewal ICR, EPA will update the labor wage rates for the different labor categories to reflect the Federal government's most current wage rate figures.

EPA also will estimate the number of new facilities subject to the Oil Pollution Prevention regulation that must determine whether the response planning requirements apply to their facilities. Similarly, the Agency will estimate the number of new facilities subject to the requirements that must prepare a response plan. EPA will use these estimates and information on the number of existing facilities that already have submitted response plans to calculate the total burden to the regulated community for maintaining response plans.

EPA anticipates in the renewal ICR that the total burden attributable to the regulation at 40 CFR 112.20 will decrease in part because the Agency believes the current ICR overestimated the number of facilities subject to the response planning requirements at the time the regulation was first promulgated. EPA will adjust the ICR estimates to reflect more accurate information obtained by the Agency during the implementation of the response plan requirements.

The Agency anticipates that the burden on the regulated community for the three-year period 1997–2000 will be less than the burden for the three-year period 1994–1997, because the majority of facilities subject to the Oil Pollution Prevention regulation currently maintain either a certification form or a response plan. As a result, only those facilities previously not subject to the regulation (i.e., facilities that are new, that implement a change in design, such as an increase in oil storage capacity, or that are identified by the RA as a ''substantial harm'' facility) will be required to either complete the certification form or develop a response plan in the upcoming three-year ICR approval period. For such ''newly-regulated facilities,'' the burden attributable to 40 CFR 112.20 may also be lessened because the number of states that require response plans similar to that required under the OPA has increased and because some new facilities may submit a response plan prepared in the Integrated Contingency Plan format. EPA currently is analyzing state requirements to determine the degree of overlap with the response planning requirements under the Oil Pollution Prevention regulation.

As part of the Agency's efforts to reduce the overall paperwork burden on regulated facilities, EPA would like to solicit comments on how the Agency could best reduce the total paperwork burden hours for this rule while maintaining an effective level of environmental protection. EPA also would like to solicit public comments to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed at 40 CFR Part 9. Send comments regarding these matters, or any other aspects of the information collection, including suggestions for reducing the burden, to the address listed above under **ADDRESSES** near the top of this Notice.

Dated: February 13, 1997.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 97–4122 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5690–8]

Agency Information Collection Activities Under OMB Review; Standards of Performance for New Stationary Sources; Automobile and Light Duty Truck Surface Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D), this notice announces that the Information Collection Request (ICR) for Standards of Performance for New Stationary Sources—Automobile and Light Duty Truck Surface Coating Operations—Subpart MM) described below has been forwarded to the Office of Management and Budget (OMB) for review and approval. 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 March 24, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1064.08.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations (Subpart MM) OMB Control No. 2060–0034; EPA ICR No. 1064.08). This is a request for reinstatement, with change, or a previously approved collection for which approval has expired.

Abstract: The Administrator has judged that VOC emissions from automobile and light duty truck surface coating operations cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of automobile and light duty truck surface coating operations must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test. Monitoring requirements specific to automobile and light duty truck surface coating operations consist of monitoring both VOC emissions and incineration temperatures.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

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 29, 1995.

Response to Comments: The American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers (AIAM) jointly filed comments in response to Information Collection Request (ICR) for Standards of Performance for New Stationary Sources—Automobile and Light Duty Truck Surface Coating Operations—Subpart MM). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

A meeting was held on Wednesday, January 8, 1997 at 2:00 p.m. to discuss

the comments of the AAMA and AIAM. At the meeting AIAM represented both organizations.

The majority of comments fell into one of two categories. The first category of comments related to requirements that were the result of other regulations as opposed to requirements specific to the Subpart MM New Source Performance Standard (NSPS). For example, completing an application for Title V is not covered by this ICR because it is not required by Subpart MM. This ICR pertains only to Subpart MM and not other regulations that apply to the auto manufacturing industry.

The second category of comments related to activities undertaken by the industry but not required by the regulation. Comments regarding performance audits, and conducting surveys and studies are examples of activities potentially performed by the industry but they are not required by Subpart MM and therefore not accounted for in the ICR.

As a result of the comments regarding the labor costs, EPA recalculated the tables using the updated labor rates provided by Department of Commerce, Bureau of Labor Statistics January 1996 Employment and Earnings Table.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14.1 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: 45.

Estimated Number of Respondents: 45.

Frequency of Response: 4.

Estimated Number of Responses: 180.

Estimated Total Annual Hour Burden: 2,540.3 hours.

Estimated Total Annualized Cost Burden: $65,250.

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. 1064.08 and OMB Control No. 2060–0034 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 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: February 12, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–4117 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5690–7]

Agency Information Collection Activities Under OMB Review; Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for New Source Performance Standards for Flexible Vinyl and Urethane Coating and Printing described below has been forwarded to the Office of Management and Budget (OMB) for review and approval. 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 March 24, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1175.05.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Flexible Vinyl and Urethane Coating and Printing (OMB Control No. 2060–0073 expiration date 4/30/97; EPA ICR No.1175.05). This is a request for extension of a currently approved collection.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

* * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost * * * and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

In addition, Section 114(a) requires that any owner or operator subject to any Subpart to establish and maintain records, make reports, install, use and maintain monitoring equipment or methods as required, and provide other information as EPA may deem necessary.

In the Administrator's judgment, VOC emissions from flexible vinyl and urethane coating and printing industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the New Source Performance Standards (NSPS) were promulgated for this source category. The NSPS for the Flexible Vinyl and Urethane Coating and Printing Industry were proposed on January 18, 1983, and promulgated on June 29, 1984. These standards apply to each rotogravure printing line used to print or coat flexible vinyl or urethane products, and for which construction, modification or reconstruction commenced after the date of proposal. Volatile organic compounds (VOCs) are the pollutants regulated under this Subpart. The standards restrict the use of inks to those with a weighted average VOC content of less than 1.0 kilogram VOC per kilogram of ink solids, unless the source can otherwise reduce emissions to the atmosphere by 85 percent.

The information requested as part of this rule include one-time-only notifications; records about the initial performance test, changes in the operation of the facility, and exceedences of parameters; and semiannual reports of those exceedances.

Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and note the operating conditions (temperature of exhaust gases, VOC concentrations, and temperature across the catalytic bed) under which compliance was achieved. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

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 08/30/96 (61 FR 45959).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 36.75 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.

Respondents/Affected Entities: Each applicable (modified, etc.) rotogravure printing line printing/coating flexible vinyl or urethane products plant.

Estimated Number of Respondents: 7.

Frequency of Response: 2/per facility/per year.

Estimated Total Annual Hour Burden: 514.5 hours.

Estimated Total Annualized Cost Burden: $21,012.65.

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.1175.05 and OMB Control No. 2060–0073 in any correspondence. Send to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 12, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–4118 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30422A; FRL–5587–9]

Stine Microbial Products; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Blue Circle Liquid Biological Fungicide, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the Federal Register of October 9, 1996 (61 FR 52944; FRL–5397–1), which announced that Stine Microbial Products, 2225 Laredo Trail, Adel, IA 50003, had submitted an application to register the product Blue Circle Liquid Biological Fungicide (File Symbol 63950–A), containing the active ingredient *Burkholderia cepacia* type Wisconsin isolate J82 at 0.6 percent, an active ingredient not included in any previously registered product. The active ingredient concentration was subsequently corrected from 0.6 to 2 percent.

The application was approved on December 24, 1996, as Blue Circle Liquid Biological Fungicide (EPA Registration Number 63950–6), for application to food and nonfood plant and seedling roots.

The Agency has considered all required data on risks associated with the proposed use of *Burkholderia cepacia* type Wisconsin isolate J82, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Burkholderia cepacia* type Wisconsin isolate J82 when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on *Burkholderia cepacia* type Wisconsin isolate J82.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 4, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4194 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30429; FRL–5588–2]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 24, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30429] and the file symbols) to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30429]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Biopesticides and Pollution Prevention Division (7501W), Attn: (Regulatory Action Leader named in each registration), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person: Contact the Action Leader named in each registration at the following office location, telephone number, and e-mail address.

Regulatory Action Leader	Office location/telephone number	Address
Anne Leslie,	Rm. CS15-W46, (703–308–8727); e-mail: leslie.anne@epamail.epa.gov.	Environmental Protection Agency Westfield Building North Tower, 2800 Crystal Drive Arlington, VA 22202
Sheryl Reilly,	Rm. CS15-W29, (703–308–8265); e-mail: reilly.sheryl@epamail.epa.gov.	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 67702–L. Applicant: W. Neudorff GmbH KG, Postfach 1209, An der Muhle 3, D-31860 Emmerthal, Germany. Product name: NEU 1161I. Insecticide. Active ingredients: Canola oil 89.5% and pyrethrins 0.5%. Proposed classification/Use: None. For use on growing crops, house plants, ornamentals, and shade trees and the control of fleas and ticks on pets. (S. Reilly)

2. File Symbol: 67702–A. Applicant: W. Neudorff GmbH KG. Product name: NEU 1161I RTU. Insecticide. Active ingredients: Canola oil 1% and pyrethrins 0.01%. Proposed classification/Use: None. For use on growing crops, house plants, ornamentals, and shade trees and the control of fleas and ticks on pets. (S. Reilly)

3. File Symbol: 67702–U. Applicant: W. Neudorff GmbH KG. Product name: NEU 1160I Vegetable Oil Spray. Insecticide. Active ingredient: Canola oil 96%. Proposed classification/Use: None. For use to control adelgids, aphids, cankerworms, caterpillars, fungus gnats, spider mites, and a variety of other insects on growing crops, house plants, ornamentals, and shade trees. (S. Reilly)

4. File Symbol: 53689–R. Applicant: Great Lakes IPM, Inc., 10220 Church Road NE, Vestaburg, MI 48891. Product name: Rose Chafer Floral Lure. Insect attractant. Active ingredients: Alpha-ionone 45.5% percent and hexanoic acid at 49.0%. Proposed classification/Use: None. For use as an insect attractant to control both male and female Rose Chafer Beetles from attacking a variety of tree fruits, small fruits, ornamental shrubs, flowers, and vegetables. (A. Leslie)

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30429] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in

''ADDRESSES'' at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 6, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4195 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–714; FRL–5589–4]

Abbott Laboratories; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing regulations establishing tolerances for residues of the biochemical pesticide aminoethoxyvinylglycine in or on apples and pears. This notice includes a summary of the petition that was prepared by the petitioner, Abbott Laboratories.

DATES: Comments, identified by the docket control number [PF–714], must be received on or before March 24, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov or by submitting disks. Electronic comments must be submitted either in ASCII format (avoiding the use of special characters and any form of encryption) or in WordPerfect in 5.1 file format. All comments and data in electronic form must be identified by docket control number [PF–714]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. The official record for this rulemaking, as well as the public version described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record, which will also include all comments submitted directly in writing.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. No CBI should be submitted through e-mail. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, Washington, DC 20460, Office location, telephone number, and e-mail address: Crystal Station I, 2800 Crystal Dr., Arlington, VA 22202. (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP–6F4632) from Abbott Laboratories, 1401 Sheridan Road, North Chicago, IL 60064–4000. The petition proposes, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 to establish tolerances for residues of the biochemical pesticide aminoethoxyvinylglycine (AVG) in or on apples and pears at 0.08 part per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. The proposed analytical method is high pressure liquid chromatography (HPLC).

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) (Pub. L. 104–170), Abbott Laboratories included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Abbott Laboratories; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3), EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Abbott Laboratories' Petition Summary

A. Residue Chemistry

1. *Plant metabolism.* AVG signifies the active ingredient *L*-alpha-(2-aminoethoxyvinyl)glycine hydrochloride in its pure form. An alternative nomenclature for AVG is [*S*]-trans-2-amino-4-[2-aminoethoxy]-3-butanoic acid hydrochloride. *N*-acetyl AVG is the primary metabolite of AVG in apples.

2. *Analytical method.* Abbott Laboratories has determined that residues of AVG are not expected in/on apples and pears at detectable levels when orchards are treated at the label use rate and pre-harvest interval. The Limit of Quantitation (LOQ) is 0.075 ppm and the Limit of Detection (LOD) is 0.03 ppm by HPLC analysis. There is no concentrating of residues in the processed commodities (*i.e.*, apple juice or wet apple pomace).

3. *Magnitude of the residue.* In the magnitude of the residue study in apples, the maximum residue at day 0 following treatment at the label use rate was 0.131 ppm. By day 21, there were no quantifiable residues present. The exposure assessments (below) indicate that there will be large margins of exposure (MOEs) from aggregate exposure to AVG. The proposed HPLC method used is deemed adequate by Abbott Laboratories to measure residues and the company argues that no additional analytical method for detecting and measuring residue levels is needed.

B. Toxicological Profile

1. *Acute toxicity.* The acute mammalian toxicological data considered in this proposed tolerance for AVG include: an acute oral toxicity study in rats, an acute dermal toxicity study in rabbits, an acute inhalation toxicity study in rats, a primary eye irritation study in rabbits, a dermal irritation study in rabbits, and a dermal sensitization study in guinea pigs.

The results of these studies indicate that AVG has an acute oral LD_{50} of 6,400

milligrams active ingredient per kilogram of body weight (mg a.i./kg bwt) in rats, an acute dermal LD_{50} greater than 2,000 mg a.i./kg bwt in rabbits, an acute inhalation LD_{50} of 1,130 mg/m^3 in rats, causes slight eye and dermal irritation in rabbits, and is not a dermal sensitizer in guinea pigs.

2. *Genotoxicity.* Abbott Laboratories concludes that AVG was not mutagenic in an Ames *Salmonella* gene mutation assay with or without metabolic activation. The company maintains that there was no mutagenic activity associated with AVG in cultures of mouse lymphoma cells (L5178Y tk ±) with or without metabolic activation. In a rat bone marrow cell micronucleus test *in vivo,* Abbott Laboratories reports that there was no indication that AVG was genotoxic.

3. *Developmental toxicity.* In a developmental toxicity study in rats by oral gavage, a no observable effect level (NOEL) of 1.77 mg a.i./kg bwt/day was determined for both developmental and maternal toxicity.

4. *Subchronic toxicity.* A Reference Dose (RfD) of 0.002 mg a.i./kg bwt/day was derived from a 90–day feeding study in rats in which there was decreased food consumption, body weight and food efficiency (body-weight gain/food consumption), and fatty changes in kidney and liver at dosage levels of 9 mg a.i./kg bwt/day or higher. The NOEL in this study was 2.2 mg a.i./kg bwt/day.

In a 21–day dermal toxicity study in rats, the NOEL was greater than 1,000 mg a.i./kg/day.

In a 28–day dietary immunotoxicity study in rats with a NOEL of 5 mg a.i./kg/day, decreases in several immune response parameters are considered secondary to the decreased food consumption, body weight, and food efficiency in the treated rats.

5. *Reproductive toxicity; chronic toxicity; animal metabolism; metabolite toxicity.* AVG is classified as a biochemical due to its proposed use pattern, its low use rate, and its natural occurrence. Due to the nature of this biochemical pesticide, the requirements for reproductive and chronic toxicity studies as well as animal metabolism and metabolite toxicity have not been triggered in the Tier Toxicity Testing approach.

C. Aggregate Exposure

Dietary exposure—food and drinking water/non-dietary exposure. Expected dietary exposures from residues of AVG would occur through apples, pears, and processed apples and pears. Spray drift may lead to exposure to residues in drinking water. There are no proposed home and garden uses for AVG. AVG is used in a commercial floral preservative. There is no exposure to infants and children through this floral preservative. The only potential exposure from this floral preservative would be dermal exposure.

For estimations of maximum anticipated residues, non-detectable residues were assigned a value one half of the LOD. For the two instances in which residues were detectable on one of the replicates, the full LOD was used. The maximum anticipated residues of AVG were calculated to be 0.018 ppm in the apple raw agricultural commodity.

The processed commodities examined were apple juice and wet apple pomace. Processing factors were calculated from apples without washing prior to processing to provide the highest possible estimate of anticipated residues in the juice and pomace. The mean apple juice processing factor was determined to be 0.8; for wet apple pomace the processing factor was 0.9.

A chronic dietary exposure analysis was conducted for AVG using the anticipated residues in apples for both apples and pears. Residues were rarely detected in field trials conducted at the maximum rate and minimum interval between application and harvest. The anticipated residue of 0.018 ppm represents about half of the LOD.

Low residues are expected in wet apple pomace, so finite residues of AVG are not expected in meat and milk; therefore, these foods were not included in the exposure analysis.

Tap water, non-tap water, and water in commercially prepared food were also included in the analysis. Residue levels in water were assumed to be 0.0012 ppm. This was based upon calculations for airblast application of AVG onto late season trees. It is estimated that a negligible amount of the applied dose could drift into nearby drinking water sources. The following table summarizes the results from the chronic aggregate exposure analysis based upon anticipated residues for the overall U.S. population and the five most highly exposed population subgroups. The exposure estimate was compared against the RfD of 0.002 mg a.i./kg bwt/day:

Population subgroup	Exposure mg a.i./kg bwt	Percent of RfD
U.S. Population	0.000055	2.5
All Infants	0.000206	10.3
Non-nursing Infants < 1 yr.	0.000258	12.9
Children 1–6 yrs	0.000099	5.0
Children 7–12 yrs	0.000077	3.8
Females 13–50 yrs ...	0.000040	2.0

As seen in the above table, even for the most highly exposed population subgroup, less than 13% of the RfD was used.

Chronic aggregate exposure to AVG also was estimated using proposed tolerance-level residues. Exposure was estimated using the same consumption data that were used for the anticipated residue exposure calculation.

The following table summarizes results of the chronic exposure analyses using proposed tolerances for the overall U.S. population and the five most highly exposed population subgroups.

Population subgroup	Exposure mg a.i./kg bwt	Percent of RfD
U.S. Population	0.000111	5.6
All Infants	0.000538	26.9
Non-nursing Infants < 1 yr.	0.000638	31.9
Children 1–6 yrs	0.000324	16.2
Children 7–12 yrs	0.000173	8.7
Females 13+/nursing	0.000133	6.7

An examination of the summary table demonstrates that chronic aggregate exposure represents no more than 32% of the chronic RfD for any population subgroup. These calculations were performed assuming that 100% of the apple and pear crops in the United States would contain AVG residues at tolerance levels. Assuming that 100% of all apple products consumed would contain tolerance-level residues is the worst-case scenario and yields a gross overestimate of dietary exposure.

An acute exposure analysis based upon anticipated residues was conducted using EPA's Tier 2 method with anticipated residues. For blended commodities (*e.g.*, apple juice and pear nectar), the mean anticipated residue level was used. For single serving commodities (*e.g.*, raw apples and pears), the LOQ of 0.075 ppm was used as a worst-case estimate of high end exposure because AVG residues were not quantifiable in the few samples in which residues were detected.

A separate exposure analysis was conducted for infants because baby foods are blended commodities. For these analyses, only raw forms of apples and pears were assumed to be consumed as single servings containing the high-end residue value of 0.075

ppm. All prepared and processed foods were assumed to be blended foods containing the mean anticipated residue of 0.018 ppm. The following table summarizes the exposure analysis at the 95th percentile:

Population subgroup	Exposure mg a.i./kg bwt	MOE
U.S. Population	0.000276	6,510
All Infants	0.000598	3,009
Non-nursing Infants < 1 yr.	0.000551	3,269
Children 1–6 yrs	0.000756	2,381
Children 7–12 yrs	0.000448	4,022
Females 13–50 yrs ..	0.000198	9,091

The MOE of the most highly exposed population subgroup, children 1 to 6 years old, is more than 23–fold higher than a level considered to provide adequate protection.

The acute exposure summary (below) in which proposed tolerance-level residues were used shows that estimated exposures provide adequate MOEs, even at the 95th percentile of exposure. In this analysis, acute exposure was calculated for the entire population rather than for consumers only, a procedure recommended by the EPA in their proposed method for acute dietary risk assessment.

Population subgroup	Exposure mg a.i./kg bwt	MOE
U.S. Population	0.000406	4,432
All Infants	0.002188	823
Non-nursing Infants < 1 yr.	0.002191	822
Children 1–6 yrs	0.001384	1,301
Children 7–12 yrs	0.000663	2,845
Females 13–50 yrs ..	0.000245	7,336

The most highly exposed population subgroup, non-nursing infants, has an estimated MOE of 822, greater than 8–fold higher than a level considered to provide adequate protection.

D. Cumulative Effects

AVG is a structurally unique biochemical pesticide and is a naturally occurring L-α-amino acid. Its proposed mode of action for mammalian toxicity is the inhibition of the enzymeγ-cystathionase. Other agents which inhibit this enzyme include naturally occurring amino acids such as alanine, cysteine, glutamic acid, and homoserine. Given the expected exposure, Abbott Laboratories maintains that inhibition of this enzyme would not occur at levels that would pose a human health risk.

E. Endocrine Effects

Abbott Laboratories reports that there have been no indications of treatment-related effects from AVG to suggest that the pesticide may have an endocrine disruption activity.

F. Safety Determination

1. *U.S. population.* AVG is a naturally occurring amino acid. Based upon expected residues in apples, pears, and water, Abbott Laboratories concludes that there is a reasonable certainty of no harm resulting from aggregate exposure of AVG to the general population.

2. *Infants and children.* The effects demonstrated in the developmental and immune toxicity studies are considered secondary to the adverse effects upon body weight gain, food consumption and food efficiency in the treated rats. These data indicate to Abbott Laboratories that AVG is not a developmental or immunological toxicant, and that infants and children are not sensitive subpopulations. The company concludes that there is a reasonable certainty that no harm will result from aggregate exposure of AVG to infants and children.

G. International Tolerances

There are no Codex maximum residue levels established for residues of AVG on apples or pears.

Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Abbott Laboratories concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of AVG, including all anticipated dietary exposure and all other non-occupational exposures.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notation indicating the docket control number [PF–714].

A record has been established for this notice under docket control number [PF–714] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping.

Authority: 21 U.S.C. 346a.

Dated: February 10, 1997.

Janet L. Anderson,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4114 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–F

[PF-709; FRL–5588–5]

Good Bugs, Inc.; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of a temporary exemption from the requirement of the tolerance for residues of Burkholderia (pseudomonas) cepacia strain AMMD in or on American ginseng, carrots, peas, potatoes, snap beans, supersweet and sweet corn, tomatoes, and turf in California, Florida, Illinois, Minnesota, Missouri, Ohio, Washington, and Wisconsin for the 1997-1999 growing seasons. The summary of the petition was prepared by the petitioner, Good Bugs, Inc.

DATES: Comments, identified by the docket control number [PF-709], must be received on or before March 24, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Crystal Mall #2, Room

1132, 1921 Jefferson Davis Highway, Arlington, VA. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket control number [PF-709]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Teung F. Chin c/o (PM 90), Regulatory Action Leader, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, 703-308-1259, e-mail: chin.teung@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition [PP–7G4796] from Good Bugs, Inc., P.O. Box 939, New Glarus, WI 53574, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a temporary exemption from the requirement of a tolerance for residues of the microbial pesticide, Burkholderia (pseudomonas) cepacia strain AMMD in or on the raw agricultural commodities American ginseng, carrots, peas, potatoes, snap beans, supersweet and sweet corn, tomatoes, and turf. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Good Bugs Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Good Bugs Inc. and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

I. Petition Summary

A. Proposed Use Practices

1. Foliar applications of Burkholderia (pseudomonas) cepacia strain AMMD for potatoes, carrots, tomatoes, and turf will be at the rate of 4 oz/acre/application, 20 applications per acre per year. In Wisconsin, 20 acres of potatoes will be treated in 1997, 100 acres in 1998, and 500 acres in 1999; 5 acres of carrots will be treated in 1997, 10 acres in 1998, and 10 acres in 1999; 10 acres of turf will be treated in 1997, 100 acres in 1998, and 100 acres in 1999. In Minnesota, 20 acres of turf will be treated in 1997, 100 acres in 1998, and 100 acres in 1999. In California, 10 acres of carrots will be treated in 1998 and 10 acres in 1999; 100 acres of potatoes will be treated in 1998 and 100 acres in 1999; 100 acres of tomatoes will be treated in 1998 and 100 acres in 1999. In Ohio, 5 acres of tomatoes will be treated in 1997, 20 acres in 1998, and 20 acres in 1999; 5 acres of turf will be treated in 1997, 100 acres in 1998, and 100 acres in 1999. In Florida, 10 acres of potato will be treated in 1997, 100 acres in 1998, and 100 in 199; 5 acres of tomatoes will be treated in 1997, 100 acres in 1998, and 100 in 1999; 5 acres of turf will be treated in 1997, 100 acres in 1998, and 100 acres in 1999. In Missouri, 5 acres of turf will be treated in 1997, 100 acres in 1998, and 500 acres in 1999. For foliar applications on American ginseng, 4 oz/acre/application, 12 applications/acre/year will be applied in Wisconsin on 4,000 acres in 1997, 1998, and 1999.

2. For seed treatment of peas and sweet corn, the rate of application is 3 oz. per 100 lbs of seed, for snap beans 2 oz. per 100 lbs of seed and for supersweet corn, 4.5 oz. per 100 lbs of seed. In Wisconsin, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of snap beans will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of sweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Minnesota, 5 acres of peas will be treated in 1997, 50 in 1998, and 200 in 1999; 5 acres of snap beans will be treated in 1997, 50 acres in 1998, and 200 in 1999; 5 acres of sweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Illinois, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 199 9; 5 acres of sweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Washington, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 1999.

B. Product Identity/Chemistry

1. Burkholderia (pseudomonas) cepacia strain AMMD was originally isolated from the rhizosphere of a pea plant. The cells of this strain are gram negative, aerobic, rod shaped and produce poly-beta-hydroxybutyrate granules intracellularly. Colonies are convex and white, but eventually become crenulated on nutrient broth yeast extract agar plates. Two colony morphologies, smooth and rough are present. Fluorescent pigments are not produced on King's Medium B. The species Burkholderia (pseudomonas) cepacia was first identified using gas chromatography fatty acid (GC-FAME) analysis.

2. Burkholderia (pseudomonas) cepacia strain AMMD residues are not anticipated at the time of harvest by Good Bugs, Inc. Treatment of aerial plant parts and seeds are the only uses for this proposed microbial pesticide. Residues from seed treatments are not expected as the bacteria does not grow systemically in the plant. The above ground parts of potatoes, American ginseng, and carrots are not eaten. Based on conducted studies, Good Bugs, Inc. believes that strain AMMD does not survive well in the phyllosphere. Populations were no longer detectable 4 days after spray application to snap bean leaves and flowers. An enforcement method for residues is not needed to protect human health.

3. Good Bugs, Inc. believes that an analytical method for detecting and measuring the levels of this microbial pesticide residue is not needed to protect human health due to lack of signficant exposure.

C. Mammalian Toxicological Profile

Good Bugs, Inc. believes that acute oral limit toxicity testing of Burkholderia (pseudomonas) cepacia strain AMMD showed no evidence of toxicity or pathogenicity in rats dosed

once by oral gavage with strain AMMD. Normal weight gains were observed in all test animals during the observation period. No lesions were observed in any test animal. A waiver for genotoxicity, reproductive and developmental toxicity, subchronic toxicity, and chronic toxicity is requested. This testing is not generally required for microbial pesticides and the lack of toxicity along with the lack of exposure does not warrant such testing.

D. Aggregate Exposure

1. *Dietary exposure.* The species Burkholderia (pseudomonas) cepacia is a common inhabitant of soils, plant surfaces, and fresh water. Good Bugs, Inc. believes that use of this microbial pesticide as outlined is not expected to increase dietary exposure via food or water consumption. Transfer of the microbial pesticide to drinking water is unlikely due to the low survivability of the organism in the environment. Any low levels of oral exposure that may occur would not be harmful due to the lack of mammalian toxicity.

2. *Non-dietary exposure of Burkholderia (pseudomonas) cepacia strain AMMD.* Good Bugs, Inc. believes that treatment of turf as outlined in the experimental plan will be on limited acreage and, due to the low survivability of the organism, exposure will be minimal.

3. *Worker exposure via dermal exposure or inhalation.* Good Bugs, Inc. believes that worker exposure will be minimized by the label requirements of long-sleeved shirt, long pants, gloves, and the wearing of a respirator.

E. Cumulative Exposure

Biological control agents of this type generally work by outcompeting the disease organisms, therefore, not having a toxic mode of action that can be shared. However, other exposure can occur since another strain of Burkholderia (pseudomonas) cepacia is already registered with the Agency. Good Bugs, Inc. believes that since the Agency has registered this other strain and granted an exemption from tolerance, this added exposure does not present a hazard to human health in and of itself and thus does not add to cumulative exposure.

F. Safety Determination

1. Good Bugs, Inc. believes the safety of the U.S. population and that of infants and children will not be adversely affected by the use of Burkholderia (pseudomonas) cepacia strain AMMD. Strain AMMD was originally isolated from the rhizosphere of a pea and strains of Burkholderia (pseudomonas) cepacia are widely distributed in nature and are readily isolated from soil, fresh water, and plant roots and leaves. Strain AMMD does not survive well in the phyllosphere and cannot be detected after 4 days.

2. Some strains of Burkholderia (pseudomonas) cepacia are infectious to individuals with cystic fibrosis or compromised immune systems. Some strains of Burkholderia (pseudomonas) cepacia can also cause skin infection of feet known as swamp rot. In addition, this bacterium has been isolated from nosocomial sources such as contaminated indwelling medical devices and antiseptic solutions. Good Bugs, Inc. believes that because of the importance of these clinical strains, it is critical that Burkholderia (pseudomonas) cepacia strain AMMD is distinguished from other strains. Two recent studies have determined that plant associated strains are distinct from clinical isolates. Molecular phyllogenetic studies based on deoxyribonucleic acid (DNA)-DNA and DNA-ribosomal ribonucleic acid (RNA) hybridization of 150 isolates have identified 4 genomovars of Burkholderia (pseudomonas) cepacia. All cystic fibrosis isolates cluster in genomovar III; while environmental isolates (including phytopathogenic type strain) belong to genomovar I.

G. Existing Tolerances

1. A tolerance exemption for Burkholderia (pseudomonas) cepacia, Wisconsin isolate/strain M36 (a.k.a. Blue Circle Inoculant), was granted in 1992 by EPA.

2. It is not known if any international tolerance exemptions exist.

II. Public Record

Interested persons are invited to submit comments on the this notice of filing. Comments must bear a notation indicating the docket control number, [PF-709].

A record has been established for this notice under docket control number [PF-709] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this notice.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 6, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4115 Filed 2–19–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Revised Policy Statement on ''Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies''

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of revised policy statement.

SUMMARY: The Task Force on Supervision, acting under delegated authority from the Federal Financial Institutions Examination Council (FFIEC), has revised the policy statement on ''Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies'' dated December 18, 1979, and is recommending that the FFIEC member agencies adopt and implement the updated policy statement. The revised policy statement entitled ''Interagency Notification and Coordination of Enforcement Actions by the Federal Bank Regulatory Authorities'' appears below.

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT:

FDIC: Daniel E. Austin, (202/898–6774) Review Examiner, Special Situations & Applications Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

FRB: Nancy Oakes, (202/452–2743), Senior Attorney, Enforcement Section, Division of Banking Supervision & Regulation, Board of Governors of the Federal Reserve System, 20th & C Streets, NW, Washington, DC 20551.

OCC: Carolyn Amundson, (202/874–5371), Senior Attorney, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Scott Albinson, (202/906–7984), Special Assistant to the Executive Director for Supervision, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

The text of the Revised Policy Statement follows:

Revised Policy

Any federal banking regulatory agency that proposes to take a formal enforcement action against any federally regulated financial institution or any institution-affiliated party shall notify in writing the other federal banking regulatory agencies and, where appropriate, a state supervisory authority prior to or at the initiation of such action. For the purposes of interagency notification, an enforcement action is initiated when the appropriate responsible agency official, or group of officials, determines that formal enforcement action should be taken. All notifications to other federal banking regulatory agencies shall be made to a designated contact person or persons as specified by each agency.

When there is an affiliation or other inter-institutional relationship, any federal banking regulatory agency that proposes to take an informal enforcement action against any federally regulated financial institution or institution-affiliated party shall notify in writing the other appropriate federal banking regulatory agencies and, where appropriate, a state supervisory authority prior to or at the initiation of such action.

In the event that complementary action (e.g., action involving a bank and its parent holding company, or a U.S. branch or agency and a foreign bank) is considered appropriate by two or more federal banking regulatory agencies, the preparation, processing, presentation, service, and follow-up of the enforcement action shall be coordinated by the agencies directly involved.

The purpose of these procedures is to encourage notification to appropriate federal and state bank regulatory authorities at the earliest practicable date. These procedures are not intended to preclude or forestall any federal banking regulatory agency from initiating an enforcement action alone and on a timely basis against an institution or institution-affiliated party for which it has primary supervisory jurisdiction.

Dated: February 13, 1997.

Joe M. Cleaver,

Executive Secretary/Federal Financial Institutions Examination Council.

[FR Doc. 97–4085 Filed 2–19–97; 8:45 am]

BILLING CODE OCC: 4810–33–P (25%); FRB: 6210–01–P (25%); FDIC: 6714–01–P (25%); OTS: 6720–01–P (25%)

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Bank of New York Company, Inc., New York, New York; to acquire 9.9 percent of the voting shares of State Street Boston Corporation, Boston, Massachusetts, and thereby indirectly acquire State Street Bank and Trust Company, Boston, Massachusetts.

In connection with this application, Applicant also has applied to acquire State Street Boston Securities Services Corp., Boston, Massachusetts, and thereby indirectly acquire Investors Fiduciary Trust Company, Kansas City, Missouri, and thereby engage in performing functions or activities that may be performed by a trust company, pursuant to § 225.25(b)(3) of the Board's Regulation Y; State Street Global Advisors, Inc., Dover, Delaware, and thereby indirectly acquire State Street Global Advisors, United Kingdom Limited, London, England, State Street Unit Trust Management Limited, London, England, and Boston Esquiserve, L.P., Canton, Massachusetts, and thereby engage in acting as an investment or financial advisor, pursuant to §§ 226.25(b)(4)(ii) and (b)(4)(iii) of the Board's Regulation Y; Boston Financial Data Services, North Quincy, Massachusetts, and thereby indirectly acquire National Financial Data Services, Kansas City, Missouri, CFDS Limited, Toronto, Ontario, Canada, CFDS Investors Services Limited, Toronto, Ontario, Canada, European Financial Data Services, Luxembourg, Princeton Financial Systems, Princeton, New Jersey, Bridge Financial Systems, Inc., St. Louis, Missouri, and Dunai Financial Services PTY Limited, Melbourne, Australia, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted worldwide.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. 1st United Bancorp, Boca Raton, Florida; to acquire 100 percent of the voting shares of Island National Bank and Trust Company, Palm Beach, Florida.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. TCF Financial Corporation, Minneapolis Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of TCF National Bank Minnesota, Minneapolis, Minnesota, a *de novo* bank; TCF National Bank Illinois, Chicago, Illinois, a *de novo* bank; TCF National Bank

Wisconsin, Milwaukee Wisconsin, a *de novo* bank; Great Lakes National Bank Michigan, Ann Arbor, Michigan, a *de novo* bank; Great Lakes National Bank Ohio, Hamilton, Ohio, a *de novo* bank; TCF Colorado Corporation, Englewood, Colorado, a bank holding company; by acquiring TCF National Bank Colorado, Englewood, Colorado, a *de novo* bank.

In connection with this application, Applicant also has applied to acquire TCF Securities, Inc., St. Paul, Minnesota, and thereby engage in offering securities brokerage services involving mutual funds shares and related investment advisory activities, pursuant to §§ 225.25 (b)(4) and (b)(15) of the Board's Regulation Y.

In addition to this application, TCF Colorado Corporation, Englewood, Colorado, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of TCF National Bank Colorado, Englewood, Colorado, a *de novo* bank.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. ANB Bancshares, Inc., Gonzales, Texas, and ANB Nevada Group, Inc., Carson City, Nevada; to become bank holding companies by acquiring 100 percent of the voting shares of American National Bank, Gonzales, Texas.

Board of Governors of the Federal Reserve System, February 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4154 Filed 2-19-97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 17, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. NationsBank Corporation, Charlotte, North Carolina, and NB Holdings Corporation, Charlotte, North Carolina; to retain 7.98 percent of the voting shares of Calvin B. Taylor Bankshares, Inc., Berlin, Maryland, and thereby indirectly retain Calvin B. Taylor Banking Company of Berlin, Maryland, Berlin, Maryland.

In connection with this application, Applicants have also applied to retain 13.03 percent of the votings shares of First Perry Bancorp, Inc., Pinckneyville, Illinois, and thereby indirectly retain First National Bank in Pinckneyville, Pinckneyville, Illinois.

In addition to this application, Applicants have also applied to retain 15.43 percent of the voting shares of The First National Bank in Falfurrias, Falfurrias, Texas.

In addition to this application, Applicants have also applied to retain 15.52 percent of the voting shares of First National Security Company, De Queen, Arkansas, and thereby indirectly retain Bank of Ashdown, NA, Ashdown, Arkansas; First National Bank of Howard County, Dierks, Arkansas; Citizens National Bank, Nashville, Arkansas; Bank of Waldron, Waldron, Arkansas; American State Bank, Broken Bow, Oklahoma; and First National Bank of De Queen, De Queen, Arkansas.

In addition to this application, Applicants have also applied to retain 15.52 percent of the voting shares of First National Security Company, De Queen, Arkansas, and therby indirectly retain First National Bancshares of Hempstead County, Inc., Hope, Arkansas; First National Bank of Hope, Hope, Arkansas; Bank of Blevins, Blevins, Arkansas; and First National Bank of Lewisville, Lewisville, Arkansas. NationsBank has applied to retain all of these shares held in its fiduciary capacity.

Board of Governors of the Federal Reserve System, February 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4183 Filed 2-19-97; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Crestar Financial Corporation, Richmond, Virginia; to engage *de novo* through its subsidiary, Crestar Securities Corporation, Richmond, Virginia, in underwriting and dealing in certain bank-ineligible securities. *See Citicorp 73 Fed. Res. Bull. 473 (1987) and Chemical 73 Fed. Res. Bull. 731 (1987)*; in acting as agent in the private placement of all types of securities. *See Bankers Trust 75 Fed. Res. Bull. 829 (1989) and J.P. Morgan 76 Fed. Res. Bull. 26 (1990)*; and in buying and selling all types of securities on the order of customers as riskless principal. *See 82 Fed. Res. Bull. 759 (1996).*

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. HPK Financial Corporation, Chicago, Illinois; to acquire Mortgage Service America, Inc., Lombard, Illinois, and thereby engage in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4155 Filed 2-19-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 952–3029]

Splitfire, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposal Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Northbrook, Illinois-based spark-plug marketer from making deceptive claims about the fuel economy, emissions, horsepower, or cost savings gained from using its ''split electrode'' spark plugs and from misrepresenting the results of tests, studies, or research and of testimonials. The complaint accompanying the consent agreement alleges that Splitfire made false or unsubstantiated economy, efficiency, and improved performance claims for its spark plugs.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Laura Fremont, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103 (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Pace (for February 11, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has provisionally accepted an agreement to a proposed consent order from respondent SplitFire, Inc., an Illinois corporation that markets automotive products.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should make final the agreement's proposed order, or withdraw from the agreement and take other appropriate action.

This matter concerns the advertising of SplitFire's ''SplitFire'' spark plug, which has one v-shaped, or ''split'' electrode. The Commission's complaint charges that SplitFire's advertising represented, without a reasonable basis, that use of SplitFire Spark Plugs results in significantly better fuel economy, significantly greater horsepower, and significantly lower emissions than use of either conventional (non split-electrode) spark plugs of platinum-tipped spark plugs. The Commission's complaint also charges that respondent represented, without a reasonable basis, that use of SplitFire Spark Plugs will result in significant cost savings over use of either conventional or platinum-tipped spark plugs.

In addition, the complaint alleges that the company lacked a reasonable basis for its claim that 70% of SplitFire Spark Plugs users achieve a gas mileage increase of from 1 to 6 more miles per gallon. Further, the complaint alleges as false SplitFire's claim that these figures were based on competent and reliable studies or surveys.

Lastly, the Commission's complaint charges that respondent represented, without a reasonable basis, that the testimonials or endorsements from consumers appearing in advertisements and promotional materials for its spark plugs reflect the typical or ordinary experience of members of the public who use SplitFire Spark Plugs.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits SplitFire, Inc., from representing, without competent and reliable scientific evidence, the effect of any motor vehicle product on a vehicle's fuel economy, emissions, or horsepower. Part I also prohibits the company from representing, without competent and reliable scientific evidence, the comparative or absolute cost savings that any motor vehicle product will contribute to or achieve. Part II of the proposed order prohibits respondent, when advertising any motor vehicle product, from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

Part III of the proposed order addresses claims made through endorsements or testimonials. Under Part III, respondent may make such representations if respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representations; or respondent must disclose either what the generally expected results would be for users of the advertised product, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve. The proposed order's treatment of testimonial claims is in accordance with the Commission's ''Guides Concerning Use of Endorsements and Testimonials in Advertising,'' 16 C.F.R. 255.2(a).

Part IV of the proposed order requires respondent to possess adequate substantiation for any representation regarding the performance, benefits, or efficacy of any motor vehicle product.

The proposed order also requires respondent to maintain advertising materials and materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to certain personnel in the company; to notify the Commission of any change in the corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

Under Part IX, the order terminates 20 years from the date of issuance, except under certain specified conditions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–4145 Filed 2–19–97; 8:45 am]

BILLING CODE 6750–01–M

[File No. 962–3118]

Zale Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violation of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Irving, Texas-based jewelry retailer to disclose, clearly and prominently, the nature of the pearl jewelry it sells and would mandate that company stores display consumer information about the definition of natural, cultured, imitation pearls. The complaint accompanying the consent agreement alleges that Zale deceptively advertised its ''Ocean Treasures'' line of limitation pearl jewelry as composed of cultured pearls.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5275.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for February 10, 1997), on the world Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Zale Corporation, (hereinafter ''Zale''). Zale is the largest retailer of fine jewelry products in the United States.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The proposed complaint alleges violations of Section 5 of the Federal Trade Commission Act. This matter focused on Zale's advertisements for the ''Ocean Treasures'' line of imitation pearl jewelry. The advertisements depicted Ocean Treasures earrings, necklaces, rings and pendants, and described them as follows: ''Ocean Treasures Fine Jewelry. Created by nature, enhanced by man.'' The advertisements also included the following statement: ''Zales. The Diamond, semi-precious and pearl store.'' The proposed complaint alleges that, through these depictions and statements, Zale violated Section 5 of the Federal Trade Commission Act by falsely claiming that the Ocean Treasures line of jewelry is composed of cultured pearls.

The Federal Trade Commission recently revised its Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 C.F.R. Part 23, 61 F.R. 27212 (May 30, 1996) (the ''Jewelry Guides''). The previous version of the Guides as well as the revised Guides address various advertising practices in the jewelry industry, including those employed by Zale. See, e.g., § 23.2 (*Misleading Illustrations*); § 23.20 (*Misuse of terms such as ''cultured pearl,'' ''seed pearl,'' ''Oriental pearl,'' ''natura,'' ''kultured,'' ''real,'' ''gem,'' ''synthetic,'' and regional designations*); § 23.19 (*Misuse of the word ''pearl''*); and § 23.18 (*Definitions of various pearls*). These industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. While the Guides are referenced in the complaint, they do not create a separate cause of action.

Part I of the proposed order would require that Zale not represent that imitation pearls are cultured pearls. Part II would prevent Zale from representing that imitation pearl jewelry is or contains one or more pearls unless Zale designates the jewelry as ''artificial,'' ''imitation,'' ''simulated,'' or by some other word or phrase of like meaning. Part III would prevent Zale from representing that cultured pearl jewelry is or contains one or more pearls unless Zale designates the jewelry as ''cultured'' or ''cultivated,'' or by some other word or phrase of like meaning. Part IV would prohibit the company from misrepresenting the composition or origin of any jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls.

Part V of the proposed order would require Zale, for a period of three years, to make available, at each of its stores that sells natural, cultured or imitation pearls, a brief fact sheet entitled ''Your Guide to Pearls.'' This fact sheet briefly defines the differences among the three general categories of pearls.

The proposed order also would require Zale to maintain materials related to its advertising of pearl, cultured pearl, and imitation pearl jewelry. The proposed order would also require Zale to provide a copy of the consent agreement to all employees or representatives with duties affecting compliance with the terms of the order; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–4146 Filed 2–19–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

James B. Boone, Jr., Ph.D., University of Missouri-Columbia: Based upon an investigation conducted by the University of Missouri-Columbia, information obtained by the Office of Research Integrity (ORI) during its oversight review, and Dr. Boone's own admission, ORI found that Dr. Boone, former Research Assistant Professor, Department of Veterinary Biomedical Sciences at the University of Missouri-Columbia, engaged in scientific misconduct by fabricating and falsifying data in biomedical research supported by a grant from the National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH).

Specifically, Dr. Boone fabricated the weights of individual, isolated muscles that, in fact, had not been separated by dissection, and falsely presented unrelated gamma counter results as having been obtained from the same individual muscles. He presented these data to his laboratory director as the results from two experiments that Dr. Boone admitted he did not complete. Dr. Boone committed additional falsifications in conducting research, including presenting: (1) A computer spread sheet that used the above described sets of the fabricated primary data of muscle weights and the falsified gamma counter results to generate false computations of blood flow in separate muscles; (2) A computer spread sheet for the statistical computations of the data from the two sets of fabricated and falsified reduced data; and (3) A histogram derived from the falsified reduced data that showed significant differences in some of the fabricated experimental measurements on individual muscles.

Dr. Boone has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning February 10, 1997:

(1) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which the respondent's participation is proposed or which uses the respondent in any capacity on PHS supported research must concurrently submit a plan for supervision of his duties. The supervisory plan must be designed to ensure the scientific integrity of the respondent's research contribution. The institution must submit a copy of the supervisory plan to ORI.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–4081 Filed 2–19–97; 8:45 am]

BILLING CODE 4160–17–P

Centers for Disease Control and Prevention

State Childhood Lead Poisoning Prevention Grantees Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

NAME: Meeting of State Childhood Lead Poisoning Prevention Grantees.

TIMES AND DATES: 12 p.m.–4:10 p.m., February 24, 1997. 8:30 a.m.–5:30 p.m., February 25, 1997. 8 a.m.–5:10 p.m., February 26, 1997. 8:30 a.m.–11:40 a.m., February 27, 1997.

PLACE: Holiday Inn Select-Atlanta-Decatur Hotel and Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030, telephone 404/371–0204.

STATUS: Open to the public, limited only by space available. The meeting room accommodates approximately 80 people.

PURPOSE: This meeting will provide a forum for childhood lead poisoning prevention coordinators and data administrators to review program progress and discuss prevention issues and concerns. Persons wishing to make written or oral comments at the meeting should notify the contact person listed below, in writing or by phone, no later than close of business February 21, 1997.

Requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

MATTERS TO BE DISCUSSED: Topics to be discussed at this meeting include CDC's proposed revised screening guidelines, establishment of a data system to implement screening guidance, and data recommendations. There will be information presented regarding computer programming and how it relates to data analysis and using data to make decisions. Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Claudette Grant, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F42, Atlanta, Georgia 30341, telephone 770/488–7330, fax 770/488–7335.

Dated: February 13, 1997.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–4139 Filed 2–19–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Office of Planning, Research and Evaluation; Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K, Chapter K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KM, The Office of Planning, Research and Evaluation (OPRE) (60 FR 56606) as last amended, November 9, 1995. This reorganization will establish the Division of Data Collection and Analysis within the Office of Planning, Research and Evaluation.

Amend Chapter KM as follows:

1. Delete KM.00 Mission in its entirety and replace with the following:

KM.00 Mission. The Office of Planning, Research and Evaluation (OPRE) is the principal advisor to the Deputy Assistant Secretary for Policy

and External Affairs and the Assistant Secretary for Children and Families on improving the effectiveness and efficiency of programs designed to make measurable improvements in the economic and social well-being of children and families.

The Office provides guidance, analysis, technical assistance, and oversight to ACF programs and across programs in the agency on: strategic planning aimed at measurable results; performance measurement; research and evaluation methodologies; demonstration testing and model development; statistical, policy and program analysis; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery. The Office also is responsible for the collection, compilation, analysis, and dissemination of data.

The Office oversees and manages the section 1110 and section 1115 social service research programs, including: priority setting and analysis; processing waivers for welfare reform demonstrations; managing and coordinating major cross-cutting, leading-edge studies and special initiatives; collaborating with states, communities, foundations, professional organizations and others to promote the development of children, family focused services, parental responsibility, employment, and economic independence; and providing coordination and leadership in implementing the Government Performance and Results Act (GPRA).

2. Delete KM.10 Organization in its entirety and replace with the following:

KM.10 Organization. The Office of Planning, Research and Evaluation is headed by a Director who reports to the Deputy Assistant Secretary for Policy and External Affairs. The Office is organized as follows:

- Office of the Director (KMA)
- Division of Economic Independence (KMB)
- Division of Child and Family Development (KMC)
- Division of Data Collection and Analysis (KMD)

3. Delete KM.20 Functions in its entirety and replace with the following:

KM.20 Functions. A. The Office of the Director provides direction and executive leadership to OPRE in administering its responsibilities. It serves as principal advisor to the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families on all matters pertaining to: improving the effectiveness and efficiency of ACF programs; strategic planning; performance measurement; program and policy evaluation; research and demonstrations; state and local innovations and progress; collection, analysis, and dissemination of data; and public/private partnership initiatives of concern to the Assistant Secretary for Children and Families. It represents the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families at various planning, research, evaluation and data collection and analysis forums and carries out special Departmental and Administration initiatives.

B. The Division of Economic Independence, in cooperation with ACF income support programs and others, works with Federal counterparts, states, community agencies, and the private sector to understand and overcome barriers to economic independence; promote parental responsibility; and assist in improving the effectiveness of programs that further economic independence.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: strategic planning and performance measurement for economic independence; statistical, policy and program analysis; surveys, research, and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to programs which promote employment, parental responsibility, and economic independence.

The Division analyzes, processes and coordinates Federal review and decision-making for all section 1115 state welfare reform waiver demonstration requests; develops policy-relevant priorities; conducts, manages and coordinates major cross-program, leading-edge research, demonstrations, and evaluation studies; manages and conducts statistical, policy and program analyses on trends in employment, child support payments, and other income supports; and works in partnership with states, communities, and the private sector to promote employment, parental responsibility, and family economic independence.

C. The Division of Child and Family Development, in cooperation with ACF programs and others, works with Federal counterparts, states, community agencies, and the private sector to: improve the effectiveness and efficiency of programs; assure the protection of children and other vulnerable populations; strengthen and promote family stability; and foster sound growth and development of children and their families.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: Strategic planning and performance measurement for child and family development; statistical, policy and program analysis; surveys, research and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Division: Manages the section 1110 social service research budget; develops policy-relevant priorities; conducts, manages and coordinates major cross-program, leading-edge research, demonstration, and evaluation studies; manages and conducts statistical, policy and program analyses on social trends and behaviors which impact child and family well-being; and works in partnership with states, local communities, and the private sector to promote the well-being of children and families.

D. The Division of Data Collection and Analysis is responsible for all aspects of the collection, compilation, analysis, and dissemination of data on selected ACF programs.

The Division develops regulations to implement data collection requirements; designs, develops, implements, and maintains systems for the collection and analysis of data including: Participation rate information, recipient characteristics, administrative data, State expenditures on families, work activities of non-custodial parents, transitional services, and data used in the assessment of State performance.

The Division provides leadership in and coordinates with other ACF and HHS offices and external organizations in the dissemination and use of these data for policy and research purposes. The Division also develops and maintains statistical protocols and manuals for data collection purposes and provides technical assistance in the use of these materials.

Dated: February 13, 1997.

Laurence J. Love,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 97–4182 Filed 2–19–97; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Anti-Infective Drugs Advisory Committee

Date, time, and place. March 5, 1997, 8:30 a.m., Bethesda Ramada, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD, and March 6 and 7, 1997, 8:30 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and III, 8210 Wisconsin Ave., Bethesda, MD. The hotels are in close proximity and have parking available. In addition, there is a public parking garage nearby at 8216 Woodmont Ave.

Type of meeting and contact person. Open public hearing, March 5, 1997, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, March 6, 1997, 8:30 a.m. to 5 p.m.; open committee discussion, March 7, 1997, 8:30 a.m. to 2 p.m.; Ermona B. McGoodwin or Danyiel D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anti-Infective Drugs Advisory Committee, code 12530. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 28, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On the morning of March 5, 1997, the committee will discuss supplemental new drug application (NDA) 50–679/S002 Maxipime® for Injection (cefepime hydrochloride, Bristol-Myers Squibb), in the treatment of febrile episodes in neutropenic patients. In the afternoon of March 5, 1997, and on March 6 and 7, 1997, the committee will discuss the draft guidance document entitled ''Evaluating Clinical Studies of Antimicrobials in the Division of Anti-Infective Drug Products,'' which is currently in the *Draft-Not for Implementation* stage. Copies of this draft guidance document can be obtained 2 weeks before the meeting from the Drug Information Branch, Division of Communications Management (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573, FAX: 301–827–4577. An electronic version of this draft guidance document will be available 2 weeks before the meeting via the World Wide Web. To access the draft guidance document on the Internet, connect to CDER's home page at http://www.fda.gov/cder/guidance.htm.

FDA regrets that it was unable to publish this notice 15 days prior to the March 5, 6, and 7, 1997, Anti-Infective Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Anti-Infective Drugs Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Science Board to the Food and Drug Administration

Date, time, and place. March 13, 1997, 9 a.m. to 3 p.m., Sheraton National Hotel, North Ballroom, 900 South Orme St. (Columbia Pike and Washington Blvd.), Arlington, VA.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 3 p.m.; Susan A. Homire, Office of Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Science Board to the Food and Drug Administration, code 12603. Please call the hotline for information concerning any possible changes.

General function of the board. The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations should notify the contact person before March 3, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, and the names and addresses of proposed participants. Each presenter will be limited in time and not all requests to speak may be accommodated. All written statements submitted in a timely fashion will be provided to the board.

Open board discussion. The Science Board Subcommittee on Toxicology, which has been established to address

issues related to toxicological testing methods, will provide an update on its activities. The Science Board Subcommittee on FDA Research will present a report to the board on a strategy for optimizing the quality and mission relevance of agency research programs.

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. March 14, 1997, 12:30 p.m., National Institutes of Health, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion, 12:30 p.m. to 2 p.m.; open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; Nancy T. Cherry or Denise A. Royster, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Vaccines and Related Biological Products Advisory Committee, code 12388. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person by March 1, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the influenza virus vaccine's formulation for 1997 and 1998.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 12, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–4305 Filed 2–18–97; 11:00 am]

BILLING CODE 4160–01–F

[Docket No. 97N–0042]

Review of the Adverse Event Reporting System for Postmarketing Surveillance; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to provide the pharmaceutical industry and other interested persons with information on the plans, progress, and technical specifications developed under the reengineering of the Center for Drug Evaluation and Research's (CDER's) postmarketing surveillance program. The primary focus of the meeting will be the electronic submission of adverse drug reaction (ADR) reports under the new adverse event reporting system (AERS), which is currently under development as a major component of the reengineering effort.

DATES: The public meeting will be held on Monday, March 17, 1997, from 9:30 a.m. to 5 p.m. There is no registration fee for the meeting. Because space is limited, interested persons are encouraged to register by March 7, 1997.

ADDRESSES: The public meeting will held at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852. Persons interested in attending should fax their registration to Robert Nelson at 301–480–2825. The facsimile should include the participant's name and title; organization name, if any; address; and telephone and fax numbers.

Three weeks prior to the public meeting, a copy of the meeting agenda will be available through CDER's Fax-on-Demand, 301–827–0577 or 800–342–

2722, under the index ''AERS Public Meeting,'' document No. 0510. Information about the meeting will be available via Internet using the World Wide Web (WWW). To connect to the CDER home page, type http://www.fda.gov/cder and go to the ''What's Happening'' section. Also available on the CDER home page is a link to the new AERS home page, which contains a brief summary of the materials that will be discussed at the meeting. Information distributed at the public meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, approximately 10 business days after the meeting at a cost of 10 cents per page.

The agenda will be placed on display, under the docket number found in brackets in the heading of this document, at the Dockets Management Branch (HFA–305), 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert C. Nelson, Food and Drug Administration, Center for Drug Evaluation and Research (HFD–700), 5600 Fishers Lane, Rockville, MD 20857, 301–827–3206.

SUPPLEMENTARY INFORMATION: The primary purpose of FDA's postmarketing surveillance program is to identify potentially serious drug safety problems, focusing especially on newly marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provides, for the first time, the opportunity to collect information on rare, latent, and long-term effects. Reports are obtained from a variety of sources, including patients, treating physicians, foreign regulatory agencies, and clinical investigators. Over 75 percent of the ADR reports that FDA receives are routed from health care practitioners through pharmaceutical companies. The remainder of the reports come directly to FDA through the agency's MedWatch program.

FDA's computerized spontaneous reporting system (SRS) contains 1.4 million ADR reports for human drugs and therapeutic biologics. FDA plans to replace SRS with AERS by September 1997. All SRS historical data will be migrated to AERS. AERS will enable FDA to receive reports from pharmaceutical companies by electronic submission, transmitted data base to data base through standardized pathways. The technical specifications of the AERS computerized system will be described at the public meeting and made available to participants, especially as they relate to the electronic submission of expedited and periodic ADR reports.

FDA has participated in the development of several guidelines by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) that relate to the submission of ADR reports under the AERS system: ''Clinical Safety Data Management: Definitions and Standards for Expedited Reporting'' (E2A); ''Clinical Safety Data Management: Data Elements for Transmission of Individual Case Safety Reports'' (E2B); and ''Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs'' (E2C). In addition, two other guidelines are currently under development by ICH: ''Medical Terminology (MEDDRA)'' (M1) and ''Electronic Standards for the Transfer of Regulatory Information (ESTRI)'' (M2).

At the public meeting, FDA will explain how it intends to incorporate these recommended standards into the requirements for the electronic submission of ADR reports under AERS. The meeting will include a general discussion of CDER's plans to propose revisions to its postmarketing ADR reporting regulations. The goals of this rulemaking are to implement the recommendations in the ICH guidelines and to enhance the quality of ADR reports received by the agency. The agency hopes to familiarize the pharmaceutical industry with the procedures for the electronic submission of ADR reports under AERS so that they are prepared to comply with any revised regulations that may issue as a result of the rulemaking initiative.

Additional information on the technical specifications of the AERS system will be placed on display, as they are available in final form, at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 13, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4161 Filed 2–19–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Form # HCFA–P–15A]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHSS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320, thus causing the disruption of this collection of information, which is essential to the agency's mission of ensuring that beneficiary needs are evaluated and implemented, to the extent possible, in a cost-effective manner. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result if normal clearance procedures are followed. Without this information, HCFA would not be able to properly determine the services needed by beneficiaries or the most cost efficient manner to meet beneficiary needs, possibly resulting in the denial of beneficiary warranted services and a loss of program dollars.

HCFA is requesting that OMB provide a 24-hour review and a 180-day approval. During this 180-day period HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR 1320.5.

1. *Type of Information Collection Request*: Revision of a currently approved collection; *Title of Information Collection*: Medicare Current Beneficiary Survey (MCBS) Round 18; *Form No.:* HCFA–P–15A; *Use:* The MCBS is a continuous, multipurpose survey of a nationally representative sample of aged and disabled persons for Medicare. The survey provides a comprehensive source of information on beneficiary characteristics, needs, and satisfaction with Medicare-related activities. The proposed MCBS revisions will focus on the evaluation of beneficiary informational needs. This information will enable HCFA to better coordinate and integrate its current communication objectives effectively and efficiently; *Frequency:* On occasion; *Affected Public:* Individuals and households; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 16,000.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1325. Written comments and recommendations for the proposed information collections should be faxed to OMB at (202) 395–6974, or sent within 48 hours of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 18, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–4337 Filed 2–19–97; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Alendronate.
Date: February 18, 1997.
Time: 3:00 p.m. - adjournment.
Place: NIAMS Review Branch, 45 Natcher Building, Bethesda, Maryland 20892.
Contact Person: Melvin H. Gottlieb, Ph.D., Natcher Building, 45 Center Drive, Rm 5AS–25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.
Purpose/Agenda: To evaluate and review an individual contract proposal. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this proposal could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: February 13, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4260 Filed 2–14–97; 4:34 pm]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: February 20, 1997.
Time: 8 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Rehana A. Chowdhury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: March 6, 1997.
Time: 2 p.m.
Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Lawrence E. Chaitkin, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–4843.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 13, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4261 Filed 2–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–25]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, 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: April 21, 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: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451—7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Donner Buchet (202) 708–2290 (this is not a toll-free number) for copies of the proposed forms and other available documents.

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).

The 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: Designation of 20 Community Development Corporations for authority to offer tax credits for contributions.

OMB Control Number, if applicable:

Description of the need for the information and proposed use: To assess progress of designated CDCs in accomplishing the program and activities for which they received designation.

Agency form numbers, if applicable:

Members of affected public: Staff of the 20 community development corporations (CDCs).

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

20 CDCs × 5 hours = maximum of 100 hours by respondents annually.

Status of the proposed information collection: 7 years of reporting remaining for 20 CDCs.

Authority: Sections 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 12, 1997.

Howard B. Glaser,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 97–4136 Filed 2–19–97; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4200–N–26]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, 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: April 21, 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: Josie D. Harrison, Reports Liaison Office, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451—7th Street, SW, Room 5124, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Cheryl Kent (202) 708–2333, Extension 348 or (202) 708–1734 (TTY) (these are not toll-free numbers) for copies of the proposed forms and other available documents.

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).

The 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, permitting electronic submission of responses.

OMB Control Number: 25290034.

Description of the need for the information and proposed use:

The information is needed to ensure that HUD's recipients comply with the Section 504 reporting requirements at:

- 24 CFR 8.21(c)(4) and 24 CFR 8.24 (d)—Transition Plans. Recipients must develop transition plans setting forth the steps necessary to complete structural changes that would make their programs and activities accessible to persons with disabilities;
- 24 CFR 8.51—Self Evaluation. Recipients must evaluate their current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of Section 504;
- 24 CFR 8.25(c)—Needs Assessment and Transition Plan. Public/Indian housing authorities must assess the needs of current tenants and applicants on waiting lists for accessible units and assess the extent to which such needs have not been met or cannot reasonably be met. PHAs must develop transition plans setting forth steps necessary to complete structural changes, revealed by the needs assessment, to make their programs and activities accessible to persons with disabilities.

Agency Form Numbers: None.

Members of Affected Public: All recipients of Federal financial assistance from this Department, including public and private non-profit organizations and qualified persons with disabilities.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response. On an annual basis, 200 respondents (HUD recipients) will submit two (2) report(s) to HUD. It is estimated that four (4) hours per annual reporting period will be required of a recipient to prepare either of the reporting requirements for a total of 1600.

Status of the proposed information collection: Revision of a currently approved collection to reflect the collection of information from HUD recipients only.

Authority: Section 3506 of the Paperwork Reduction Act of 1995 44 U.S.C., as amended. Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 12, 1997.

Susan M. Forward,

Deputy Assistant Secretary for Enforcement and Investigations.

[FR Doc. 97–4137 Filed 2–19–97; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Florida Salt Marsh Vole (Microtus Pennsylvanicus Dukecampbelli), for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Florida salt marsh vole (*Microtus pennsylvanicus dukecampbelli*), a federally endangered rodent that is known from only one site in Waccasassa Bay, near Cedar Key, Levy County, Florida. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 21, 1997 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Jacksonville Field Office, Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216 (Telephone: 904–232–2580, FAX 904–232–2404). Written comments and materials regarding the plan should be addressed to the Field Supervisor, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Linda Finger at the above address (Telephone: 904–232–2580 ext. 107).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened plants and animals to the point where they are secure self-sustaining members

of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The Florida salt marsh vole inhabits one known coastal marsh site in Levy County, Florida. The vole is limited by two factors, an extremely restricted range encompassing only one known population, and the threat of losing this population to a storm event or population fluctuations.

The immediate goal of this recovery plan is to prevent extinction of the salt marsh vole by protecting the existing population. The actions needed to recover this species are: (1) Protect existing population, (2) conduct surveys to locate additional populations, and (3) conduct life history studies.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to the approval of the plans.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

David Hankla,

Field Supervisor.

[FR Doc. 97–4094 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Obyan Beach Resort Associates, Saipan, Commonwealth of the Northern Mariana Islands (Commonwealth)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that Obyan Beach Resort Associates has applied to the U.S. Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The application has been assigned permit number PRT–824821. The proposed permit would authorize the incidental take of nightingale reed-warblers (*Acrocephalus luscinia*), federally listed as endangered, and/or nightingale reed-warbler habitat during the construction of a proposed 36-hole golf course and resort. The Micronesian megapode (*Megapodius laperouse*) also occurs on site but is not expected to be impacted by this project. Green sea turtles (*Chelonia mydas*) may nest at a beach near the project site, but outside of the project boundaries, and are not expected to be impacted by this project. The permit would be in effect for 50 years.

The U.S. Fish and Wildlife Service also announces the availability of an Environmental Assessment for the incidental take permit application, which includes the proposed Habitat Conservation Plan fully describing the proposed project and mitigation, and the accompanying Implementing Agreement. This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, Environmental Assessment and Implementing Agreement should be received on or before March 24, 1997.

ADDRESSES: Comments regarding the application or adequacy of the Environmental Assessment and Implementing Agreement should be addressed to the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3108, P.O. Box 50088, Honolulu, HI 96850. Please refer to permit number PRT–824821 when submitting comments. Individuals wishing to obtain review copies of the application, Environmental Assessment, or Implementing Agreement should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Brooks Harper, Ms. Karen Evans or Dr. Annie Marshall, Pacific Islands Office, 808–541–3441.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act prohibits the ''taking'' of a species listed as threatened or endangered. However, the U.S. Fish and Wildlife Service, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

Obyan Beach Resort Associates propose to construct a 36-hole golf course and resort on the southeastern part of Saipan, Commonwealth of the Northern Mariana Islands. Obyan Beach Resort Associates seeks coverage for impacts to 814 acres that contain nightingale reed-warbler habitat. To compensate for project impacts, Obyan Beach Resort Associates will: (1) Minimize on-site impacts and maintain habitat on site for 10 pairs of nightingale reed-warblers, and (2) work with the local Commonwealth government to establish the Saipan Wildlife Mitigation Bank, that will consist of 3 conservation sites located north of the project site. The mitigation sites provide suitable habitat for nightingale reed-warbler (tangantangan forest and mixed tangantangan/grassland mosaic). Obyan Beach Resort Associates will work with the Commonwealth government to ensure that the mitigation bank is secure through the promulgation of regulations and will provide funding for long-term management of the mitigation sites. Other measures are specified in the Habitat Conservation Plan to minimize potential for take during construction activities.

The Environmental Assessment considers the environmental consequences of three alternatives. Alternative 3, the proposed action, consists of the issuance of an incidental take permit and implementation of the Habitat Conservation Plan and its Implementing Agreement. This alternative is preferred because: (1) It satisfies the purpose and needs of the U.S. Fish and Wildlife Service and

Obyan Beach Resort Associates; (2) impacts are minimized during construction, and (3) incidental take is mitigated by the establishment of a wildlife mitigation bank and other measures specified in the Habitat Conservation Plan. This mitigation bank would be established in perpetuity for the protection of the endangered nightingale reed-warbler and other wildlife species. Alternative 2 entails developing the project as originally permitted by the local government. The impacts to nightingale reed-warblers on site would be greater under this alternative and a wildlife mitigation bank would not be established. Under Alternative 1, the no action alternative, the U.S. Fish and Wildlife Service would not issue an incidental take permit. The area leased would then be likely to revert back to the Commonwealth government. None of the existing nightingale reed-warblers would be lost, at least immediately. After the land reverted back to the Commonwealth, it would then be available for other uses. These uses could have greater impacts to nightingale reed-warblers as a result of subdivision and the subsequent habitat fragmentation. Under the no action alternative, the mitigation sites would not be preserved as a wildlife mitigation bank.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The U.S. Fish and Wildlife Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: February 12, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–4141 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[WY–985–0222–66]

Cave Gulch-Bullfrog-Waltman Natural Gas Development Project in Natrona County, Wyoming; Availability of the Draft Environmental Impact Statement (DEIS)

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Cave Gulch-Bullfrog-Waltman Natural Gas Development Project Draft Environmental Impact Statement (DEIS) which analyzes the environmental consequences of the oil and gas operators proposal to continue to drill wells on their leased acreages within the Cave Gulch-Bullfrog-Waltman oil and gas project area. This development area is located in Natrona County and generally located within Townships 36 and 37 North; Ranges 86 and 87 West, 6th Principal Meridian. The area is accessed by U.S. Highway 20/26 west of Casper, Wyoming; and, north of Waltman, Wyoming via county road 104. Access to the interior of the Cave Gulch-Bullfrog-Waltman project area is provided by a road system developed to service prior and on-going drilling and production activities.

DATES: Comments on the DEIS will be accepted for 45 days following the date the Environmental Protection Agency publishes their Notice of Availability in the Federal Register. The EPA notice is expected on or about February 14, 1997. In addition, a public meeting will be held Tuesday, March 11, 1997. The meeting will be located at the University of Wyoming, Natrona County Cooperative Extension Building, 2011 Fairgrounds Road, Casper, Wyoming. The meeting will be in two parts beginning with an open house from 3 p.m.–5 p.m. followed by a public meeting from 7 p.m.–9 p.m. Comments on the DEIS will be entertained during the open house and the public meeting.

ADDRESSES: Comments on the DEIS should be sent to Ms. Kate Padilla, Team Leader for the Cave Gulch-Bullfrog-Waltman Natural Gas Development Project EIS, Bureau of Land Management, Casper District Office, 1701 East ''E'' Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: The DEIS analyzes a proposed action, two (2) development alternatives, and the no action alternative. The proposal presented by the operators is to continue to drill additional wells on their leased acreage within this natural gas development area. The current oil and gas operators are Chevron U.S.A., Barrett Resources Corporation, Prima Oil & Gas Company, Goldmark Engineering, Inc., W.A. Moncrief, Jr., Marathon Oil Company, and John P. Lockridge, Inc. The land ownership pattern of the Cave Gulch-Bullfrog-Waltman project area is 66 percent Private, 29 percent Federal (BLM), and 5 percent State of Wyoming. The mineral ownership is as follows, 20 percent Private, 77 percent Federal (BLM), and 3 percent State of Wyoming.

Over the next 10 years, the operators propose to drill up to 160 additional wells where approximately 40 wells are currently active to obtain maximum recovery of natural gas from existing Federal, State, and private oil and gas leases. The area was divided into four segments by the operators to allow for better definition of the Proposed Action with regard to well spacing and density, based on BLM's February 1996, preliminary geologic report. The two development alternatives analyze wells based on areas defined in the BLM's June 1996, final geologic report.

The DEIS describes the physical, biological, cultural, historic, and socio-economic resources in and surrounding the project area. The focus of the impact analysis was based upon resource issues and concerns identified during public scoping. Potential impacts of concern from development were primarily concerned with raptor breeding and nesting, sensitive soils, and economics.

Dated: February 5, 1997.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 97–4097 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–22–P

[UT–056–1430–01–24–1A]

Mountain Valley Management Framework Plan; Piute Co., UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend plan.

SUMMARY: This Notice of Intent is to advise the public that the Bureau of Land Management (BLM) intends to consider a proposal which would require amending an existing planning document.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. Comments must be submitted within the thirty day period commencing with the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Dave Henderson, Sevier River Resource Area Manager, 150 East 900 North, Richfield, Utah 84701. Existing

planning documents and information are available at the above address or telephone (801) 896–1500. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the Mountain Valley Management Framework Plan which includes public lands in Piute County, Utah. The purpose of the amendment would be to identify certain lands as suitable for direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976. The lands identified for direct sale comprise 560 acres described as follows: T. 29 S., R. 3 W., Section 28, SW¼NE¼, E½NW¼, SW¼NW¼, N½SW¼, SE¼SW¼, SE¼ and Section 33, N½NE¼ and Section 34, SW¼SW¼, Salt Lake Meridian, Utah.

The existing plan does not identify these lands for disposal. However, because of the resource values and public values and objectives involved, the public interest may well be served by sale of these lands. An environmental assessment will be prepared by an interdisciplinary team to analyze the impacts of this proposal and alternatives.

Dated: February 7, 1997.

G. William Lamb,

State Director.

[FR Doc. 97–4138 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–DQ–P–M

[OR–958–0777–63; GP6–0278; OR–51891]

Public Land Order No. 7246; Withdrawal for Edson Creek Park; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 44.48 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the recreation site known as Edson Creek Park. The land will be opened to mineral leasing.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/ Washington State Office, PO 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. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Edson Creek Park:

Willamette Meridian

T. 32 S., R. 14 W.,

Sec. 6, that portion of the S½, commonly called Tax Lot 32–14–06–501, as more particularly described as follows: Beginning at a point which is north 16°30′ east 479.0 ft. from the witness corner for the southwest closing corner of Sec. 6; Thence east 488.3 ft.; Thence south 9°45′ east 73.1 ft.; Thence south 59°31′ east 115.9 ft.; Thence north 78°11′ east 128.9 ft.; Thence north 68°11′ east 94.0 ft.; Thence north 72°40′ east 85.5 ft.; Thence north 66°01′ east 111.0 ft.; Thence north 58°27′ east 80.0 ft.; Thence north 67°08′ east 229.8 ft.; Thence north 24°38′ east 106.7 ft.; Thence north 43°55′ east 110.9 ft.; Thence north 57°46′ east 304.5 ft.; Thence north 5°04′ west 50.6 ft.; Thence north 36°55′ west 126.2 ft.; Thence north 59°18′ east 155.3 ft.; Thence south 39°47′ east 416.7 ft.; Thence south 86°19′ east 258.2 ft.; Thence north 83°22′ east 109.9 ft.; Thence north 83°40′ east 281.1 ft.; Thence north 19°01′ east 777.6 ft.; Thence north 67°42′ east 166.3 ft.; Thence north 42°53′ east 363.3 ft.; Thence north 441.7 ft.; Thence south 11°02′ west 73.0 ft.; Thence south 52°03′ west 234.6 ft.; Thence west 167.0 ft.; Thence south 43°41′ west 211.0 ft.; Thence south 65°42′ west 194.0 ft.; Thence south 88°12′ west 350.0 ft.; Thence south 60°29′ west 258.9 ft.; Thence south 51°16′ east 51.8 ft.; Thence south 2°26′ west 212.9 ft.; Thence south 9°19′ east 92.4 ft.; Thence south 59°29′ west 158.0 ft.; Thence north 67°06′ west 321.8 ft.; Thence south 73°23′ west 411.2 ft.; Thence south 42°36′ west 215.2 ft.; Thence south 34°54′ west 671.0 ft.; Thence north 88°52′ west 216.1 ft.; Thence north 68°55′ west 67.8 ft.; Thence north 35°39′ west 428.4 ft.; Thence south 16°30′ west 612.6 ft. to point of beginning.

The area described contains approximately 44.48 acres in Curry County.

2. At 8:30 a.m. on March 24, 1997, the land will be opened to operation of the mineral leasing laws and the Geothermal Steam Act, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: February 4, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–4095 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–33–P

[OR–958–0777–54; GP6–0214; OR–19015, OR–19121]

Public Land Order No. 7245; Revocation of Secretarial Order Dated November 14, 1917, and Executive Order Dated May 4, 1918; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in their entirety a Secretarial order and an Executive order which withdrew 174.72 acres of public lands for the Bureau of Land Management's Waterpower Designation No. 15 and Powersite Reserve No. 686. The lands are no longer needed for the purposes for which they were withdrawn. This action will open 170.22 acres to surface entry, which have been and will remain open to mining. The 4.50-acre balance remains closed to surface entry and mining due to another existing withdrawal. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/ Washington State Office, PO 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 November 14, 1917, which established Waterpower Designation No. 15, and the Executive Order dated May 4, 1918, which established Powersite Reserve No. 686, are hereby revoked in their entirety:

Willamette Meridian

Oregon and California Railroad Grant Lands

(a) Waterpower Designation No. 15

T. 22 S., R. 5 W.,

Sec. 33, SW¼NE¼ and E½NW¼, all land lying within 50 feet of centerline of transmission line.

T. 35 S., R. 5 W.,

Sec. 29, W½SW¼, all land lying within 50 feet of centerline of transmission line.
T. 3 S., R. 3 E.,
Sec. 29, lot 4, all land lying within 50 feet of centerline of transmission line.
T. 2 S., R. 4 E.,
Sec. 1, that portion of Tract 37 within the NE¼NW¼.
(b) Powersite Reserve No. 686 and Waterpower Designation No. 15
T. 41 S., R. 4 E.,
Sec. 3, lot 3, SE¼NW¼, NE¼SW¼, and NW¼SE¼.

The areas described in (a) and (b) above aggregate approximately 174.72 acres in Clackamas, Douglas, Jackson, and Josephine Counties.

2. The following described land is within the boundary of Power Project No. 477 and will remain closed to the operation of the public land laws, including the mining laws:

T. 2 S., R. 4 E.,
Sec. 1, that portion of Tract 37 within the NE¼NW¼.

The area described contains approximately 4.50 acres.

3. At 8:30 a.m. on March 24, 1997, the lands described in paragraph 1, except as provided in paragraph 3, will be opened to such forms of disposition as may by law be made of Revested Oregon and California Railroad Grant Lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on March 24, 1997, shall be considered as simultaneously filed at that time.

4. The State of Oregon has waived its preference right for public highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818 (1988).

Dated: February 4, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–4096 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–33–P

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of a currently approved information collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend and revise the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that 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 Office of Management and Budget (OMB) control number.

DATES: Submit written comments by April 21, 1997.

ADDRESSES: Direct all written comments to Rules Processing, Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing, Minerals Management Service, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart O, Training of Lessee and Contractor Employees Engaged in Oil and Gas and Suphur Operations in the Outer Continental Shelf (OCS).

Abstract: The OCS Lands Act (OCSLA) and its Amendments of 1978 give the Secretary of the Interior the responsibility to preserve, protect, and develop oil and gas resources in the OCS consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on resources of the OCS; and preserve and maintain free enterprise competition. Section 1332(6) of the OCSLA states that ''operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.''

To do this, MMS has issued regulations governing OCS oil and gas and sulphur lease operations The rules governing training of lessee and contractor personnel operating in the OCS are prescribed in 30 CFR Part 250, Subpart O. The MMS needs the information collected under subpart O to ensure that lessee and contractor personnel are properly trained in the use of equipment and procedures in drilling, well completion/workover, well servicing, and production operations. Trained workers are necessary to avoid hazards inherent in these operations. The MMS uses the information to ensure that personnel receive the minimum training necessary for safety of operations and protection of the environment. We also use the information to evaluate training programs for technical accuracy and to verify that they incorporate appropriate instruction and testing activities.

The MMS just recently revised the subpart O regulations and published a final rule on February 5, 1997 (62 FR 5320). The effective date of the final rule is March 7, 1997. The amended regulations simplify the training options and provide flexibility to use alternative training methods. The rule was rewritten in ''plain English.'' The revision made no significant changes to the information collection requirements. During the proposed rulemaking process, only one comment was received with respect to the information collection aspects of the rule. The commenter(s) contended that schools should not need to continue maintaining training records for 5 years because of the new training period. The MMS disagreed and kept the 5-year retention period in the regulations in order to have the maximum time to review records under the statute of limitations.

Proprietary or confidential information will be protected according to the Freedom of Information Act and 30 CFR 250.18, Data and information to be made available to the public. Personal information will be protected according to the Privacy Act. The collection does not include items of a sensitive nature. The requirement to response is mandatory.

Description of Respondents: Federal OCS oil and gas and sulphur lessees and training organizations.

Frequency: On occasion.

Estimated Number of Respondents: 130 lessees and 54 training organizations.

Estimated Annual Burden: 3,947 burden hours. Based on $35 per hour, the cost to respondents is $138,145.

Estimated Other Annual Costs to Respondents: MMS has identified no other cost burdens on respondents for providing this information.

OMB Number: 1010–0078.

Comments: The MMS will summarize written responses to this notice and address them in its submission for OMB approval. All comments will become a matter of public record. We will also consult with a representative sample of respondents. The estimates shown above are those currently approved by OMB for this collection of information.

As a result of the consultations and comments we receive, we will make any necessary adjustments for our submission to OMB. In calculating the burden, MMS assumes that respondents perform many of the requirements and maintain records in the normal course of their activities. MMS considers these to be usual and customary. Commenters are invited to provide information if they disagree with this assumption and they should tell us what the burden hours and costs imposed by this collection of information are.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic; mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. The MMS needs your comments on this item. Your response should split the cost estimate into two components:

(a) Total capital and startup cost component and

(b) Annual operation, maintenance, and purchase of service component.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchase: (1) Before October 1, 1995; (2) to comply with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

Bureau Clearance Officer: Caole A. deWitt, (703) 787–1242.

Dated: February 13, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–4193 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Publication of certain concession policies and procedures.

SUMMARY: The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park System. NPS is undertaking a review of its policies and procedures concerning concession management activities. Certain policy and procedural changes have been published for comment previously. Pending completion of a full review, NPS is publishing the remainder of its staff manual (NPS–48) dealing with the administration of concession authorizations for comment. Although not required by law to seek public comment on these policies and procedures, NPS will consider all comments received in a timely manner.

COMMENT DUE DATE: March 24, 1997.

ADDRESSES: Comments should be addressed to Robert Yearout, Program Manager, Concessions Program, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Copies of those sections of NPS–48 which have not been published for comment previously may be obtained by contacting Wendelin Mann, Concessions Program, National Park Service (202) 565–1219.

SUPPLEMENTARY INFORMATION: The following sections of NPS–48 have been published for comment previously and are not included under this notice:

1. NPS Franchise Fee Determination System: Published for comment in the Federal Register on August 7, 1985; final notice published in the Federal Register on December 31, 1996.

2. Sample Prospectus and Related Guidelines: Rescinded Chapters 6, 7, 8 and 11 of NPS–48. Published for comment in the Federal Register on March 17, 1994; final notice published in the Federal Register on February 22, 1995.

3. Revision of Commercial Use License Program to Incidental Business Permit Program: Rescinded Chapter 13 of NPS–48. Adopted and published for comment in the Federal Register on August 7, 1995; no further changes were made.

Dated: February 13, 1997.

Robert K. Yearout,

Acting Associate Director, Park Operations and Education.

[FR Doc. 97–4180 Filed 2–19–97; 8:45 am]

BILLING CODE 4810–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 8, 1997.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by March 7, 1997.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Logan County

Logan County Courthouse, Southern Judicial District, Jct. of 4th and N. Broadway Sts., SE corner, Booneville, 97000207

COLORADO

Douglas County

Lamb Spring, (Prehistoric Paleo-Indian Cultures of the Colorado Plains MPS) Address Restricted, Littleton vicinity, 97000208

FLORIDA

Hernando County,

May—Stringer House, 601 Museum Crt., Brooksville, 97000210

Indian River County

Pueblo Arcade, 2044 14th St., Vero Beach, 97000211

Manatee County

Whitfield Estates Lantana Avenue Historic District, (Whitfield Estates Subdivison MPS) 332—336 Lantana Ave., Sarasota vicinity, 97000209

IOWA

Buchanan County

Fisher—Plane Commercial Building, 119 and 121 1st St., E., Independence, 97000212

Fuhrman, Mathias C. and Eva B. Crowell, Farm, 1780 185th St., Independence vicinity, 97000213

MISSISSIPPI

Hinds County

Cain Hall (Raymond and Vicinity MRA) Hinds Community College, approximately

.75 mi. W of jct. of MS 18 and MS 467, Raymond, 97000214

Marshall County

Jonesboro, Lake City & Eastern Railroad Depot (Historic Railroad Depots of Arkansas MPS) Jct. of S. Dewey and Baltimore Sts., NW corner, Manila, 97000206

NEVADA

Storey County

King House, 26—28 S. Howard St., Virginia City, 97000216
Piper's Opera House, 1, 3, and 5 N. B St., Virginia City, 97000217
Silver Terrace Cemeteries, E St., northern terminus, Virginia City, 97000215

NEW YORK

Kings County

Green—Wood Cemetery, Jct. of 5th Ave. and 25th St., Brooklyn, 97000228

NORTH CAROLINA

Wake County

Leslie—Alford—Mims House (Wake County MPS) 100 Avent Ferry Rd., Holly Springs, 97000218

PENNSYLVANIA

Bedford County

Grand View Point Hotel (Lincoln Highway Heritage Corridor Historic Resources: Franklin to Westmoreland Counties MPS) US 30, 17 mi. W of Bedford, Juniata Twnshp., Bedford vicinity, 97000219

TENNESSEE

Knox County

Asbury Methodist Episcopal Church, South (Knoxville and Knox County MPS) 2820 Asbury Rd., Knoxville vicinity, 97000222
First Baptist Church (Knoxville and Knox County MPS) 510 Main Ave., Knoxville, 97000223
Fourth and Gill Historic District (Boundary Decrease), 803, 807, 815, 820, 816, 812, 808, 804, 800 N. 4th St., Knoxville, 97000220

Shelby County

South Main Street Historic District (Boundary Increase), 663 S. Main St., Memphis, 97000224

Tipton County

East Main Street Historic District, Address Restricted, Hartsville vicinity, 97000221

UTAH

Cache County

Olson, Erick Lehi and Ingrid Larsen, House, 490 East 600 South, River Heights, 97000225

Summit County

Grix, John, Cabin, .25 mi W of UT 150, approximately 20 mi. NE of Kamas, Kamas vicinity, 97000226

WYOMING

Crook County

Ranch A, Off Riflepit Rd., approximately 3 mi. E of US 14—I–90, Ranch A National Fish Genetics Laboratory, Beulah vicinity, 97000227

[FR Doc. 97–4079 Filed 2–19–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; 1997 Sample Survey of Law Enforcement Agencies.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 21, 1997.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the metho9dology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Dr. Brian A. Reaves at the address listed below. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact, Dr. Brian A. Reaves, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, Room 303, 633 Indiana Avenue, NW., Washington, DC 20531. Additionally, comments may be submitted to the Department of Justice, Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, Washington, Center, 1001 G Street, NW., Washington, DC 20530.

Overview of this information collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: 1997 Sample Survey of Law Enforcement Agencies.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection. Form: CJ–44, CJ–44A. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, local or tribal government. Other: None. These forms will be used to collect administrative and management statistics from a nationally representative sample of State and local law enforcement agencies in the United States in order to provide basic information on their workload and resources.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3,400 respondents at 1.27 hours per response. This includes 2 hours per response for 925 respondents to Form CJ–44 and 1 Hour per response for 2,475 respondents to Form CJ–44A.

(6) An estimate of the total public burden (in hours) associated with the collection: 4,325 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 13, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–4105 Filed 2–19–97; 8:45 am]

BILLING CODE 4410–18–M

Office of Juvenile Justice and Delinquency Prevention; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Emergency Review; State Input for the 1996 Report to Congress on Title V Community Prevention Grants.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJDDP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtained comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by February 21, 1997. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer, 202–395–5871, Department of Justice Desk Officer, Washington, DC, 20530.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until April 21, 1997. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Eric Peterson at the address listed below. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Eric Peterson (202–616–3644), Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: State Input for the 1996 Report to Congress on Title V Community Prevention Grants.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and local units of government. Other: None. The information collected with this form will allow OJJDP to report to Congress on the status of Title V program implementation, grant activity in the past fiscal year, and promising local delinquency prevention programs.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 57 respondents at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 57 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 13, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

FR Doc. 97–4106 Filed 2–19–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection; Work Opportunity Tax Credit Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Work Opportunity Tax Credit Reporting Requirements.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 21, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarification of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological, e.g., permitting submissions of responses.

ADDRESSES: Carmen Ortize, U.S. Employment Service, Employment and Training Administration, U.S.

Department of Labor, Room N–4470, 200 Constitution Avenue, NW., Washington, DC 20210, 202–219–5185 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration (ETA) has oversight responsibilities for the Work Opportunity Tax Credit (WOTC) under the Small Business Jobs Protection Act of 1996 (Pub. L. 104–188). Data collected on the WOTC will be collected by the State Employment Security Agencies and provided to the U.S. Employment Service, Division of Planning and Operations, Washington, DC, through the appropriate Department of Labor regional office. The data will be use, primarily, to supplement IRS Form 8850, help expedite the processing of, either, employer requests for Certification generated through IRS Form 8850 or issuance of Conditional Certifications (CCs) and processing of employer requests for Certifications as a result of individuals' bearing SESAs or participating agencies' generated CCs, help streamline SESAs verification mandated activities, aid and expedite the preparation of the quarterly reports.

II. Current Actions

This is a request for OMB approval of an extension of an existing collection of information previously approved by OMB. The extension will allow the Department to continue these data collections and to provide a significant source of information for the Secretary's Annual Report to Congress on the WOTC Program. The data recorded through the use of these forms will also help in the preparation of an annual report to the Committee on Ways and Means of the U.S. House of Representatives.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Work Opportunity Tax Credit (WOTC).

OMB Number: 1205–0371.

Agency Number: ETA 9057–9059, 9061–9063, and 9065.

Affected Public: State, Local or Tribal Government.

Cite/Reference	Total respondents	Frequency	Total responses	Average time per response	Burden
ETA 9057	52	Quarterly	208	8 hours	1,664
ETA 9058	52	Quarterly	208	8 hours	1,664
ETA 9059	52	Quarterly	208	8 hours	1,664
ETA 9061–9063 & 9065	7,800	As needed	7,800	20 min. ea.	2,600
Record keeping	52	Annually	52	997	51,844
Totals			9,048		59,436

Total Burden Cost (capital/startup): <complete as applicable,

Total Burden Cost (capital/startup): 0

Total Burden Cost (operating/maintaining): 0

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 12, 1997.

John R. Beverly,

Director, U.S. Employment Service.

[FR Doc. 97–4089 Filed 2–19–97; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for

consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

None

Volume II:

None

Volume III:

Florida
FL970017 (Feb. 14, 1997)
Georgia
GA970039 (Feb. 14, 1997)
GA970053 (Feb. 14, 1997)
GA970065 (Feb. 14, 1997)
GA970088 (Feb. 14, 1997)
GA970089 (Feb. 14, 1997)
GA970093 (Feb. 14, 1997)
GA970094 (Feb. 14, 1997)
Kentucky
KY960004 (Feb. 14, 1997)
KY960026 (Feb. 14, 1997)
KY970027 (Feb. 14, 1997)
KY970028 (Feb. 14, 1997)
KY970029 (Feb. 14, 1997)

Volume IV:

Indiana
IN970006 (Feb. 14, 1997)
Michigan
MI970001 (Feb. 14, 1997)
MI970002 (Feb. 14, 1997)
MI970003 (Feb. 14, 1997)
MI970004 (Feb. 14, 1997)
MI970005 (Feb. 14, 1997)
MI970007 (Feb. 14, 1997)
MI970012 (Feb. 14, 1997)
MI970018 (Feb. 14, 1997)
MI970023 (Feb. 14, 1997)
MI970030 (Feb. 14, 1997)
MI970031 (Feb. 14, 1997)
MI970046 (Feb. 14, 1997)
MI970047 (Feb. 14, 1997)
MI970049 (Feb. 14, 1997)
MI970062 (Feb. 14, 1997)
MI970063 (Feb. 14, 1997)
MI970064 (Feb. 14, 1997)
Ohio
OH970001 (Feb. 14, 1997)
OH970002 (Feb. 14, 1997)
OH970003 (Feb. 14, 1997)
OH970012 (Feb. 14, 1997)
OH970014 (Feb. 14, 1997)
OH970017 (Feb. 14, 1997)
OH970018 (Feb. 14, 1997)
OH970026 (Feb. 14, 1997)
OH970028 (Feb. 14, 1997)
OH970029 (Feb. 14, 1997)
OH970034 (Feb. 14, 1997)
OH970035 (Feb. 14, 1997)

Volume V:

Kansas
KS970006 (Feb. 14, 1997)
KS970007 (Feb. 14, 1997)
KS970008 (Feb. 14, 1997)
KS970012 (Feb. 14, 1997)
KS970013 (Feb. 14, 1997)
KS970018 (Feb. 14, 1997)
KS970019 (Feb. 14, 1997)
KS970020 (Feb. 14, 1997)
KS970021 (Feb. 14, 1997)
KS970022 (Feb. 14, 1997)
KS970023 (Feb. 14, 1997)
KS970026 (Feb. 14, 1997)

Volume VI:

Idaho
ID970004 (Feb. 14, 1997)
ID970014 (Feb. 14, 1997)
Oregon
OR970001 (Feb. 14, 1997)
OR970004 (Feb. 14, 1997)
Washington
WA970001 (Feb. 14, 1997)
WA970002 (Feb. 14, 1997)
WA970003 (Feb. 14, 1997)
WA970007 (Feb. 14, 1997)
WA970011 (Feb. 14, 1997)
WA970013 (Feb. 14, 1997)

Volume VII:

California
CA970002 (Feb. 14, 1997)
CA970028 (Feb. 14, 1997)
CA970031 (Feb. 14, 1997)
CA970032 (Feb. 14, 1997)
CA970033 (Feb. 14, 1997)
CA970034 (Feb. 14, 1997)
CA970035 (Feb. 14, 1997)
CA970036 (Feb. 14, 1997)
CA970037 (Feb. 14, 1997)
CA970038 (Feb. 14, 1997)
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CA970041 (Feb. 14, 1997)
CA970042 (Feb. 14, 1997)
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CA970044 (Feb. 14, 1997)
CA970045 (Feb. 14, 1997)
CA970046 (Feb. 14, 1997)
CA970047 (Feb. 14, 1997)
CA970048 (Feb. 14, 1997)
CA970049 (Feb. 14, 1997)
CA970052 (Feb. 14, 1997)
CA970053 (Feb. 14, 1997)
CA970055 (Feb. 14, 1997)
CA970056 (Feb. 14, 1997)
CA970057 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determination Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC This 14th day of February 1997.

Margaret J. Washington,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–4190 Filed 2–19–97; 8:45 am]

BILLING CODE 1510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Active Tectonics; Notice of Meeting

In accordance with the Federal Advisory Commission Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for Active Tectonics (1756).

Date: March 10, 1997.

Time: 8:00 a.m. to 6:00 p.m.

Place: Room 730, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Robert P. Wintsch, Program Director, Tectonics Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1552.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4153 Filed 2–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Computer and Computation Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Computer and Computation Research (1192).

Date: March 10, 1997.

Time: 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, 22230 Room: 1150.

Type of meeting: Closed.

Contact person(s): Frank D. Anger, Program Director, Software Engineering and Language Program, CISE/CCR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Telephone: (703) 306–1911.

Purpose of meeting: To provide advice and recommendations for the Software Engineering and Language Program (SEL) by reviewing a group of approximately 12 proposals responding to an initiative in Evolutionary Development of Complex Software for that program.

Agenda: Review and evaluate SEL proposals as a part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: February 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4150 Filed 2–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: Special Emphasis Panel in Electrical and Communications System (1196).

DATE AND TIME: March 10, 1997; 8:30 a.m. to 5:00 p.m.

PLACE: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Virginia Ayres, Program Director, Physical Foundations of Enabling Technologies Division of Electrical and Communications Systems, NSF, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230, Telephone: (703) 306–1339.

PURPOSE: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4152 Filed 2–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date and Time: March 10 & 11, 1997; 8:30 AM–5:00 PM.

Place: Room 680 on 3/10 & 11, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Rajinder Khosla, Program Director, Physical Foundations of Enabling Technologies (PFET), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate **PFET regular research ** proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4151 Filed 2–19–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: March 10–12, 1997; 8:00 a.m. until 5:00 p.m.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of meeting: Closed.

Contact Person: Dr. Joe W. Jenkins, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1879.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Operator Algebra/Operator Theory (OA/OT) Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4149 Filed 2–19–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Reporting Statistics—Airlines

AGENCY: National Transportation Safety Board.

ACTION: Notice of statistical reporting changes.

SUMMARY: On January 7, 1997, the NTSB adopted a system for classifying airline accidents by their severity. This system is a minor revision of a proposal published in the Federal Register on December 5, 1996. An improved classification system providing more meaningful measures of the level of safety of airline transportation was required by the FAA Reauthorization Act of 1996. This notice describes changes in the adopted version from the proposed classification system and additional accident parameters, many focusing on passenger injuries. The NTSB will remain open to suggestions for improving the content and format of its statistics.

DATES: The NTSB adopted the new classification system on January 7, 1997.

ADDRESSES: Comments and suggestions may be submitted to: Analysis and Data Division (RE–50), ATTN: Airline Statistics, National Transportation Safety Board, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594–2000.

FOR FURTHER INFORMATION CONTACT: Stan Smith (202) 314–6550.

SUPPLEMENTARY INFORMATION: The Safety Board retained its proposed four-category system but re-designated the second category ''Serious'' rather than ''Severe.'' A cautionary note was added to the list of accidents in which one or more passengers received fatal injuries. That note reads:

The NTSB wishes to make clear to all users of the following list of accidents that the information it contains cannot, by itself, be used to compare the safety either of operators or of aircraft types. Airlines that have operated the greatest number of flights and flight hours could be expected to have suffered the greatest number of fatal-to-passenger accidents (assuming that such accidents are random events, and not the result of some systematic deficiency). Similarly, the most used aircraft types would tend to be involved in such accidents more than lesser used types. The NTSB also cautions the user to bear in mind when attempting to compare today's airline system to prior years that airline activity (and hence exposure to risk) has risen by almost 100% from the first year depicted to the last.

Issued in Washington, DC on this 13th day of February, 1997.

Jim Hall,

Chairman.

[FR Doc. 97–4159 Filed 2–19–97; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 and STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77 issued to Commonwealth Edison for operation of the Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendments would relocate certain cycle-specific parameter limits from the Technical Specifications to the Operating Limits Report (ORL).

Before issuance of the proposed license amendments, the Commission will have made findings as required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The relocation of the cycle-specific core operating limits from the Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The Technical Specifications will continue to require operation within the analyzed core operating limits and the appropriate actions will be taken if the limits are exceeded. The cycle specific limits within the OLR will be implemented and controlled by plant procedures. Any needed revisions of the limit values in the OLR will be performed based on NRC approved methodology as delineated in TS 6.9.1.9. Each accident analysis addressed in the Byron and Braidwood Updated Final Safety Analysis Report (UFSAR) will be examined with respect to changes in cycle dependent parameters. These parameters are obtained from the application of NRC approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analysis. This examination, which will be performed under the requirements of 10 CFR 50.59 process, ensures that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The relocation of the cycle specific variables has no influence or impact, nor does it contribute in any way to the probability or consequences of any new or different kind of accident. No safety related equipment, safety function or plant operations will be altered as a result of this proposed change. The cycle specific variables are calculated using NRC approved methods and submitted to the NRC for their review to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the analyzed core operating limits and appropriate actions will be taken, when, or if, the limits are exceeded.

Therefore, the proposed changes do not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety for the following reasons:

The margin of safety is not affected by the relocation of cycle specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle specific limits. The proposed amendment continues to require operation within the core limits as obtained from the NRC approved reload design and safety analysis methodologies. Appropriate actions are required to be taken, when, or if, these limits are exceeded.

The development of the limits for future reloads will continue to conform to those methods described in the NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 safety review to assure that operation of the Byron and Braidwood units within the cycle specific limits will not involve a reduction in

the margin of safety as defined in the basis for any Technical Specification.

Therefore, the proposed changes do not impact operation of the plant in a manner that involves a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 24, 1997, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by

a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated December 21, 1995, as supplemented on October 24, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 13th day of February 1997.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 97–4177 Filed 2–19–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–348]

Southern Nuclear Operating Company, Inc. Alabama Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern Nuclear Operating Company, Inc. (Southern Nuclear), to withdraw its August 23, 1996, application for proposed amendment to Facility Operating License No. NPF–2 for the Farley Nuclear Plant, Unit 1, located in Houston County, Alabama.

The proposed amendment would have revised the technical specifications by modifying the installation method for previously licensed steam generator tube elevated tubesheet laser welded sleeves in Farley Nuclear Plant, Unit 1.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the Federal Register on September 11, 1996 (61 FR 47982). However, by letter dated February 7, 1997, Southern Nuclear withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 23, 1996, and the licensee's letter dated February 7, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama.

Dated at Rockville, Md., this 13th day of February 1997.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4176 Filed 2–19–97; 8:45 am]

BILLING CODE 7590–01–P

Proposed Generic Communication; Assurance of Sufficient Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal Pumps (M96537)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter that will request addressees to submit the analysis and pertinent assumptions used to determine the net positive suction head (NPSH) available for emergency core cooling (including core spray and decay heat removal) and containment heat removal pumps. This information will enable the NRC to determine if the NPSH analyses for reactor facilities are consistent with their respective current licensing basis. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading.

The proposed generic letter has been endorsed by the Committee to Review Generic Requirements (CRGR). The relevant information that was sent to the CRGR will be placed in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, as appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires March 24, 1997. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–6D–69, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Howard (Jack) Dawson, (301) 415–3138.

SUPPLEMENTARY INFORMATION:

NRC GENERIC LETTER 97–XX: ASSURANCE OF SUFFICIENT NET POSITIVE SUCTION HEAD FOR EMERGENCY CORE COOLING AND CONTAINMENT HEAT REMOVAL PUMPS

Addressees

All holders of operating licenses for nuclear power plants, except those who have certified to a permanent cessation of operations.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter (GL) to request that addressees submit the analysis and pertinent assumptions used to determine the net positive suction head (NPSH) available for emergency core cooling (including core spray and decay heat removal) and containment heat removal pumps. This information will enable the NRC to determine if the NPSH analyses for reactor facilities are

consistent with their respective current licensing basis.

Background

As a result of recent NRC inspection activities, licensee notifications, and licensee event reports, a safety-significant issue has been identified that has generic implications and warrants action by the NRC to ensure that the issue has been adequately addressed and resolved. The issue is that the NPSH available for emergency core cooling system (ECCS) (including core spray and decay heat removal) and containment heat removal pumps may not be adequate under all design-basis accident scenarios. In some cases, this may be a result of changes in plant configuration, operating procedures, environmental conditions or other operating parameters that have taken place over the life of the plant.

In other cases, the licensing analysis may not bound all postulated events for a sufficient time, or assumptions used in the analysis may be non-conservative or inconsistent with those assumptions and methodologies traditionally considered acceptable by the staff. For example, some licensees have recently discovered that they must take credit for containment overpressure to meet ECCS (including core spray and decay heat removal) and containment heat removal pump NPSH requirements. In the examples the NRC staff is familiar with, the need for crediting this overpressure in ECCS analyses has arisen due to changes in plant configuration and operating conditions which have occurred over the life of the plant, and/or errors in prior NPSH calculations. The overpressure being credited by licensees may be inconsistent with the licensing basis of the plant.

The current NPSH analyses (including any corresponding containment pressure analysis) may not be available to the staff in docketed material (e.g., final safety analysis reports) because some licensees have changed their analyses. Consequently, this generic letter requests that addressees submit the analyses and pertinent assumptions used to determine the NPSH available for emergency core cooling (including core spray and decay heat removal) and containment heat removal pumps. This generic letter applies only to ECCS (including core spray and decay heat removal) and containment heat removal pumps that take suction from the containment sump or suppression pool following a loss-of-coolant accident (LOCA) or secondary line break.

New NPSH analyses are not required or requested to respond to this information request. However, new NPSH analyses may be warranted if an addressee determines that a facility is not in compliance with the Commission's rules and regulations. In such cases, the affected addressees are expected to take corrective action, as appropriate, in accordance with the requirements stated in 10 CFR part 50, appendix B, to restore their facility to compliance.

The following is a sample of the NRC staff's recent findings concerning the NPSH issues addressed by this generic letter:

Haddam Neck

In 1986 and 1995, the licensee identified conditions where the NPSH available for the residual heat removal (RHR) pumps may be insufficient when the pumps are operating in the emergency core cooling mode. In 1986, the licensee determined that the only extant NPSH analysis, which was performed in 1979 as part of the Systematic Evaluation Program, did not properly account for hydraulic losses in suction piping, and as a result, erroneously indicated that containment overpressure was not needed to satisfy NPSH requirements for the pumps in the recirculation mode of operation. A new analysis showed that credit had to be taken for 6 psi of containment overpressure. In another reanalysis conducted in 1995 for increased service water temperature, the licensee found that additional containment overpressure, which constituted a significant fraction of the peak calculated containment accident pressure, was necessary to meet NPSH requirements for the same pumps. On August 30, 1996, the licensee reported in Licensee Event Report (LER) 96–016 that calculations recently performed to determine the NPSH available for the residual heat removal pumps may have been in error for the alternate, short-term recirculation flow path, due to insufficient containment overpressure for a period of pump operation. The licensee attributed this event to the failure to fully analyze the containment pressure and sump temperature responses under design-basis accident conditions.

Maine Yankee

During an inspection conducted in July and August 1996, to determine if Maine Yankee was in conformance with its design and licensing bases, an NRC Independent Safety Assessment Team (ISAT) identified potential weaknesses in the licensee's containment spray pump NPSH analysis. These potential weaknesses included concerns regarding the validity of the containment sump temperature analysis, incorrect calculation of bounding pump suction head losses, and use of a hot fluid correction factor to reduce NPSH requirements. The licensee's calculation of record, performed in 1995 and which does not include the hot fluid correction factor, indicates a condition in which the available NPSH for the containment spray pumps would be below the required NPSH for the first 5 minutes after pump suction is switched from the refueling water storage tank to the recirculation sump. This analysis was performed for a power level of 2700 thermal megawatts (MWt). When the hot fluid correction factor was used, the NPSH available could only be shown to be slightly greater than the NPSH required for the same 5-minute period. For the remainder of the transient, the NPSH available to the containment spray pumps was shown to exceed the amount required.

The basis for the licensee's contention that the containment spray pumps were operable is that recent pump tests showed that the pumps could operate for a 15-minute period with NPSH below the required value without damage to the hydraulic performance or mechanical integrity of the pumps. The licensee performed another analysis for a power level of 2440 MWt which showed that adequate NPSH margin would exist for the containment spray pumps in the recirculation mode of operation. This analysis did not include use of the hot fluid correction factor. The ISAT concluded that it was appropriate to consider the containment spray pumps operable at a power level of 2440 MWt. Maine Yankee is currently prohibited by the NRC from operation above 2440 MWt. The NRC staff is currently reviewing the licensee's analysis and assumptions in greater detail.

Pilgrim

The NRC staff's safety evaluation for licensing of the Pilgrim plant, and documents referenced by the evaluation, indicate that containment overpressure was not necessary to satisfy RHR and core spray pump NPSH requirements. When a plant modification was made in 1984, the licensee's safety analysis of the modification stated that the NPSH available was determined assuming (1) maximum debris loading conditions on the sump strainers for the residual heat removal and core spray pumps and (2) no credit for containment over-pressure. On April 14, 1994, in its response to NRC Bulletin 93–02, ''Debris Plugging of Emergency Core Cooling Suction Strainers'' (March 23, 1993), the

licensee stated that the NPSH available to the residual heat removal and core spray pumps was analyzed assuming no overpressure condition in the torus.

However, in an analysis conducted by the licensee in 1996 in support of a strainer modification, credit is needed and taken for containment over-pressure. At the time of this analysis, the licensee also indicated that the assumption of no overpressure in the torus, stated in its response to Bulletin 93–02, was incorrect. While the issue of whether or not credit for over-pressure is part of Pilgrim's original licensing basis is currently under staff review, the potential exists that other licensees have made modifications to their plants that may be inconsistent with their licensing basis and could reduce the NPSH available to ECCS and core spray pumps.

Crystal River, Unit 3

As part of the NRC's Integrated Performance Assessment of Crystal River, Unit 3, conducted in July 1996, an NRC inspection team reviewed the licensee's calculation which established the minimum required post-LOCA reactor building water level for ensuring adequate NPSH available for the reactor building spray pumps. When the team compared this level with the minimum predicted level, they found that for one of the pumps, there was only a slight difference between the water level available and the water level required to ensure adequate NPSH during the post-accident recirculation phase of pump operation.

The team found that the licensee used non-conservative assumptions in calculating the available NPSH for the spray pump. For example, uncertainty in data regarding the required NPSH was not accounted for, a correction factor to reduce the NPSH required was used in the calculation without considering the effects of non-condensable gases in the pumped fluid, and uncertainties associated with the hydraulic resistance of check valves in the spray lines were not fully accounted for. Conservative assumptions that were included in the calculation were those detailed in Regulatory Guide (RG) 1.1, ''Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal System Pumps,'' dated November 2, 1970 (originally Safety Guide 1), regarding the use of maximum reactor building fluid temperature and no credit for containment overpressure.

The team concluded that the cavitation-free operation of building spray pump 1B during the recirculation phase of operation is questionable due to the non-conservative assumptions used in the NPSH calculation. However, the team also concluded that this issue did not constitute an immediate safety concern since the licensee's calculations conservatively assumed no credit for containment overpressure and use of maximum expected reactor building water temperature. As a result of the teams findings, the NRC staff is reviewing the issue of adequate NPSH for the reactor building spray pumps at Crystal River, Unit 3, in greater detail.

Related Generic Communications

On October 22, 1996, the staff issued Information Notice (IN) 96–55, ''Inadequate Net Positive Suction Head of Emergency Core Cooling and Containment Heat Removal Pumps Under Design Basis Accident Conditions,'' to alert addressees to recent discoveries by licensees that there may be scenarios for which the NPSH available for emergency core cooling system and containment heat removal pumps may not be sufficient. Earlier INs describing similar events include IN 87–63, ''Inadequate Net Positive Suction Head in Low Pressure Safety Systems,'' dated December 9, 1987, and IN 88–74, ''Potentially Inadequate Performance of ECCS in PWRs During Recirculation Operation Following a LOCA,'' issued on September 4, 1988.

Discussion

It is important that the emergency core cooling (including core spray and decay heat removal) and containment spray system pumps have adequate NPSH available for all design-basis LOCAs to ensure that the systems can reliably perform their intended functions under accident conditions. Inadequate NPSH could cause voiding in the pumped fluid, resulting in pump cavitation. While some ECCS (including core spray and decay heat removal) and containment heat removal pumps can operate for relatively short periods of time while cavitating, prolonged operation under cavitation conditions for any pump can cause vapor binding, resulting in reduced pump performance and potential common-mode failure of the pumps. Common-mode failure would result in the inability of the emergency core cooling system to provide adequate long-term core cooling and/or the inability of the containment spray system to maintain the containment pressure and temperature below design limits.

This generic letter addresses situations in which the NPSH available for ECCS (including core spray and decay heat removal) and containment heat removal pumps may be inadequate as a result of changing plant conditions, and/or errors and non-conservative assumptions in NPSH calculations. In some cases, NPSH reanalyses conducted to support plant modifications may result in a substantial reduction of margin in NPSH available or a change in the original design basis of the plant. In particular, recent examples have indicated that containment overpressure has been credited by licensees to satisfy NPSH requirements in response to changing plant conditions and errors in prior NPSH calculations.

NRC Regulatory Guide 1.1 establishes the regulatory position that emergency core cooling and containment heat removal systems should be designed so that adequate NPSH is provided to system pumps assuming maximum expected temperatures of pumped fluids and no increase in containment pressure from that present before any postulated loss-of-coolant accidents. Standard Review Plan (SRP) 6.2.2, ''Containment Heat Removal Systems'' (NUREG–0800, Revision 3, July 1981) clarifies RG 1.1 by stating that the NPSH analysis should be based on the assumption that the containment pressure equals the vapor pressure of the sump water, to ensure that credit is not taken for containment pressurization during the transient. As part of licensing and Systematic Evaluation Plan reviews, the NRC staff has, in the past, selectively allowed limited credit for a containment pressure that is above the vapor pressure of the sump fluid (i.e., an overpressure) to satisfy NPSH requirements on a case-by-case basis.

Requested Information

Addressees are requested to review, for each of their reactor facilities, the *current* analyses that are used to determine the available NPSH for the emergency core cooling (including core spray and decay heat removal) and containment heat removal pumps which, at any time following a design-basis accident, take suction from the containment sump or the suppression pool. No new NPSH analysis is requested or required. Based on this review, within 60 days from the date of this generic letter, addressees are requested to provide the information outlined below for each of their facilities; to the extent practical, the use of a tabular format is acceptable in presenting the information.

(1) Provide the NPSH analysis and assumptions for each pump, and, in particular,

(a) Specify, as a function of time, the required NPSH and the available NPSH,

(b) Identify the postulated pipe breaks that were analyzed if a spectrum of primary and secondary system pipe break sizes and locations was considered in the NPSH analysis,

(c) Specify the emergency core cooling (including core spray and decay heat removal) and containment heat removal system configurations (and associated flow rates) that were considered in the NPSH analysis for each pump; identify and justify which configurations were not analyzed,

(d) Specify if the *current* licensing-basis NPSH analysis is different from the original licensing-basis analysis, and

(e) Specify any quality assurance procedures and engineering program controls in place when the current NPSH analysis was performed.

(2) For each pump, specify whether or not containment overpressure, i.e., containment pressure above the vapor pressure of the sump (or suppression pool) fluid, was credited in the calculation of available NPSH. Specify the amount of overpressure needed, and the *minimum* overpressure available. Indicate if the overpressure was determined from the containment pressure at a single point in time, or if the containment pressure profile over an extended period of time was considered. If an extended period of time was considered, state how long and give the rationale for choosing this time period; if only a single point in time was considered, state the point in time and give the rationale for selecting this point in time.

(3) When containment overpressure is credited in the calculation of available NPSH, specify the containment atmosphere heat removal assumptions that were used in the containment response analysis to determine the *minimum* containment overpressure available, and in particular,

(a) Identify the heat transfer correlations that were used, and specify whether or not multipliers were used, to calculate the transfer of energy to the heat sinks in the containment,

(b) Specify how many trains of containment spray were assumed to be operating, and whether a minimum, maximum, or intermediate value of spray flow was assumed,

(c) Specify how the service water temperatures for the heat exchangers that remove energy from the containment atmosphere were chosen for the NPSH analysis, and specify any special assumptions made concerning heat transfer across the heat exchangers (e.g., effect of fouling on heat transfer),

(d) Specify the total number of containment fan coolers at the plant, and specify how many fan coolers were assumed to be operating.

Required Response

Within 30 days from the date of this generic letter, each addressee is required to submit a written response indicating (a) whether or not the requested information will be submitted, and (b) whether or not the requested information will be submitted within the requested time period. Addressees who choose not to submit the requested information, or are unable to satisfy the requested completion date, must describe in their response an alternative course of action that is proposed to be taken, including the basis for the acceptability of the proposed alternative course of action.

New NPSH analyses are not required or requested to respond to this information request. However, new NPSH analyses may be warranted if an addressee determines that a facility is not in compliance with the Commission's rules and regulations. In such cases, the affected addressees are expected to take corrective action, as appropriate, in accordance with the requirements stated in 10 CFR part 50, appendix B, to restore their facility to compliance.

NRC staff will review the responses to this generic letter and if concerns are identified, affected addressees will be notified.

Address the required written response to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001, under oath or affirmation under the provisions of section 182a, Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f).

Backfit Discussion

This generic letter only requests information from addressees under the provisions of section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). The information requested will enable the staff to determine whether addressees' NPSH analyses for the emergency core cooling (including the core spray and decay heat removal) and containment heat removal system pumps comply and conform with the current licensing basis for their respective facilities, including the licensing safety analyses and the principle design criteria which require and/or commit that safety-related components and systems be provided to mitigate the consequences of design-basis accidents.

With respect to the principle design criteria for nuclear power reactor facilities, which establish minimum requirements for structures, systems, and components important to safety, General Design Criterion (GDC) 35 of appendix A to Title 10 of the Code of Federal Regulations (10 CFR part 50, appendix A) specifies that there be a system to provide abundant emergency core cooling. Furthermore, 10 CFR 50.46, which addresses the acceptance criteria for emergency core cooling systems for light water nuclear power reactors, requires, in part, that the emergency core cooling system be able to provide long-term cooling following any loss-of-coolant accident. The potential for the loss of adequate NPSH for emergency core cooling system pumps, and the cavitation that would result, raises the concern that the emergency core cooling system would not be capable of providing core cooling over the duration of postulated accident conditions as required by GDC 35 and 10 CFR 50.46.

Similarly, GDC 38 of appendix A to 10 CFR part 50 specifies that there be a system to rapidly remove heat from the reactor containment in order to reduce the containment pressure and temperature following any loss-of-coolant accident, and GDC 16 of appendix A to 10 CFR part 50 specifies that reactor containment and associated systems be provided to assure that the containment design conditions important to safety are not exceeded for the duration of the accident conditions. The potential for the loss of adequate NPSH in containment spray pumps, and the cavitation that would result, raises the concern that containment spray would not be capable of lowering and maintaining the containment pressure and temperature below design values as required by GDC 38 and GDC 16.

Considering the safety significance of removing heat from the containment atmosphere and cooling the reactor core following a design-basis accident, the requested information is needed to verify addressee compliance with licensing basis commitments regarding the performance of emergency core cooling (including core spray and decay heat removal) system and containment heat removal system pumps. The evaluation required by 10 CFR 50.54(f) to justify this information request is included in the preceding discussion.

Dated at Rockville, Md., this 11th day of February 1997.

For the Nuclear Regulatory Commission.

Thomas T. Martin,

Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4175 Filed 2–19–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 6–8, 1997, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Thursday, January 23, 1997 (62 FR 3539).

Thursday, March 6, 1997

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:30 a.m.: Capability of RELAP5/MOD 3 Code to Assess the AP600 Design

(Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the capability of the RELAP5/MOD 3 code to assess the adequacy of the AP600 passive plant design.

The Committee may hear presentations by representatives of the Westinghouse Electric Corporation, as appropriate.

Note: A portion of this session may be closed to discuss Westinghouse proprietary information.

10:45 a.m.–12:15 p.m.: AP600 Test Data from ROSA and Oregon State University (OSU)–APEX Test Facilities

(Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the issues associated with the release of test data from ROSA and OSU–APEX test facilities to the public.

The Committee may hear presentations by representatives of the Westinghouse Electric Corporation, as appropriate.

Note: A portion of this session may be closed to discuss Westinghouse proprietary information and matters the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.

1:15 p.m.–2:45 p.m.: Arthur Andersen Report, ''Recommendations to Improve the Senior Management Meeting Process''

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of the Arthur Andersen study that was performed to evaluate the Senior NRC Management Meeting Process for assessing the performance of operating nuclear plants.

Representatives of the nuclear industry will participate, as appropriate.

3:00 p.m.–4:30 p.m.: Risk-Informed, Performance-Based Regulation and Related Matters

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Standard Review Plan (SRP) Sections, Regulatory Guides, and other matters associated with the risk-informed, performance-based regulation.

Representatives of the nuclear industry will participate, as appropriate.

4:45 p.m.–7:15 p.m.: Preparation of ACRS Reports

(Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, March 7, 1997

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:45 a.m.: Independent Safety Assessment of the Main Yankee Atomic Power Station

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of independent safety assessment of the Main Yankee Atomic Power Station.

Representatives of the nuclear industry will participate, as appropriate.

9:45 a.m.–12:30 p.m.: National Academy of Sciences/National Research Council (NAS/NRC) Phase 2 Study Report

(Open)—The Committee will hear presentations by and hold discussions with the Chairman of the NAS/NRC Committee regarding the results of the NAS/NRC Phase 2 Study on the digital instrumentation and control systems.

Other member(s) of the NAS/NRC Committee, representatives of the NRC staff and nuclear industry will participate, as appropriate.

1:30 p.m.–2:30 p.m.: Department of Energy's (DOE's) Tritium Production Program

(Open)—The Committee will hear presentations by and hold discussions with representatives of DOE regarding DOE's tritium production program.

Representatives of the NRC staff will participate, as appropriate.

2:30 p.m.–3:00 p.m.: Future ACRS Activities

(Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

3:00 p.m.–3:15 p.m.: Reconciliation of ACRS Comments and Recommendations

(Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports. The EDO responses are expected to be provided to the ACRS prior to the meeting

3:30 p.m.–7:15 p.m.: Preparation of ACRS Reports

(Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Saturday, March 8, 1997

8:30 a.m.–9:00 a.m.: Report of the Planning and Procedures Subcommittee

(Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and organizational and personnel matters relating to the ACRS.

Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

9:00 a.m.–1:00 p.m.: Preparation of ACRS Reports

(Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

1:00 p.m.–2:00 p.m.: Strategic Planning

(Open)—The Committee will continue its discussion of items of significant importance to NRC, including rebaselining of the Committee activities for FY 1997.

Procedures for the conduct of and participation in ACRS meetings were

published in the Federal Register on October 1, 1996 (61 FR 51310). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss proprietary information per 5 U.S.C. 552b(c)(4), information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action per 5 U.S.C. 552b(c)(9)(B), matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EST.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672 or ftp.fedworld. These documents and the meeting agenda are also available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: February 13, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–4174 Filed 2–19–97; 8:45 am]

BILLING CODE 7590–01–P

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 3 to Regulatory Guide 1.134, and it is temporarily identified as DG–1068, ''Medical Evaluation of Licensed Personnel at Nuclear Power Plants.'' The guide will be in Division 1, ''Power Reactors.'' This regulatory guide is being revised to endorse an updated ANSI/ANS–3.4–1996, ''Medical Certification and Monitoring of Personnel Requiring Operator Licenses for Nuclear Power Plants,'' which describes methods acceptable to the NRC staff for determining the medical qualifications of applicants for initial or renewal operator or senior operator licenses for nuclear power plants and for notifying the NRC of an operator's incapacitating disability or illness.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by March 17, 1997.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list

of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact D. McCain at the NRC, telephone (301) 415–1021; e-mail DLM2@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section; or by fax at (301) 415–2260. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 7th day of February 1997.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 97–4178 Filed 2–19–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22508; File No. 811–3414]

Sun Growth Variable Annuity Fund, Inc.

February 12, 1997.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

Applicant: Sun Growth Variable Annuity Fund, Inc. (''Applicant'').

Relevant 1940 Act Section: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

Filing Date: The application was filed on December 31, 1996.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 10, 1997, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Bonnie S. Angus, Sun Life Assurance Company of Canada (U.S.), 50 Milk Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Michael Koffler, Staff Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representation

1. Applicant is an open-end, diversified management company organized as a Delaware corporation. On March 12, 1982, Applicant filed with the Commission a notification of registration as an investment company on Form N–8A, and a registration statement under Section 8(b) of the 1940 Act and under the Securities Act of 1933 (File No. 2–76478) registering an indefinite amount of securities. The registration statement was declared effective April 22, 1982, and public offering of Applicant's securities began on April 30, 1982.

2. Shares of Applicant are the underlying investment of two separate accounts of Sun Life Assurance Company of Canada (U.S.) (''Sun Life of Canada (U.S.)''), which are registered as unit investment trusts: Sun Life of Canada (U.S.) Variable Account A and Sun Life of Canada (U.S.) Variable Account B. These variable accounts are the sole shareholders of Applicant.

3. Applicant is a small fund with continuing net redemptions. Applicant's board of directors believes it was in the best interest of its stockholders to merge Applicant into a larger fund, to obtain economies of scale with respect to fees and expenses.

4. On December 18, 1996, pursuant to an Agreement and Plan of Reorganization dated October 1, 1996, between Applicant and MFS/Sun Life Series Trust (the ''Series Trust''), Applicant exchanged all of its assets for shares of the Money Market Series of the Series Trust. Applicant subsequently dissolved and distributed all the Money Market Series shares on a pro rata basis to each stockholder of Applicant. These transactions have been approved by Applicant's board of directors and by Applicant's stockholders.

5. All expenses incurred in connection with these transactions will be borne by Sun Life of Canada (U.S.).

6. Applicant has no assets and no security holders.

7. Applicant has no debts or other liabilities outstanding.

8. Applicant is not a party to any litigation or administrative proceeding, and is not now engaged, nor does it intend to engage, in any business activities other than those necessary for winding up its affairs.

9. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4092 Filed 2–19–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38268; File No. SR–CBOE–97–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated, Relating to the Use of Proprietary Brokerage Order Routing Terminals on the Floor of the Exchange

February 11, 1997.

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 January 21, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend from the Standard & Poor's 500 index (''SPX options'') to the trading crowd in options on the Standard & Poor's 100 index (''OEX options'') its existing policy adopted pursuant to Exchange Rule 6.23 whereby members are permitted to establish, maintain and use proprietary hand-held, brokerage order routing terminals and related systems (''Terminals'') in the trading crowd with the written approval of the Exchange upon submission of an ''Application & Agreement for Brokerage/Order Routing Terminals in Trading Crowds'' (''Application Agreement''). At present, members may apply to use Terminals only in the trading crowd in SPX options. The Exchange proposes to make changes to the Application Agreement reflecting its use to apply for Terminals in the OEX crowd as well as the SPX crowd. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basic for, the proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend to floor brokers in the OEX trading crowd the Exchange's policy pursuant to which members have the right to use proprietary, wireless, hand-held terminals for the electronic routing of firm and customer orders directly to brokers in the crowd (''Terminals''). The Exchange's general policy concerning the use of Terminals in the SPX trading crowd was recently approved by the Commission.[3] Pursuant to this policy, members may use Terminals in the SPX trading crowd only with the written approval of the Exchange after submission of the Exchange's Application Agreement.

In its filing originally proposing the adoption of a policy pertaining to the use of Terminals on the trading floor, the Exchange stated that it would initially limit the use of Terminals to the SPX options trading crowd. To date only one member firm has applied and been approved to use Terminals in that crowd. The Exchange now proposes to extend the availability of Terminals to one additional trading crowd on the floor, the OEX crowd, in response to a request from the same member firm that has been approved to use Terminals in the SPX crowd. The Exchange notes that the use of Terminals in the OEX crowd would be subject to exactly the same terms and conditions that apply in the SPX crowd, including the use of the same form of Application and Agreement that was recently approved.[4]

The Exchange originally proposed to limit Terminals to the SPX crowd for an initial evaluation period because the one firm proposing to use Terminals made its proposal with respect to SPX options only, and because the Exchange believed it should have some experience with its Terminals policy before extending the policy beyond the SPX Options trading crowd. Now that the same firm has expressed a desire to use Terminal in the OEX crowd as well as the SPX crowd, the Exchange believes that having Terminals in both crowds will provide a better evaluation of the Exchange's Terminals policy than if Terminals are limited to the SPX crowd only. Because OEX options represent a more retail-oriented product than the largely institutional SPX options, the Exchange believes that the availability of Terminals in both crowds will better enable the Exchange to evaluate how Terminals may be used for both retail and institutional orders, which in turn will be relevant to deciding when and under what conditions to propose an extension of the Terminal policy on a floor-wide basis.

[3] See Securities Exchange Act Release No. 38054 (Dec. 16, 1996), 61 FR 67365 (Dec. 20, 1996) (''Release No. 38054'').

[4] In particular, the applicant must agree that its terminal will be used to receive brokerage orders only, and that it will not be used to perform a market making function. *id.*

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[5] in general, and furthers the objectives of sections 6(b)(1)[6] and 6(b)(5)[7] of the Act in particular, in that the proposal is designed to improve communications to and from the Exchange's OEX trading crowd in a manner that gives the Exchange necessary monitoring tools and that is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, perfect the mechanisms of a free and open market, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any inappropriate burden on competition. To the contrary, the Exchange believes that the proposed rule change will promote competition among brokers by encouraging the development and use of new systems designed to facilitate the execution of customer orders, while at the same time preserving the benefits of the auction market for all customers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposal.

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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b) (1).

[7] 15 U.S.C. 78f(b) (5).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference 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–CBOE–97–02 and should be submitted by March 13, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4091 Filed 2–19–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Notice of Proposed Change in Magnetic Media Specifications for Submitters Who File Corrected Wage Reports Using Magnetic Media or Electronic Filing

SUMMARY: Notice is hereby given that SSA has developed new Magnetic Media Reporting and Electronic Filing Specifications (MMREF–2) for submitters who file corrected wage reports to SSA, using magnetic tape, diskette, cartridge or electronic filing. The new MMREF–2 will consist of a single record format to be used to report domestic or territorial correction reports using magnetic media and electronic filing.

We would like to receive any comments the public may offer on the MMREF–2. An educational seminar on the MMREF–2 is scheduled to be held at the SSA headquarters in Baltimore February 24, 1997, 9 a.m. to 12 p.m. To receive a draft copy of the MMREF–2 and/or to attend the educational seminar contact the addressee below.

DATES: Comments must be received by March 14, 1997 on the MMREF–2.

ADDRESSES: To receive a draft and/or to be part of the seminar, contact Ed Bulson, Social Security Administration, Room 3–B–15 Operations Building, Baltimore, Maryland 21235 or fax him at (410) 966–4159.

FOR FURTHER INFORMATION CONTACT: Mark Ruley, Financial Management Analyst, Office of Finance, Assessment and Management, Social Security Administration, 451 Altmeyer Building, Baltimore, Maryland 21235, (410) 965–0371.

Dated: February 12, 1997.

Richard Harron,

Tax Forms Coordinator.

[FR Doc. 97–4080 Filed 2–19–97; 8:45 am]

BILLING CODE 4190–29–P

Final Report of the Representative Payment Advisory Committee

AGENCY: Social Security Administration (SSA).

ACTION: Notice of availability of final report.

SUMMARY: The Social Security Administration (SSA) is making available the final report of the Representative Payment Advisory Committee.

ADDRESSES: Copies of the final report are available, free of charge, and may be requested by writing to: SSA, Representative Payment Advisory Committee Staff, 3–M–1 Operations Building, 6401 Security Blvd., Baltimore, MD 21235. You may also request a copy of the report by calling: (410) 966–4688. The report is also available for viewing on SSA's Home Page of the Internet at http://www.ssa.gov.

Written comments may be sent: by mail—SSA, Representative Payment Advisory Committee Staff, 3–M–1 Operations Building, 6401 Security Blvd., Baltimore, MD 21235; or by telefax—(410) 966–0980; via Internet—adcom@ssa.gov.

DATES: If you would like to submit comments, they should be postmarked on or before May 21, 1997.

FOR FURTHER INFORMATION CONTACT: SSA, Representative Payment Advisory Committee Staff, 3–M–1 Operations Building, 6401 Security Blvd., Baltimore, MD 21235; telephone—(410) 966–4688.

SUPPLEMENTARY INFORMATION: The Representative Payment Advisory Committee was chartered in July 1995 to undertake a comprehensive examination of SSA representative payment policy in five broad areas: (1) Beneficiary incapability; (2) payee selection; (3) payee recruitment and support; (4) standards for payee selection; (5) payee accountability and oversight. The Committee was established to take a fresh look at SSA's representative payment program to ensure that it continues to protect our nation's most vulnerable citizens.

The Committee heard public testimony in Washington, D.C., Chicago, IL, San Francisco, CA and Atlanta, GA. The Committee also held deliberative meetings in Baltimore, MD in April, June, and September 1996. We announced these meetings in the Federal Register. The public was also invited to comment directly to the Committee during the period July 1995 to September 1996. The Committee submitted its final report to SSA on November 7, 1996.

After the close of the public comment period, SSA may consider all comments received in developing initiatives to improve the representative payment program.

Dated: February 12, 1997.

Georgina Harding,

Staff Director, Representative Payment Advisory Committee.

[FR Doc. 97–4078 Filed 2–19–97; 8:45 am]

BILLING CODE 4190–29–P

STATE DEPARTMENT

Overseas Security Advisory Council Meeting; Closed

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Thursday, February 27, at the Registry Resort & Spa, Fort Lauderdale, Florida. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, D.C. 20522–1003, phone: 202–663–0869.

Dated: February 13, 1997.

William D. Clarke,

Acting Director of the Diplomatic Security Service.

[FR Doc. 97–4284 Filed 2–18–97; 10:39 am]

BILLING CODE 4710–24–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

WTO Dispute Settlement Proceeding Regarding Hungary's Export Subsidies on Agricultural Products (Docket No. WTO/D–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that the United States has requested the establishment of a dispute settlement panel under the Agreement Establishing the World Trade Organization (WTO), to examine Hungary's export subsidies on agricultural products. More specifically, the United States alleges that Hungary's export subsidies are inconsistent with the obligations of the WTO Agreement on Agriculture, including, but not limited to, Article 3.3, Article 8 and Article 9.2. USTR also invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 17, 1997, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Ileana Falticeni, Office of Monitoring and Enforcement, Room 501, Attn: Hungary Export Subsidies Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Attorney, (202) 395–3582, or Marilyn Moore, Senior Economist, (202) 395–6127.

SUPPLEMENTARY INFORMATION: On January 9, 1997, the United States requested establishment of a WTO dispute settlement panel to examine whether Hungary's export subsidies on agricultural products are inconsistent with the obligations of the WTO Agreement on Agriculture. Argentina, Australia and New Zealand also requested the establishment of a panel. The WTO Dispute Settlement Body (DSB) considered the U.S. request at its meeting on January 22, 1997. Under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, the DSB must establish a panel at the next DSB meeting where a panel request is on the agenda, unless the DSB determines by consensus otherwise. The next scheduled DSB meeting will be held on February 25, 1997. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States and Legal Basis of Complaint

In Hungary's Schedule annexed to the Marrakesh Protocol to the General Agreements on Tariffs and Trade 1994 (Schedule), Hungary provided an exclusive list of the agricultural products or groups of products that would be eligible for particular categories of export subsidies. Hungary's Schedule also specified the maximum level of expenditure for such subsidies that may be allocated or incurred for each year with respect to each agricultural product or group of products, and the maximum quantity of each agricultural product or group of products for which such subsidies could be granted each year. In 1995, Hungary provided export subsidies on agricultural products that are not specified in its Schedule. In addition, in the case of agricultural products that are specified in its Schedule, Hungary provided export subsidies in excess of its specified budgetary outlay and quantity commitment levels. Both sets of circumstances continued in 1996.

Hungary's export subsidies appear to be inconsistent with Hungary's obligations to limit its export subsidies under the Agreement on Agriculture, including, but not limited to, Article 3.3, Article 8, and Article 9.2.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

A person requesting that information or advice contained in a comment submitted by that person, other than business confidential information, be treated as confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2))—

(1) Must so designate that information or advice;

(2) must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–14 (''U.S.–Hungary Export Subsidies'')), may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 97–4181 Filed 2–19–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Tallahassee Regional Airport, Tallahassee, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Tallahassee, Florida, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On June 25, 1996, the FAA determined that

the noise exposure maps submitted by the City of Tallahassee, Florida, under Part 150 were in compliance with applicable requirements. On December 20, 1996, the Administrator approved the Tallahassee Regional Airport noise compatibility program. Thirteen (13) of fifteen (15) recommendations of the program were approved in full. Two recommendations were partially approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Tallahassee Regional Airport noise compatibility program is December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, Extension 29. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Tallahassee Regional Airport, effective December 20, 1996.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 of the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The City of Tallahassee, Florida, submitted to the FAA on June 4, 1996, updated noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from January 3, 1994 through May 30, 1996. The Tallahassee Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 25, 1996. Notice of this determination was published in the Federal Register.

The Tallahassee Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2001. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on June 25, 1996, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained fifteen (15) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective December 20, 1996.

Outright approval was granted for thirteen (13) of the fifteen (15) specific program measures. Two (2) measures were partially approved. The approval action was for the following program measures:

OPERATIONAL CONTROLS

Operational control number	Description	NCP pages
1	Balance the air carrier and military jet departure activity on Runways 27 and 36 (approximately 40 percent of the departure activity on each runway) to reduce noise exposure north of the airport. Departure activity on other runways should remain the same as the current conditions. This measure recommends a modification of Air Traffic Control procedures to increase the use of Runway 27 departures of air carrier and military jet activity to approximately 40 percent and to reduce departure of these aircraft to approximately 40 percent on Runways 36. For military jet departures, approximately 40 percent of these represent touch and go activity and would need to remain on Runway 36. The remaining military jet activity would be assigned to the same as the proposed air carrier activity. Other aircraft runway utilization would remain the same as the current condition. This would reduce noise exposure on sensitive areas north of the Airport and reduce the number of impacts within their 65 DNL contour by 53 people. FAA Action: Approved as a voluntary measure.	Pgs. 35–36; p. 12; and Table 14.
2	This measure recommends the implementation of a ''close-in'' departure procedure for Runways 36 and 09 and a ''distant'' departure for Runway 18 based on Advisory Circular 91–53A. This will increase aircraft altitude over noise sensitive areas south of the Airport and reduce noise levels in residential areas north and east of the Airport. FAA Action: Approved as a voluntary measure.	Pgs. 36–37; Table 14; and AC 91–53.
3	This measure recommends that when precision approach Global Positioning System (GPS) technology becomes available, a GPS should be installed and alternative approach procedures to Runway 27 should be reviewed to determine if approach track modifications are warranted. This will provide for future flexibility in reducing arrival noise to areas east of the Airport. FAA Action: Approved in part. FAA approves the review of alternative approach procedures to Runway 27 to determine if approach track modifications are warranted for noise benefits when precision approach GPS technology becomes available. The airport operator may submit supplemental information, including the noise benefits, upon completion of its review and may request approval under Part 150 of specified approach procedures to be used. However, the installation of a GPS under Part 150 is disapproved. The primary benefits of a GPS would be related to a development upgrade rather than noise benefits. This does not prevent the installation of a GPS outside of Part 150.	Pg. 37 and Table 14.
4	This measure supports the Federal legislation for the phase-out of Stage 2 aircraft by the year 2000. The phase-out of Stage 2 aircraft will reduce the impact of aircraft noise on areas surrounding the Airport. FAA Action: Approved as an expression of airport operator support for the Federal transition sechedule.	Pg. 37 and Table 14.

LAND USE MEASURES

Land use control number	Description	NCP pages
1	This measure recommends that current zoning for the City of Tallahassee and Leon County be amended to implement noise overlay zoning to supplement the underlying zoning categories. Overlay Zone 1 should be associated with the 60 DNL contour and Zone 2 should be associated with the 65 DNL contour using identifiable features to define the limits. Generally, residential uses, churches, hospitals and schools would be excluded from the 65 DNL contour and consideration would be given to precluding the location of additional mobile homes from the 60 DNL contour and above. This could preclude the potential for future incompatible development in areas subject to overflight and noise exposure. FAA Action: Approved.	Pg. 42–43; Exhibit 12; and Tables 13 & 15.
2	It is recommended that current zoning for the City of Tallahassee and Leon County be changed to designate land north of the Airport, east of Sand Road, West of Capitol Circle S.W., and south of S.R. 20 for future compatible forms of commercial and industrial development; and to designate land north of S.R. 20, west of Capitol Circle S.W., south of Gum Road and east of a north-south line situated approximately 3,600 feet west of Capitol Circle S.W. for low density residential development. This would preclude the potential for future incompatible development in areas subject to overflight and noise exposure. FAA Action: Approved in part. The portion of this recommendation related to any new residential development, regardless of density, does not meet Part 150 approval criteria to prevent the introduction of noncompatible land uses and is disapproved. This disapproval for purposes of Part 150 is not intended to discourage planning efforts to reduce the potential for future noncompatible land uses.	Pgs. 43–44; Exhibits 11 and 13; and Tables 13 & 15.
3	It is recommended that existing building codes for the City of Tallahassee and Leon County be amended to require soundproofing in new residential and noise sensitive institutional land uses (churches, hospitals, etc.) that may occur within the composite current and future 65 DNL noise contours. This addresses noise impacts which may occur on new noise sensitive uses in undeveloped areas. The application of these standards should only impact vested residential lots or parcels available for development, and only if the acquisition program proposed is not implemented. FAA Action: Approved. Sound attenuation consistent with Part 150 Table 1 will make these structures compatible. The FAA believes that the prevention of additional residential land uses within the DNL 65dB contour is highly preferred over allowing such uses even at lower densities and combined with sound attenuation. The airport operator and local land use jurisdiction are urged to pursue all possible avenues to discourage new residential development within these levels of noise exposure.	Pgs. 44–45 and Tables 13 & 15.
4	It is recommended that the City of Tallahassee and Leon County amend the current Tallahassee-Leon County Comprehensive Plan to incorporate the recommendations of the updated FAR part 150 Noise Compatibility Study into the provisions of their planning document. This would identify noise and land use compatibility areas within the aircraft noise impact areas. FAA Action: Approved.	Pgs. 47–48 and Tables 13 & 15.

LAND USE MEASURES—Continued

Land use control number	Description	NCP pages
5	It is recommended that procedures be implemented to factor noise compatibility considerations into the project review process of local planning commissions, Boards of Adjustment and staff review of land development proposals. This measure would include the development of specific checklist items relating to issues of noise compatibility and a map showing the area where noise compatibility issues are critical. FAA Action: Approved.	Pg. 48 and Tables 13 & 15.
6	It is recommended that the Broadmoor Estates Mobile Home Park be considered for voluntary fee simple acquisition and the present occupants be relocated to other compatible locations not impacted by aircraft related noise. This would remove approximately 210 residences (incompatible land uses) from high noise contour areas. FAA Action: Approved.	Pgs. 50–51; Exhibit 13; and Tables 13 & 15.
7	It is recommended that a voluntary purchase program be implemented for the acquisition of all 52 existing single-family residential units in The Cascades, depending upon the extent of neighborhood disruption, and 17 existing predominantly mobile homes located near the eastern terminus of Sullivan Road. This would remove these residences from high noise contour areas. FAA Action: Approved as a voluntary measure.	Pgs. 49–52; Exhibit 13; and Tables 13 & 15.
8	Acquisition is recommended for three parcels of undeveloped land located almost entirely within the 65dB contour: west of Capitol Circle S.W., south of Jackson Bluff Road, and north of Lake Cascade that has the potential for residential development. This will provide positive control over land use within high noise contour areas or land available for potential residential development. FAA Action: Approved. This measure is subject to a determination at the time of implementation that the purchase is necessary to prevent new noncompatible development because noncompatible development on the vacant land is highly likely and local land use controls will not prevent such development.	Pgs 52–53; Exhibit 13; and Tables 13 & 15.
9	It is recommended that as a final option, owners of noise impacted property who either opt not to participate in the voluntary purchase program, or whose dwellings are not technologically or financially feasible to undergo soundproofing will be offered the opportunity to sell an avigation easement to the airport. The avigation easement purchase offer will be made only after the completion of the voluntary purchase program and the residential soundproofing program is completed. This will provide protection to the airport from litigation and will provide notification to future residents of noise exposure. FAA Action: Approved.	Pgs. 53–54; Exhibit 13; and Tables 13 & 15.
10	It is recommended that soundproofing should be offered as an option to owners of permanent residential structures located within the DNL 65dB voluntary purchase areas, if in doing so, it is both technologically feasible and cost efficient. The soundproofing option would not commence until completion of the voluntary acquisition program. Mobile homes would not be eligible. This would address impacts on existing residences and result in notification of future residents of noise impacts. In exchange for the soundproofing, the residents will be required to dedicate an easement and nonsuite covenant to the airport. FAA Action: Approved.	Pgs. 54–55; Exhibit 13; and Tables 13 & 15.
11	It is recommended that the City of Tallahassee and Leon County should continue practicing environmental land use controls during their development review process. This supports the prohibition of residential land use within noise impacted portions of the study area. FAA Action: Approved.	Pg. 46 and Tables 13 & 15.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 20, 1996. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the City of Tallahassee, Florida.

Issued in Orlando, Florida on February 4, 1997.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 97–4204 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at La Crosse Municipal Airport, La Crosse, Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 24, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Eldon L. Steele, Airport Manager of the La Crosse Municipal Airport at the following address: La Crosse Municipal Airport, 2850 Airport Road, La Crosse, WI 54603.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of La Crosse under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, MN 55450, 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 5, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of La Crosse was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the

application, in whole or in part, no later than May 22, 1997.

The following is a brief overview of the application.

PFC application number: 97–03–00–LSE.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1997.

Proposed charge expiration date: August 1, 1998.

Total estimated PFC revenue: $315,000.

Brief description of proposed project(s): Acquire snow removal equipment (two snow plow trucks); Pavement evaluation and management system study; Airport Layout Plan update; PFC administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: no request to exclude carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of La Crosse.

Issued in Des Plaines, IL, on February 12, 1997.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–4207 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements to Support the Demonstration and Evaluation of Innovative Alcohol-Impaired Driving Projects

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of discretionary cooperative agreement program to support the demonstration and evaluation of Innovative Alcohol-Impaired Driving Projects.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to demonstrate and evaluate innovative projects aimed at reducing alcohol-impaired fatalities.

The goal of NHTSA's Impaired Driving program is to reduce alcohol-related fatalities to 11,000 by the year 2005. While progress has been made in reducing alcohol-related fatalities in the last ten years, more innovative programs with potential to achieve dramatic declines in alcohol-impaired driving fatalities are needed to reach this national goal. This cooperative agreement program is to support the development of innovative projects or new approaches that have potential to substantially reduce alcohol-related fatalities, injuries and crashes.

NHTSA anticipates funding several innovative demonstration projects for a period of two years under this announcement.

This notice solicits pre-applications from public and private, non-profit and for-profit organizations, state and local governments and their agencies. Interested applicants must submit a pre-application package as further described in the Pre-Application Procedures section of this notice. The pre-applications will be evaluated to identify those that warrant further development. Only selected pre-applicants will be invited to submit a full application.

DATES: Pre-applications must be received at the office designated below on or before 3:00 pm April 1, 1997.

ADDRESSES: Pre-applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–97–H–05072.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Rose Watson, Office of Contracts and Procurement at (202–366–9557). Programmatic questions relating to this cooperative agreement program should be directed to Valerie Gompf, Impaired Driving Division, NHTSA, 400 7th Street, SW (NTS–11), Washington, DC 20590 by e-mail at vgompf@nhtsa.dot.gov or by phone (202–366–2702). Interested applicants are advised that no separate pre-application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The goal of NHTSA's Impaired Driving program is to reduce alcohol-related fatalities to 11,000 by the year 2005. Progress has been made in reducing alcohol-related fatalities in the last ten years. The proportion of traffic fatalities involving alcohol has dropped to 41 percent in 1995, from 52 percent in 1985. The 17,274 alcohol-related fatalities in 1995 (41 percent of total traffic fatalities for the year) represent a 24 percent reduction from the 22,720 alcohol-related fatalities reported in 1985 (52 percent of the total).

From 1985 to 1995 intoxication rates decreased for drivers of all age groups involved in fatal crashes, with the youngest and oldest drivers experiencing the largest decreases. For drivers 65 and older, intoxication rates dropped from 7.6 percent in 1985 to 5.0 percent in 1985 (a decline of 34 percent); for drivers 16 to 20 years of age, intoxication rates dropped by 47 percent (from 23.9 percent in 1985 to 12.7 percent in 1995).

The highest intoxication rates in fatal crashes in 1995 were recorded for drivers 21–24 years old (27.8 percent), followed by ages 25–34 (26.8 percent and 35–44 (22.8 percent). These three age groups have also shown the smallest reductions since 1985 (21.3 percent, 17.3 percent and 6.0 percent, respectively.

Safety belts were used by only about 17.5 percent of the fatally injured intoxicated drivers (blood alcohol concentration (BAC) of 0.10 g/dl or greater), compared to 29.1 percent of fatally injured impaired drivers (BAC between 0.01 g/dl and 0.09 g/dl) and 44.6 percent of fatally injured sober drivers (no alcohol).

Innovations in enforcement, alternative sanctions, public education, alcohol screening and treatment, prevention, technology and the passage of tougher legislation have all contributed to this decline. While it is clear that the nation has made progress in reducing alcohol-related fatalities, more needs to be done in order to continue making significant gains. It will take new ideas, creative approaches, innovative programs, new partners, and new or improved technologies to significantly lower the number of alcohol-related deaths. The national goal will not be met without expanding beyond the current state-of-the-art in these areas.

Partners in Progress

To explore how to achieve this national goal, NHTSA convened a group of over 100 people for the Partners in Progress meeting in February 1995. The group developed over 100 strategies to address the goal. In January 1996, NHTSA convened an Implementation Group to develop an action plan to make quantum leaps toward this goal. The Implementation Group met several times over the course of a year and drafted an ''Impaired Driving Guide for Action,'' which included the following seven countermeasure areas:

(1) public education;

(2) individual responsibility;

(3) legislation;
(4) enforcement/adjudication;
(5) technology;
(6) health care and medical community; and
(7) business/employers.

This innovative cooperative agreement program will be based on the seven areas identified in the Partners in Progress An Impaired Driving Guide for Action. The information contained in this notice from the Partners in Progress is still in draft form. The final document is expected to be printed in June of 1997.

Purpose

The purpose of this cooperative agreement program is to encourage innovation in solving the impaired driving problem by funding projects that apply original or creative methods or technologies; or that use existing methods or technologies in original or creative ways. The objective is to identify creative or novel approaches/technologies with the greatest potential to reduce alcohol involved crashes, fatalities and injuries.

Project Eligibility

Applications may be submitted by public and private, non-profit and for-profit organizations, and state and local governments and their agencies or a consortium of the these groups above. Thus, universities, colleges, research institutions, hospitals, other public and private (non- or not-for-profit) organizations, and State and local governments are eligible to apply. Interested applicants are advised that no fee or profit will be allowed under this cooperative agreement program.

Eligible projects will also be limited to those that fall within the seven categories of the draft Partners in Progress: Impaired Driving Guide for Action outlined below:

(1) Public Education—Create public concern and outrage by developing and implementing a comprehensive national and/or local public information and education campaign that promotes health norms and reawakens the public awareness of the scope, impact and cost of the impaired driving problem, and develops public support for legislative and enforcement efforts.

1.1 Recreate public concern and outrage about senseless deaths and injuries caused by impaired driving.

1.2 Develop campaigns and messages with appeal to high-risk target populations, e.g. 21–34 year olds, high BAC offenders and under age 21.

1.3 Improve the balance of media messages related to alcohol-impaired driving. Three specific actions are recommended for achieving a more appropriate balance in media messages.

a. Increase the relevance and reach of pro-health and safety messages through increased availability and public service announcements, counter-advertising and media literacy;

b. Decrease the advertising and promotional messages that glamorize or trivialize drinking and driving; and

c. Enlist the expertise of the alcohol and advertising industries in reaching high risk populations, especially those age 21–34 and underage youth with pro-health and safety messages.

(2) Individual Responsibility—Promote a social norm where individuals do not drive while impaired and actively intervene to prevent behaviors by others that contribute to driving while impaired.

2.1 Develop and implement community programs that train all citizens to follow a prescribed set of behaviors:

a. Serve as appropriate role models especially regarding their drinking and driving behavior.

b. Intervene in the behavior of others when they are likely to drive while impaired.

c. Assist alcohol dependent individuals to seek and participate in treatment and recovery.

d. Exhibit appropriate social hosting practices.

e. Patronize establishments that exhibit responsible serving practices.

f. Support and comply with laws regulating the purchase, possession, consumption of or provision of alcohol to underage persons as well as underage persons falsifying identification in order to purchase.

g. Educate family, friends and co-workers about the dangers of drinking and driving.

h. Intensify the social contract: ''Do you mind if I drive after drinking?''

I. Participate in the development of alternative activity programs for youth that:

1. Encourage parents and others to be role models for children.

2. Encourage children to query their parents, ''If you're drinking, who's driving?''

3. Incorporate impaired driving and other traffic safety messages into school curricula.

4. Support alcohol-free parties for youth celebrations.

j. Show support for the enactment and enforcement of policies, laws, and ordinances that:

1. Strengthen the prevention and deterrence of impaired driving.

2. Provide for accessible/affordable treatment for alcohol dependent persons.

3. Promote designated drivers and the use of other alternative transportation.

(3) Legislation—Promote passage of effective legislation and sustain existing effective laws such as Minimum Drinking Age 21, Administrative License Revocation, Zero Tolerance for Youth and .08 illegal per se for adults. Encourage adoption and evaluation of promising legislation such as graduated licensing for youth and vehicle sanctions for repeat offenders.

3.1 Support, promote strengthen, and pass legislation that reflects the public sentiment. The majority of the nation's citizens believe that alcohol impaired driving is socially unacceptable. Listed below are legislative initiatives that should be addressed in each state.

a. Administrative License Revocation (Laws which automatically and immediately suspend or revoke licenses of drivers who operate a vehicle with a blood alcohol level at or above the state's defined legal limit.)

b. Safety Belts and Child Car Seats (Laws that make non-use of safety belts by drivers and passengers a traffic offense, thus allowing police to stop and ticket any occupant not wearing a safety belt or using a proper child restraint).

c. Comprehensive Screening and Multi-tiered Treatment Programs (Laws requiring all drivers convicted of DWI/DUI undergo an alcohol assessment program to determine if they have an alcohol abuse problem and require appropriate sanction and treatment.)

d. .08 BAC Per Se (Laws lowering the illegal blood alcohol concentration to .08 BAC per se for all drivers over the age of 21.)

e. Vehicle Confiscation, Immobilization, Impoundment (Laws requiring that convicted repeat DUI/DWI offenders lose their vehicle or use of their vehicle for a prescribed period of time or have devices placed on the vehicle that would prevent the driver from driving if they had consumed any alcohol.)

f. Valid Drivers License Required for Vehicle Purchase or Registration (Laws that prevent persons without a valid drivers license from purchasing or registering a vehicle.)

g. Zero Tolerance (Laws that prevent drivers under the age of 21 to operate a vehicle with any measurable amount of alcohol in their system.)

h. Graduated Licensing (Laws that require new drivers to demonstrate responsible driving behavior during restricted hours of operation over an extended period of time before obtaining full license privilege.)

i. 21 Minimum Drinking Age (Laws that make it illegal for persons under 21 to purchase, attempt to purchase, use

false identification to purchase, possess and/or consume alcoholic beverages. These laws also prohibit an adult from purchasing alcohol for a minor or selling to a minor.)

j. Enhanced Penalties for Higher BACs (Laws that provide more severe penalties for drivers with very high blood alcohol levels.)

k. Dram Shop Laws (Laws that provide criminal and administrative penalties for serving and selling alcohol to intoxicated or underage patrons.)

l. Immunity for Hospital BAC Reporting (Laws that grant immunity to hospitals that conduct and report BAC tests of drivers in case of death or serious injury.)

(4) Enforcement/Adjudication—Implement uniform, visible and highly publicized traffic safety and alcohol regulatory enforcement efforts throughout the nation and ensure effective and consistent prosecution and adjudication of offenders to guarantee that impaired driving is treated as a serious crime.

4.1 Hold law enforcement administrators accountable for impaired driving deaths and injuries in their jurisdictions.

4.2 Train, support and motivate law enforcement officers, prosecutors and judges to consistently enforce all laws pertaining to DWI/DUI and alcohol regulatory control.

4.3 Publicize the fact that traffic enforcement not only reduces fatalities and injuries, but also crime in general.

4.4 Improve the quality and accessibility of traffic records related to alcohol traffic offenses: arrests, convictions, sanctions, compliance with judicial directives and outcomes.

4.5 Enforce laws pertaining to legal sale, purchase and provision of alcohol to underage and intoxicated persons.

4.6 Increase the efficiency of the arrest process to reduce the time and paperwork requirements associated with DUI arrests.

4.7 Increase the availability and use of creative alternative sentences for DUI offenders such as: community service, electronic monitoring, ignition interlocks, and intensive probation.

(5) Technology—Identify and apply technological solutions to the impaired driving problem that affect the roadway, the vehicle and the driver.

5.1 Establish a strong safety presence to influence the development and application of safety technologies within the Intelligent Transportation Systems (ITS) and highway construction communities.

5.2 Develop/use innovative technological devices to support the detection, arrest, prosecution, sentencing and monitoring of impaired drivers.

(6) Health and Medical—Encourage the health care and medical community to address alcohol use and impaired driving in patient consultations. Involve health care providers as champions for public education efforts and advocates for policy changes.

6.1 Advocate for health care policies that provide for adequate coverage for assessment, intervention, and treatment of alcohol problems.

6.2 Show concern and take action about potential impaired driving by patients as an integral part of preventive medicine. This action should include:

a. Questions about drinking, impaired driving and occupant protection in patient interviews.

b. Information about drinking, impaired driving and occupant protection in written and verbal patient education.

c. Aggressive assessment and referral for alcohol problems.

6.3 Involve health care professionals as advocates for prevention, legislation and enforcement initiatives in the areas of impaired driving and occupant protection.

6.4 Strengthen training for health care professionals in issues related to alcohol and impaired driving. This training should occur both initially in medical school and in continuing medical education programs.

(7) Business and Employers—Convince/inspire businesses and employers to implement policies as well as engage in responsible hospitality practices whenever alcoholic beverages are sold or served. Encourage businesses to support community activities related to reducing the human and economic costs of traffic crashes.

7.1 Develop and implement impaired driving policies, programs and enforcement actions by businesses and employers that influence employee and customer behaviors:

a. Employee assistance programs.

b. Policies regarding on-the-job drinking and impaired driving.

c. Education to employees and customers regarding responsible hosting/party planning.

7.2 Increase participation of businesses and employers in addressing traffic safety issues within their communities.

7.3 Adopt responsible hospitality practices by those licensed to sell alcoholic beverages including: strict age identification, staff training, promotion of alternative beverages, availability of food and control of intoxication.

7.4 Patronize responsible establishments or adopt responsible hospitality practices when hosting events for employees, clients, or business associates.

Additional Resources

The following is a list of resources for information on highway safety programs on impaired driving.

(1) Compendium of Traffic Safety Research Projects, DOT HS 808 379 April 1996. This is an annotated bibliography of NHTSA's behavioral research over the last 10 years, and includes alcohol-impaired driving research. This is available on NHTSA's world wide web home page (http://www.nhtsa.dot.gov:80/people/injury/research/COMPEND.HTM).

(2) Traffic Safety Digest. This is a quarterly publication of NHTSA which contains innovative traffic safety projects that have been or are currently being conducted in states and communities. This is available on NHTSA's world wide web home page (http://www.nhtsa.dot.gov:80/people/outreach/safedige).

(3) Each state has a Governor's Highway Safety Office that can provide information on state legislation, programs and activities related to impaired driving.

Pre-application Procedures

Each applicant must submit one original and two copies of the pre-application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, SW., Room 5301, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required. Pre-Applications shall be limited to the completed Cover Page of the Application for Federal Assistant (standard form 424—revised 4–88); a 4-page project description; and a 1-page staffing and budget summary. The cover page form 424 can be found in Appendix A. In block 11 of the cover page form 424, the applicant should also state which of the seven Partners in Progress areas the project addresses. The pre-application may be single spaced, must be typed on one side of the page only, and must include a reference to NHTSA Cooperative Agreement No. DTNH22–97–H–05072. Please note applicants interested in submitting more than one innovative project must prepare a separate pre-application package for each project.

Only complete packages received on or before 3:00 p.m., April 1, 1997 will be considered.

Project Review Procedures and Criteria

Upon receipt of the pre-applications, they will be screened to ensure that they

meet the eligibility requirements. Pre-applications meeting the requirements will be reviewed by a panel using the criteria outlined below. In preparing the pre-application package, applicants should organize the package to follow the outline provided by the review criteria.

Pre-application Review Criteria

The project package must concisely address the following review criteria:

1. Description of what the organization proposes to accomplish which:

(a) clearly identifies the one area for consideration (must be one of the seven areas outlined from Partners in Progress); states the goals and objectives of the project; and explains the innovative and creative features of the project being demonstrated. If building on an old idea, what are the innovative or new approaches that make this project different from what has been tied in the past?

(b) clearly articulates the project's potential to make a significant contribution to national efforts to achieve the 2005 impaired driving fatality goal. A rationale for the estimated impact must be included. (45 percent)

2. Briefly outline a specific, sound, and feasible work plan, including the plan to evaluate the effectiveness of the proposed project in reducing impaired driving fatalities. This outline should identify the specific tasks required to accomplish the goals and objectives of the project. The feasibility of the project will be evaluated in light of resources, realism, and ability to achieve the desired outcome. (25 percent)

3. Description of the project's adaptability to other jurisdictions at a reasonable cost. (15 percent)

4. Briefly outline the project's staffing and budget. Include staffing titles and a 1-2 sentence description of the position duties. The budget should segregate project demonstration costs from project evaluation costs and for each of these activities should identify costs by *direct labor* with a break down of costs by proposed staffing; *direct materials/ equipment* with a break down of major cost items; *total travel* costs with an explanation of the relationship to the project; *evaluation* costs; and *overhead*. Clearly identify any financial or in-kind commitment of resources by the applicant organization or other supporting organizations to support the project. (15 percent)

Those applicants whose pre-application are not selected will be informed in writing. Those applicants whose pre-applications are selected for further development will also be notified in writing and a date for submitting full applications will be set. Upon receipt of the full application proposal by NHTSA, they will be reviewed by panel members who were involved in the review of the pre-applications using the following criteria.

Full Application Criteria

The following criteria will be used to evaluate the full application:

(1) Innovation (30 percent). The description clearly identifies the one area for consideration (must be one of the seven areas outlined from Partners in Progress), and explains the innovative and creative features of the project. If building on an old idea, what are the innovative or new approaches that make this project different from what has been tried in the past? The applicant has thought through some of the barriers to developing and implementing this new idea. The innovative project involves new non-traditional highway safety partners. The project is adaptable to other jurisdictions at a reasonable cost. The project idea will be publicly supported and/or is suitable for public participation.

(2) Goals, Objectives and Workplan (30 percent). The applicant's goals are clearly articulated and the objectives are time-phased, specific, measurable, and achievable. The workplan will achieve an outcome-oriented result that will reduce impaired driving fatalities and injuries. The workplan addresses what the applicant proposes to develop and implement; how this will be accomplished; and includes the major tasks/milestones necessary to complete the project. This involves identification and solution of potential technical problems and critical issues related to successful completion of the project. The work plan will be evaluated with respect to its feasibility, realism, and ability to achieve the desired outcomes.

(3) Evaluation Plan (20 percent). The evaluation plan clearly articulates the project's potential to make a significant contribution to national efforts to achieve the 2005 impaired driving fatality goal. A rationale for the estimated impact is included. The applicant describes the proposed evaluation design and the methods for measuring the outcomes of the proposed interventions (countermeasures). The evaluation plan will measure the effectiveness of the innovative program idea. The applicant provides sufficient evidence of community cooperation and commitment, if needed. There are sufficient data sources identified and access is ensured from appropriate owners or collectors of the data to: identify/create and test appropriate instruments; and collect and appropriately analyze quantitative and qualitative data for measuring the effectiveness of the innovative project.

(4) Project Management and Staffing (20 percent). The proposed staff are clearly described, appropriately assigned, and have adequate skills and experiences. The applicant has the capacity and facilities to design, implement, and evaluate the proposed project, The applicant provided details regarding the level of effort and allocation of time of each staff position. The applicant furnished an organizational chart and resumes of each proposed staff. The resumes demonstrate an appropriate staffing mix, experience and technical skills for the successful completion of project objectives. Sufficient staff with the evaluation expertise have been allocated to carry out the submitted evaluation plan. The applicant's staffing plan is reasonable for accomplishing the objectives of the project within the established time frame. The financial budget is sufficiently detailed to allow NHTSA to determine that the estimated costs are reasonable and necessary to perform the proposed effort. Financial or in-kind commitment of resources by the applicant organization or other supporting organizations to support the project has been clearly identified.

Availability of Funds and Period of Support

Contingent on the availability of funds and satisfactory performance, cooperative agreements will be awarded for a project period of two years. A total of $1.6 million in cooperative agreements is anticipated to be awarded. It is anticipated that individual award amounts, based upon demonstrated need, may range between $200,000 and $400,000. This stated range does not establish a minimum or maximum funding levels.

Ideally, one cooperative agreement would be awarded in each of the seven areas, but NHTSA reserves the right to award to applicants whose proposals have the greatest potential regardless of program area. Thus more than one cooperative agreement could be awarded in each area and some areas may have no projects funded.

In each project, some portion of the funding requested must be dedicated to evaluation activities. Given the amount of funds available for this effort, applicants are strongly encouraged to seek other funding opportunities to supplement the federal funds.

Preference will be given to applicants with cost-sharing proposals.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative-agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of this Cooperative Agreement and to coordinate activities between the Grantee and NHTSA.

2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.

3. Serve as a liaison between NHTSA Headquarters, Regional Offices and others (Federal, state and local) interested in innovative alcohol grant program and the activities of the grantee as appropriate.

4. Stimulate the transfer of information among cooperative agreement recipients and others engaged in innovative alcohol program activities.

Special Award Selection Factors

While not a requirement of this announcement, applicants are strongly urged to seek funds from other federal, State, local and private sources to augment those available under this announcement. For those applications that are evaluated as meritorious for consideration for award, preference may be given to those that have proposed cost-sharing strategies and/or have other proposed funding sources in addition to those in this announcement.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirements and Deliverables:

A. Quarterly Progress Reports should include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report. The grantee shall supply the progress report to the Contracting Officer's Technical Representative (COTR) every ninety (90) days following date of award.

B. Program Implementation and Evaluation Plan: The grantee shall submit a revised program implementation and evaluation plan, incorporating comments received from the NHTSA COTR, no more than 1 month after award of this agreement. The NHTSA COTR will review and comment, if necessary.

C. Draft Final Report: The grantee shall prepare a Draft Final Report that includes a description of the innovative project, partners, intervention strategies, program implementation, evaluation methodology and findings from the program evaluation. In terms of information transfer, it is important to know what worked and did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The grantee shall submit the Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

D. Final Report: The grantee shall revise the Draft Final Report to reflect the COTR's comments. The revised final report shall be delivered to the COTR 15 days before the end of the performance period. The grantee shall supply the COTR:

—A camera ready version of the document as printed.

—A copy, on appropriate media (diskette, Syquest disk, etc.), of the document in the original program format that was used for the printing process.

—Some documents require several different original program languages (e.g., PageMaker was the program for the general layout and design and PowerPoint was used for charts and yet another was used for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example PowerPoint files should be clearly identified by both a descriptive name and file name (e.g., 1994 Fatalities—chart1.ppt.)

—A complete version of the assembled document in portable document format (PDF) for placement of the report on the world wide web (WWW). This will be a file usually created with the Adobe Exchange program of the complete assembled document in the PDF format that will actually be placed on the WWW. The document would be completely assembled with all colors, charts, side bars, photographs, and graphics. This can be delivered to NHTSA on a standard 1.44 floppy diskette (for small documents) or on any appropriate archival media (for larger documents) such as an CD ROM, TR–1 Mini cartridge, Syquest disk, etc.

—Four additional hard copies of the final document

E. A Briefing to NHTSA and a presentation to at least one national meeting (e.g., Lifesavers * * *).

F. Preparation and submission of a paper for publication in a professional journal.

Items (E) and (F) above will be submitted to NHTSA initially in draft format and will be circulated for review and comment to NHTSA and others, as appropriate.

3. During the effective performance period of cooperative agreements awarded as a result of this announcement, the agreement as applicable to the grantee, shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Issued on: February 14, 1997.

James Hedlund,

Associate Administrator for Traffic Safety Programs.

BILLING CODE 4910–59–M

Appendix A—Application for Federal Assistance Cover Page, Standard Form 424 (rev 4–88).

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction / *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other *(specify)*:	**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify): _____
	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐ TITLE:	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4910–59–C

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise and existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

[FR Doc. 97–4203 Filed 2–19–97; 8:45 am]

BILLING CODE 4910–59–M

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 536X)]

CSX Transportation, Inc.—Abandonment Exemption—in Vigo County, IN

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, pursuant to 49 U.S.C. 10502, exempts CSX Transportation, Inc. (CSXT), from the prior approval requirements of 49 U.S.C. 10903 to permit CSXT to abandon a 2.6-mile portion of its Chicago Service Lane, CE&D Subdivision, known at the Saxton Branch, between milepost ZY–0.00, at Dewey, IN (near Terre Haute), and milepost ZY–2.6, at the end of the track, in Vigo County, IN, subject to an environmental condition and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 24, 1997. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) must be filed by March 3, 1997, petitions to stay must be filed by March 7, 1997, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by March 12, 1997, and petitions to reopen must be filed by March 17, 1997.

ADDRESSES: Send pleadings, referring to STB Docket No. AB–55 (Sub-No. 536X) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 13, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–4179 Filed 2–19–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; Computer Matching Program

AGENCY: Financial Management Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs dated June 19, 1989, notice is hereby given of the conduct of a Financial Management Service (FMS) matching activity.

EFFECTIVE DATE: March 24, 1997.

ADDRESS: Comments or inquiries may be submitted to the Debt Management Services, Financial Management Service, 401 14th Street, SW, Room 151, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, Debt Management Services, (202) 874–6660.

SUPPLEMENTARY INFORMATION: FMS is the central disbursing source for the Federal Government and currently receives recurring and non-recurring payment certification records from departments and agencies of the Government. FMS has a ''system of records'' (as defined in the Privacy Act of 1974) for nonrecurring payments entitled ''Payment Records for Other than Regular Recurring Benefit Payments'' identified as Treasury/FMS .016.

FMS is also the lead agency in the Federal Government for debt collection, and collects non-tax debts owed to the Federal Government. FMS has a ''system of records'' for debt collection

entitled ''Debt Collection Operations System'' identified as Treasury/FMS .014.

The Debt Collection Improvement Act of 1996 (''DCIA'') amended the administrative offset statute, 31 U.S.C. 3716, by statutorily providing for centralized administrative offset by disbursing officials of the United States. This statutory provision takes advantage of FMS' role as the primary disbursing agency for the Federal Government. This match of records contained in the two systems of records identified above is intended to help implement disbursing official offset within the Department of the Treasury. As a match of two Treasury systems of records, the intended match may be an internal match which is not subject to the requirements of the Computer Matching and Privacy Protection Act of 1988 (see 5 U.S.C. 552a(a)(8)(B)(v)(II)). The preparation of this Notice and any other documents which would be required for a matching program is intended to assure compliance with the Computer Matching and Privacy Protection Act of 1988, if judicial interpretation would deem this computerized comparison a ''matching program.'' This notice should not be construed as a determination or admission by the agency that this match is a ''matching program.''

The DCIA provides authority for Treasury to waive subsections (o) and (p) of 5 U.S.C. 552a (relating to computer matching agreements, and post-offset notification and verification) upon written certification by the head of a State or an executive, judicial, or legislative agency seeking to collect the claim that the requirements of subsection (a) of 31 U.S.C. 3716 have been met. Such waiver will be in effect prior to the commencement of the computer matching program. Interested parties may obtain documents concerning the waiver from the contact listed above.

NAME OF SOURCE AGENCY:

Financial Management Service

NAME OF RECIPIENT AGENCY:

Financial Management Service

BEGINNING AND COMPLETION DATES:

This program of computer matches will commence not earlier than the thirtieth day after this notice appears in the Federal Register. The matching activity will continue indefinitely.

PURPOSE:

The purpose of this program of computer matches is to identify payments made to individuals who owe delinquent debts to the Federal Government, and to offset such payments where appropriate to satisfy those debts.

AUTHORITY:

Authority for this program of computer matches is granted under 31 U.S.C. 3716.

CATEGORIES OF INDIVIDUALS COVERED:

Individuals receiving payments, which are not recurring benefit payments, from the Federal Government which are disbursed by the Financial Management Service; and individuals who are indebted to the United States and whose debts may be collected by offset in accordance with 31 U.S.C. 3716.

CATEGORIES OF RECORDS COVERED:

Included in this program of computer matches is information concerning the debtor contained in the Debt Collection Operations System (Treasury/FMS .014) including name, taxpayer identification number, the amount of the indebtedness, the name and address of the agency who is principally responsible for collecting the debt, and the name, phone number and address of an agency contact. Information contained in Payment Records for Other than Regular Recurring Benefit Payments (Treasury/FMS .016) which shall be included in this program of computer matches shall include name, taxpayer identification number, mailing address, and the amount of payment.

Dated: February 10, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 97–4107 Filed 2–19–97; 8:45 am]

BILLING CODE: 4810–35–F

Internal Revenue Service

Proposed Collection; Comment Request for Form 2688

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2688, Application for Additional Extension of Time to File U.S. Individual Income Tax Return.

DATES: Written comments should be received on or before April 21, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Additional Extension of Time to File U.S. Individual Income Tax Return.

OMB Number: 1545–0066.

Form Number: 2688.

Abstract: Internal Revenue Code section 6081 permits the Service to grant a reasonable extension of time to file a return. Form 2688 allows individuals who need additional time to file their U.S. income tax return to request an extension of time to file after the automatic 4-month extension period ends.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,453,000.

Estimated Time Per Respondent: 37 min.

Estimated Total Annual Burden Hours: 900,860.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–4185 Filed 2–19–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8453–P

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–P, U.S. Partnership Declaration and Signature for Electronic and Magnetic Media Filing.

DATES: Written comments should be received on or before April 21, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Partnership Declaration and Signature for Electronic and Magnetic Media Filing.

OMB Number: 1545–0970.

Form Number: 8453–P.

Abstract: This form is used to secure the general partners' signature and declaration in conjunction with the electronic or magnetic media filing of a partnership return (Form 1065). Form 8453–P, together with the electronic or magnetic media transmission, will comprise the partnership's return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 49 min.

Estimated Total Annual Burden Hours: 405.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–4186 Filed 2–19–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8453–F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–F, U.S. Estate or Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing.

DATES: Written comments should be received on or before April 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Estate or Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing

OMB Number: 1545–0967.

Form Number: 8453–F.

Abstract: This form is used to secure taxpayer signatures and declarations in conjunction with electronic or magnetic media filing of trust and fiduciary income tax returns. Form 8453–F, together with the electronic or magnetic media transmission, will comprise the taxpayer's income tax return (Form 1041).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 49 min.

Estimated Total Annual Burden Hours: 810.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information

displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–4187 Filed 2–19–97; 8:45 am]

BILLING CODE 4830–01–U

[FI–46–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–46–93 (TD 8555), Hedging Transactions (§ 1.1221–2).

DATES: Written comments should be received on or before April 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, Room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Hedging Transactions.

OMB Number: 1545–1403.

Regulation Project Number: FI–46–93.

Abstract: This regulation clarifies the character of gain or loss from the sale or exchange of property that is part of a business hedge. A taxpayer must identify the hedging transaction on its books and records before the close of the day on which the taxpayer enters into it and must also identify the item, items, or aggregate risk being hedged. The information will be used to verify that a taxpayer is properly reporting its business hedging transactions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 110,000.

Estimated Time Per Respondent: 52 minutes.

Estimated Total Annual Burden Hours: 95,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 14, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–4188 Filed 2–19–97; 8:45 am]

BILLING CODE 4830–01–U

[INTL–372–88; INTL–401–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning existing final regulations, INTL–372–88 (TD 8632), Section 482 Cost Sharing Regulations (§ 1.482–7); INTL–401–88 (TD 8552), Intercompany Transfer Pricing Regulations Under Section 482 (§§ 1.482–1, 1.482–4).

DATES: Written comments should be received on or before April 21, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: (INTL–372–88) Section 482 Cost Sharing Regulations; (INTL–401–88) Intercompany Transfer Pricing Regulations Under 482.

OMB Number: 1545–1364.

Regulation Project Number: INTL–372–88; INTL–401–88.

Abstract: The information collections in INTL–372–88 are necessary to

determine whether an entity is an eligible participant of a qualified cost sharing arrangement and whether each eligible participant is sharing the costs and benefits of intangible development on an arm's length basis. INTL–401–88 relates to the pricing of transfers of tangible property, intangible property, or services between related parties to ensure that taxpayers clearly reflect income and to prevent the avoidance of taxes with respect to such transactions.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 7 hours, 51 minutes.

Estimated Total Annual Burden Hours: 7,850.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–4189 Filed 2–19–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Fulbright Teacher Exchange Program Orientation

ACTION: Notice—Request for Proposals.

The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations, with a minimum of four years of experience in successfully administering orientation programs, and meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop and administer August 1997 orientation activities in Washington DC. for approximately 500 foreign and U.S. teachers and dependents participating in the Fulbright Teacher Exchange Program. The activities prepare participants in the program to teach in the educational system of another country. The programming specifically strives: (a) To provide the U.S. teachers with opportunities to meet face to face with their foreign exchange partners to discuss the details of their individual exchange assignments; (b) to provide participants with an understanding of the educational systems in which they will be teaching; and (c) to provide teachers with practical guidance on living in their countries of destination, with particular references to cross-cultural differences.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and other countries of the world.'' (The funding authority for the program cited above is provided through the Fulbright-Hays Act.)

Programs and projects must conform with Agency requirements and guildlines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/ASX–97–02.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on *Thursday, April 3, 1997.* Faxed documents will not be accepted, nor will documents postmarked April 3, 1997, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Grants should begin on or above May 15, 1997 and run through April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Ilo-Mai Harding, Teacher Exchange Branch, E/ASX, room 349, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 619–4556, fax: (202) 401–1433, Internet: IHARDING@USIA.GOV to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http;//www.usia.gov or from the Internet Gopher at gopher://gopher.usia.gov. Under the heading ''International Exchanges/Training,'' select ''Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before downloading.

Please specify USIA Program Officer Ilo-Mai Harding on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASX–02, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC, 20547.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-

economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview: August Orientation Workshop

Approximately 500 U.S. and foreign exchange teachers and their dependents from approximately 25 countries will attend an orientation workshop in Washington, DC, from August 4 to 8. Names and numbers of participants will be provided in May/June after completion of the educator matching process. (There will be approximately 135 U.S. teachers, 165 foreign teachers and 200 family members.)

Participating countries arrange for non-U.S. teachers to arrive at the U.S. orientation site. Flights carrying non-U.S. teachers and their families should arrive on August 4, 1997 in the Washington, DC area. Arrangements should be made by the recipient institution for the U.S. teachers and their families to arrive at the orientation on August 5, which is a rest day by foreign teachers. (The recipient institution must require U.S. teachers to make their own travel arrangements to the orientation site, on a reimbursable basis). The workshop itself will take place August 6–7. Departure will be scheduled for August 8.

Purpose: The purpose of the August orientation workshop is to provide U.S. and foreign teachers and their spouses and dependents with a wide range of briefings and discussions to assist them in preparing to function effectively in host schools and communities here and abroad. Partners meet face to face and share important information about their workplace and other particulars concerning their individual exchanges. The workshop should focus on the teachers' need to understand education in the host country, the professional and personal aspects of the exchange, and the many aspects of adjustment to living abroad, including cross-cultural orientation. The workshop should also address the anticipated needs and concerns of spouses and children so that they are able to optimally benefit from the exchange year abroad.

Agenda: An equivalent of one day should be set aside for the U.S. teachers and their families, as well as exchange partners and their families, to discuss their individual exchanges one-on-one.

Sessions for foreign teachers and spouses should include:

(1) Overview of the U.S. education system, highlighting contemporary issues affecting U.S. education;

(2) In-depth briefings on administrative procedures and instructional practices of the U.S. education system, by subject and level;

(3) Briefings, with information and materials, on techniques of teaching modern foreign languages and English as a second language for the foreign teachers assigned such classes in the United States;

(4) Information and materials on living in different regions of the United States, including educational practices, local laws, customs and culture;

(5) Discussion about cultural and ethnic diversity within the U.S. and cross-cultural issues relative to living and working here;

(6) Presentations by a wide variety of individuals who represent diverse backgrounds and life experiences;

(7) Administrative matters.

Sessions for U.S. teachers and spouses should include:

(1) In-depth discussions by country, and in some cases by level, on education in participating countries, as appropriate;

(2) Briefing, with information and materials, on techniques of teaching English as a foreign language and other relevant subjects for U.S. teachers assigned such classes abroad;

(3) Tips on living abroad, by country;

(4) Discussion about cross-cultural issues relative to living and working abroad;

(5) Administrative matters.

Additional Activities

In developing the program agenda, cooperating institution may wish to provide additional activities designed to strengthen teachers' and dependents' abilities to function in a foreign setting. Time constraints should be considered. Sessions must not interfere with the counterpart (one-on-one) discussions between partners. Possibilities might include sessions on cross-cultural communication and understanding, and visits to embassies, consulates, and cultural gatherings. It may also be possible to schedule sessions on August 6 when all foreign teachers are present and most U.S. teachers will have arrived by the afternoon.

Speakers

Cooperating institution is to identity and invite speakers and panelists to cover all sessions, but must demonstrate its ability and willingness to draw on its own resources to identify such individuals, as will as other resources beyond the organization. This includes universities in the area, consulting groups, embassy personnel or other experts. Speakers may include USIA specialists, staff from foreign counterpart agencies, university faculty, international and intercultural specialists, foreign consular and embassy officials, recent former exchange teachers, foreign teachers currently on exchange in the United States, and others. USIA must approve speaker/panelist selections. During the sessions set aside for administrative matters, USIA staff will specifically designate Agency specialists and staff from foreign counterpart agencies to serve as resource people and speakers. The cooperating institution may also be asked to call on these people to assist with other orientation sessions.

Services

In addition to developing the agenda and securing speakers, the cooperating institution will provide the following services in consultation with USIA program officers:

(1) Arrange economical on-site housing preferably in University dormitories for teachers and their dependents; dependents will range from infants to adults. (USIA program officers will provide specific information as to the numbers, sex and age of orientation participants);

(2) Arrange for on-site housing, as needed, for U.S. Government personnel, selected panelists, speakers, and staff of USIA's foreign counterpart agencies;

(3) Arrange for three meals per day on-site for participants;

(4) Arrange on-site day care and educational and recreational activities for spouses and children during time when exchange teachers are in sessions; arrange supervised care for children six months to eighteen years to permit teachers and their spouses to attend jointly scheduled activities; (in order to cut costs, child care should not be provided during optional activities and all meals);

(5) Reimburse U.S. teachers for one-way transportation, (air/bus/train/car/airport transfer), on an as-needed basis, from their homes to the orientation; the Agency estimates these costs will average $250 per teacher; (if a round trip super saver is less expensive than an economy one-way fare, the teacher may be reimbursed the former);

(6) Reimburse selected speakers, panelists and others for travel costs and pay honoraria, where required, up to $300;

(7) Arrange for transportation for U.S. and foreign teachers, spouses and dependents to any activities or programming off-site;

(8) Arrange for transportation for:

(a) Foreign teachers (and their baggage) arriving on group or individual flights to the orientation site on the designated official arrival day and up to three days before this date;

(b) All U.S. and foreign teachers and resources (and their baggage) departing from the orientation site to major metro-area plane, bus or rail departure points on the designated official departure day only;

(9) Prepare name tags for all orientation participants, using a color-coded badge system designating exchange teachers by country as well as speakers, university personnel, and USIA staff;

(10) Prepare signs/posters to guide participants to their on-site destinations.

Reports

The institution will be expected to design and distribute an evaluation for the August orientation to be completed by the teachers. Such a form will cover program content, including meeting sessions, as well as logistical arrangements such as housing, food, and general meeting facilities. The form will be cleared by USIA prior to its use. Participants' evaluations should be tabulated and sent to USIA no later than four weeks after the orientation. The institution should also provide the Agency with a substantive written analysis of the orientation, with recommendations for improving future orientations (no later than ten weeks after the orientation). The Agency reserves the right to conduct an independent evaluation of the program. The institution is also required to provide a breakdown of actual cost figures for the orientation no later than ten weeks after the completion of the orientation.

Special note: The cooperating institution will survey the literature of appropriate subject fields to determine materials of greatest potential value to teachers. If approved by USIA, recipient institution will purchase materials (up to $30 per teacher). The institution will also compile other materials as directed by USIA. These may include materials on U.S. education, including current trends and initiatives, materials on education in selected foreign countries, materials on cross-cultural adjustment and understanding, materials that provide guidance on living abroad, and other materials which the institution and USIA staff consider useful. The institution will provide these materials to U.S. and foreign exchange teachers at the orientation.

Note: USIA may also request that cooperating institution arrange additional orientation and/or training, or workshop briefings for program participants and administrators, resource people, and organizers during the award period. Cooperating institution may also be asked to provide programming and other services to USIA including, but not limited to, peer committee chairpersons workshops, predeparture orientation activities, foreign and U.S. teacher debriefings, materials purchase and distribution, and the development of new program information, including materials and videos.

Proposed Budget: The contracted organization must submit a comprehensive line-item budget based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. Administrative costs should be kept low; this will be an important factor in grant competition. Also, the ability to achieve cost-effectiveness within budget guidelines through cost-sharing will enhance competitive proposals.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as other USIA Offices, where appropriate. Proposals may also be reviewed by the Office of the General Counsel. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content (orientation sessions, resource materials, and choice of resources).

5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the

needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: February 13, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–4104 Filed 2–19–97; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Thursday
February 20, 1997

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Test Procedures and Certification Requirements for Plumbing Products; and Certification Requirements for Residential Appliances; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/TP–97–600]

RIN 1904–AA71

Energy Conservation Program for Consumer Products: Test Procedures and Certification Requirements for Plumbing Products; and Certification Requirements for Residential Appliances

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rule and public hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), requires the Department of Energy (DOE or the Department) to administer an energy and water conservation program for certain major household appliances and commercial equipment, including certain plumbing products. This proposed rule would codify water conservation standards and test procedures established in EPCA for plumbing products, incorporate by reference water conservation standard and test procedures for faucets and test procedures for showerheads revised by the American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI), and provide for certification of compliance with plumbing product standards. This proposed rule would also clarify the certification requirements applicable to all residential appliances.

DATES: The Department will accept comments, data, and information regarding the proposed issues of this notice no later than May 6, 1997.

The public hearing will be held on March 31, 1997 in Washington, DC. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., March 21, 1997. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 4:00 p.m., March 21, 1997.

ADDRESSES: Written comments and requests to speak at the public hearing should be labeled ''Test Procedures and Requirements for Plumbing Products; and Certification Requirements for Residential Appliances, Docket No. EE–RM/TP–97–600'' and submitted or hand-delivered to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–7140; Fax: (202) 586–4617.

The hearing will begin at 9:30 a.m., on March 31, 1997, and will be held in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC.

Copies of the transcript of the public hearing and public comments received may be read in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The proposed rule would incorporate by reference ASME/ANSI standards (which are documents that contain both test procedures and water usage standards) as follows: American Society of Mechanical Engineers/American National Standards Institute Standard A112.19.6–1990, ''Hydraulic Requirements for Water Closets and Urinals;'' and American Society of Mechanical Engineers/American National Standards Institute Standard A112.18.1M–1994, ''Plumbing Fixture Fittings.''

Copies of these standards may be viewed at the Department of Energy's Freedom of Information Reading Room at the address stated above. Copies of the ASME/ANSI Standards may also be obtained by request from the American Society of Mechanical Engineers, 345 East 47th Street, New York, N.Y. 10017, or the American National Standards Institute, 1430 Broadway, New York, N.Y. 10018. For more information concerning public participation in this rulemaking proceeding, see section IV, ''Public Comment,'' of this notice.

FOR FURTHER INFORMATION CONTACT: William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Stop EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9145.

Eugene Margolis, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

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4. Modifications to Existing Language to include Plumbing Products in the Code of Federal Regulations.
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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, as amended, (EPCA), by the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act (NAECA) of 1987, Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPAct), Pub. L. 102–486, created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The products covered under this program include faucets, showerheads, water closets, and urinals—the subjects of today's notice of proposed rulemaking.

This Program consists essentially of three parts: testing, labeling, and energy and water conservation standards. In the case of faucets, showerheads, water closets, and urinals, the test procedures measure water use or estimated annual operating cost of these covered products during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct. EPCA, § 323(b)(3), 42 U.S.C. § 6293(b)(3).

Effective 180 days after a test procedure applicable to a covered product is prescribed or established, no manufacturer may make a representation with respect to water usage of such products unless such products have been tested in accordance with such test procedures and such representation fairly discloses the results of such testing. EPCA, § 323(c)(2), 42 U.S.C. § 6293(c)(2). However, the 180-day period may be extended for an additional 180 days if the Secretary determines that this requirement would impose an undue burden. EPCA, § 323(c)(3), 42 U.S.C. § 6293(c)(3).

EPCA states that the procedures for testing and measuring the water use of faucets and showerheads, and water closets and urinals shall be ASME/ANSI Standards A112.18.1M–1989, and A112.19.6–1990, respectively, but that if ASME/ANSI revises these requirements, the Secretary shall adopt such revisions if they conform to the basic statutory requirements for test procedures. EPCA, § 323(b)(7) and 323(b)(8), 42 U.S.C. § 6293(b)(7) and § 6293(b)(8).

EPCA prescribes water conservation standards for faucets, showerheads, water closets and urinals. It further provides that if the requirements of ASME/ANSI Standard A112.18.1M–1989 or ASME Standard A112.19.6–1990 are amended to improve the efficiency of water use, the Secretary shall publish a final rule establishing an amended uniform national standard unless the Secretary determines that adoption of such a standard at the level specified is not (i) technologically feasible and economically justified, (ii) consistent with the maintenance of public health and safety; or (iii) consistent with the purposes of this Act. EPCA, § 325(j) and 325(k), 42 U.S.C. § 6295(j) and § 6295(k).

B. Background

EPCA requires that DOE amend the plumbing products test procedures and standards established by statute to conform with revisions to standards by ASME/ANSI if certain requirements are met. The applicable faucet standard and the test procedures for faucets and showerheads, as prescribed by EPCA, were in ASME/ANSI Standard A112.18.1M–1989. On September 15, 1994, ASME/ANSI Standard A112.18.1M—1994 was issued and DOE initiated a review as required.

The Department held a public workshop with representatives from the Plumbing Manufacturers Institute (PMI), its manufacturer members, Federal and state agencies, and water conservation organizations in Washington, DC on June 15, 1995. The following issues were discussed: (a) definitions of ''basic model'' for faucets, showerheads, water closets, and urinals; (b) statistical sampling plans for certification testing; (c) certification reporting requirements for plumbing products; and (d) whether multiple-user ''sprayheads'' are considered covered products, and if so, how the faucet standards are to be applied. Subsequently, various attendees at the workshop filed comments. Several comments covered the issue of enforcement which will be addressed in section (II)(B)(8).

Four letters from the industry (W/C Technology Corporation, July 14, 1993; Plumbing Manufacturers Institute, February 7, 1994; and Bradley Corporation, February 9, 1994, and August 12, 1994) concerning issues relating to today's notice (e.g., definition for ''electromechanical hydraulic toilet,'' and multiple-user sprayheads) were submitted to DOE prior to the June 15, 1995, public workshop. The Department will consider these as part of the public comment received.

The Department held a second public meeting in Washington, DC on February 28, 1996, to further discuss the statistical sampling plans that would be used to certify compliance, and new issues concerning: (a) incorporation of the test procedure requirements for faucets and showerheads, and standard for faucets contained in ASME/ANSI Standard A112.18.1M–1994; (b) an effective date to allow manufacturers to test and make initial compliance certification submissions after such requirements are published in a final rule; and (c) a uniform mathematical rounding method and how it is to be used to convert test data into final results for the purpose of determining compliance. Four comments (Eljer Industries (Eljer), Mr. R. Michael Martin, and two from PMI) were received subsequent to the second public meeting.

II. Discussion

A. Statutory Plumbing Requirements

DOE is proposing to codify into the Code of Federal Regulations statutory requirements with respect to plumbing products—including test procedures, water conservation standards, and definitions. EPCA also requires that if specified ASME or ASME/ANSI standards or test procedures are amended, DOE must amend the regulatory requirements to conform with the revisions if certain requirements are met.

Comment is invited on those provisions of the proposed water conservation standards and test procedures that differ from the current statutory standards. Comments on standards or test procedures established by statute will not be considered.

1. Test Procedures

The Department proposes to add the following descriptors as measures of water usage for faucets, showerheads, water closets, and urinals: maximum permissible water use (in gallons and liters per minute or cycle, and gallons and liters per flush), at 10 CFR sections 430.23(s)–430.23(v), respectively. The test procedures for measuring water usage are discussed below.

(a) Faucets and showerheads. EPCA states that test procedures for showerheads and faucets shall be the test procedures specified in ASME A112.18.1M–1989 for such products but if ANSI revises these requirements, the Secretary shall adopt such revisions if they conform to the basic statutory requirements for test procedures. EPCA, § 323(b)(7), 42 U.S.C. § 6293 (b)(7).

The test procedure requirements for faucets and showerheads in ASME/ANSI Standard A112.18.1M–1989 were revised and issued as ASME/ANSI Standard A112.18.1M–1994 on September 15, 1994. These revised test procedures appear to be reasonably designed to produce test results which

measure water use or estimated annual operating cost of a covered product during a representative average use cycle and appear not to be unduly burdensome to conduct. See EPCA, § 323(b)(3), 42 U.S.C. § 6293(b)(3). Therefore, the Department proposes to incorporate by reference, section 6.5, ''Flow Capacity Test in ASME/ANSI Standard A112.18.1M–1994, for testing faucets and showerheads at Appendix S of Title 10 CFR Part 430, Subpart B.

(b) Water closets and urinals. EPCA states that the test procedures for water closets and urinals shall be the test procedures specified in ASME A112.19.6–1990 but if ANSI revises these requirements, the Secretary shall adopt such revisions if they conform to the basic statutory requirements for test procedures. EPCA, § 323(b)(8), 42 U.S.C. § 6293(b)(8). The test procedure requirements for water closets and urinals in ASME/ANSI Standard A112.19.6–1990 have not been revised. DOE proposes to incorporate by reference all applicable sections in ASME/ANSI Standard A112.19.6–1990 for testing water closets and urinals at Appendix T of Title 10 CFR Part 430, Subpart B.

The test procedures for testing water closets include section 7.1.2, ''Test Apparatus and General Instructions;'' and subsections 7.1.2.1, 7.1.2.2, 7.1.2.3, and 7.1.6, ''Water Consumption and Hydraulic Characteristics.''

The test procedures for urinals include sections 8.2, ''Test Apparatus and General Instructions;'' and subsections 8.2.1, 8.2.2, 8.2.3, and section 8.5, ''Water Consumption.''

2. Water Conservation Standards

EPCA prescribed statutory water conservation standards for faucets, showerheads, water closets and urinals and specified that if specified ASME or ASME/ANSI standards are amended to improve the efficiency of water use, the Secretary shall publish a final rule establishing an amended uniform national standard unless the Secretary determines that adoption of such a standard at the level specified is not (i) technologically feasible and economically justified, (ii) consistent with the maintenance of public health and safety; or (iii) consistent with the purposes of this Act. EPCA, § 325(j) and § 325(k), 42 U.S.C. § 6295(j) and § 6295(k).

(a) Faucets. EPCA specifies that after January 1, 1994, it would be unlawful to manufacture lavatory or kitchen faucets, or lavatory or kitchen replacement aerators that exceed 2.5 gallons per minute (gpm); or metering faucets that exceed 0.25 gallons per cycle, when measured at a flowing water pressure of 80 pounds per square inch (psig). EPCA, § 325(j)(2), 42 U.S.C. § 6295(j)(2). On September 15, 1994, the water conservation standard for faucets was amended to 2.2 gpm at 60 psig in ASME/ANSI Standard A112.18.1M–1994.

At the second workshop held on February 28, 1996, the issue of whether to incorporate the revised ASME/ANSI Standard A112.18.1M–1994 was discussed. PMI claimed that all manufacturers are currently designing and manufacturing faucets to be in conformity with this revised standard and therefore, requested that it be incorporated. This position was supported by the workshop participants, including, Mr. R. Michael Martin, the American Water Works Association (AWWA), Delta Faucet Company (Delta), Kohler Company (Kohler), American Standard Inc., and Sloan Valve. Four additional comments submitted following the public meeting reiterated support for incorporation of the 1994 ASME/ANSI standard. (PMI, No. 1 at 1; PMI, No. 2 at 2; Eljer, No. 3 at 1; and R. Michael Martin, No. 4 at 1).

DOE does not believe the revised standard for faucets constitutes an improvement in water efficiency and therefore incorporation of the revised standard would not be necessary. The revised standard (2.2 gpm at 60 psig) is equivalent theoretically to the statutory requirement (2.5 gpm at 80 psig) per Bernoulli's equation of fluid mechanics which states that the ratio of water flow through a fixed orifice at different pressures is equivalent to the square root of the ratio of the pressures.

However, the Department believes that there might be a burden on the industry if DOE does not incorporate the standard for faucets contained in ASME/ANSI Standard A112.18.1M–1994. Comments indicated that industry is presently designing and manufacturing fixture fittings that meet the flow capacity requirements contained in EPCA and in ASME/ANSI Standard A112.18.1M–1994 and the coexistence of both standards would cause confusion in the market place if not brought into conformity. In addition, Mexico and Canada are planning to adopt faucet standards equivalent to those in ASME/ANSI Standard A112.18.1M–1994 so U.S. adoption of that standard would be consistent with the policy of promoting harmonization in North America. Therefore, the Department proposes to incorporate the revised applicable faucet standard in ASME/ANSI Standard A112.18.1M–1994 at 10 CFR § 430.32(o) in today's rulemaking.

(b) Showerheads. EPCA specifies that the maximum water use allowed for any showerhead manufactured after January 1, 1994, is 2.5 gpm when measured at a flowing water pressure of 80 psig. EPCA also requires that such showerheads meet the requirement of ASME/ANSI Standard A112.18.1M–1989, 7.4.3(a). EPCA, § 325(j)(1), 42 U.S.C. § 6295(j)(1). This requirement specifies that if a flow control insert is used as a component part of a showerhead, then it must be manufactured such that a pushing or pulling force of 8 lb or more is required to remove the insert. Note that section 7.4.3(a) in ASME/ANSI Standard A112.18.1M–1989 was redesignated as section 7.4.4(a) in ASME/ANSI Standard A112.18.1M–1994.

The standard for showerheads in ASME/ANSI Standard A112.18.1M–1994 are at the level prescribed in EPCA. The proposed rule would codify this standard, 2.5 gpm at 80 psig, in the Code of Federal Regulations and incorporate by reference, section 7.4.4(a) in ASME/ANSI Standard A112.18.1M–1994 at 10 CFR 430.32(p). Codification of this statutory standard does not invoke the requirements specified in section 325(j)(3) of EPCA, 42 U.S.C. § 6295(j)(3).

(c) Water closets and urinals. EPCA specifies that the maximum water use allowed for gravity tank-type toilets, flushometer tank toilets, and electromechanical hydraulic toilets, is 1.6 gallons per flush (gpf), and for blowout toilets and commercial gravity tank-type 2-piece toilets is 3.5 gpf, if manufactured after January 1, 1994. For commercial gravity tank-type 2-piece, the maximum water use of 3.5 gpf is applicable until January 1, 1997, after which the standard is 1.6 gpf. For flushometer valve toilets, other than blowout toilets, the maximum water use is 1.6 gpf, if manufactured after January 1, 1997. The maximum water use allowed for any urinal manufactured after January 1, 1994, is 1.0 gpf. EPCA, § 325(k)(1) and 325(k)(2), 42 U.S.C. § 6295(k)(1) and § 6295(k)(2).

The standards for water closets and urinals in ASME/ANSI Standard A112.19.6–1990 have not been revised. Accordingly, the proposed rule would codify the statutory water conservation standards for water closets and urinals in 10 CFR §§ 430.32(q) and 430.32(r), respectively.

3. Definitions

EPCA prescribes statutory definitions for terms applicable to the administration of plumbing products.

DOE believes it would be more convenient for the readers if these definitions were incorporated in the Code of Federal Regulations. Therefore, the proposed rule would incorporate the amended statutory definitions for the terms ''consumer product,'' ''energy conservation standard,'' and ''estimated annual operating cost'' in EPCA, § 321(1), § 321(6) and § 321(7), 42 U.S.C. § 6291(1), § 6291(6) and § 6291(7); and the new statutory definitions for the terms ''ANSI,'' ''ASME,'' ''blowout,'' ''faucet,'' ''flushometer tank,'' ''flushometer valve,'' ''low consumption,'' ''showerhead,'' ''urinal,'' ''water closet,'' and ''water use'' in EPCA, § 321(31)(A)–§ 321(31)(H), 42 U.S.C. § 6291(31)(A)–§ 6291(31)(H), in 10 CFR § 430.2.

B. Supplementary Plumbing Requirements

The proposed provisions to supplement the statutory requirements to facilitate the monitoring and administration of compliance for plumbing products are discussed below.

1. Metric Equivalents

Section 205b of the Metric Conversion Act, 15 U.S.C. 205b, states that the metric measurement system is the preferred system of weights and measures in the United States. It also requires Federal agencies to use the metric system of measurement in all procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. These requirements are also expressed in Executive Order 12770 of July 25, 1991. 56 FR 35801 (July 29, 1991).

EPCA specifies that the required labeling for water usage rates of covered plumbing products be expressed in terms of gallons. Metric units are used in the ASME/ANSI Standard A112.18.1M–1994 for testing faucets and showerheads, and are prescribed in ASME/ANSI Standard A112.19.6–1990 for testing water closets and urinals. In addition, they are also required on submissions to the Federal Trade Commission (FTC) concerning labeling.

To maintain consistency in testing with the ASME/ANSI standards, Section 205(b) of the Metric Conversion Act, and Executive Order 12770, the Department proposes to require the submission of metric equivalents on all plumbing products certified with DOE for compliance purposes.

2. Definitions of Basic Model

The Department is proposing to establish definitions of ''basic model'' for plumbing products. It is common for a single plumbing product manufacturer to make numerous models of faucets, showerheads, water closets, and urinals covered by EPCA and each model is potentially required to be tested. Often, however, several models of faucets, for example, are essentially the same faucet except for refinements that do not significantly affect the water consumption of the faucet. One way to meet EPCA's mandate that test procedures ''not be unduly burdensome to conduct,'' is to establish ''basic models'' for plumbing products.

''Basic model'' is a term generally used by DOE to describe products or items of equipment with performance, design, hydraulic, and functional characteristics that are essentially the same. For plumbing products, the models that exhibit essentially identical hydraulic characteristics would be categorized into a family. Such a family would constitute a ''basic model'' of that particular covered product and only representative samples within the family need be tested. Components of similar design may be substituted in a basic model without requiring additional compliance certification if the represented measures of water consumption continue to satisfy applicable water usage standards.

(a) Faucets and showerheads. PMI and American Standard Inc. jointly proposed that ''basic model'' be defined by either (a) the flow control mechanism which is attached or installed within the fixture fitting, or (b) the models that have identical water-passage design features that use the same path of water in the highest-flow mode. (PMI, No. 3, at 1).

R. Michael Martin submitted a comment stating that the proposal by PMI and American Standard Inc. is adequate for faucets but believes additional words are necessary to explain how flow restrictors for showerheads are to be held for testing, because some flow restrictor could be merely a plastic disc with a single hole. (R. Michael Martin, No. 9, at 6).

The Department disagrees with Mr. Martin's comment on the need for additional language for showerheads. A flow control restrictor for showerheads, such as a plastic disc with a single hole, is not considered to be a separately supplied accessory to be tested by itself. Such a flow control mechanism is internally installed as an integral component and tested within an assembled showerhead.[1] Thus, DOE believes it unnecessary to add explanatory language as requested by Mr. Martin.

The Department believes that the ''basic model'' definition for faucets and showerheads proposed by PMI and American Standard Inc. is practical and promotes the objective in Section 323(b)(3) of EPCA, 42 U.S.C. § 6293(b)(3). Therefore, the Department proposes to amend the existing definition of ''basic model'' to add language for fixture fittings based on the proposal submitted by PMI and American Standard Inc. in 10 CFR § 430.2.

(b) Water closets and urinals. PMI and American Standard Inc. also jointly proposed that ''basic model'' for water closets be defined as ''those fixtures which have the largest volume of water within the well of the water closet as flushed by one of the following four types: (a) gravity closed-coupled; (b) gravity one-piece; (c) flushometer tank; or (d) flushometer valves and other pressurized flushing device;'' and ''basic model'' for urinals as ''those fixtures which have the largest volume of water within the well of the urinal.'' (PMI, No. 3, at 1–2; American Standard Inc., No. 4, at 1–2).

Two comments raised concern about defining ''basic model'' based on the largest volume within the well. Mr. Martin stated, ''Each different size and shape should be a different basic model.'' (R. Michael Martin, No. 9, at 6). The National Institute of Standards and Technology (NIST) stated, ''Manufacturer design, selection and installation of components for control of refill and/or overflow, can differ and may result in higher consumption, rather than lesser, even for a bowl volume that is not the largest.'' (NIST, No. 6, at 2).

The Department agrees with the view expressed by Mr. Martin and NIST that the proposed definition of ''basic model'' for water closets and urinals by PMI and American Standard Inc. are inadequate because they do not ensure that all water closets and urinals of a particular basic model will have less water usage than the unit(s) with the greatest water volume in the well. For instance, the flush mechanism of a small fixture may permit greater water volume in the well than a large fixture of the same design with a different flush mechanism.

Therefore, DOE proposes a definition of ''basic model'' for water closets and urinals to mean all units of a given type of covered product (or class thereof) that

[1] Telephonic conversations between Bill Hui, Department of Energy, and Shahin Moinian, Moen Incorporated; Sally Remedios, Delta Faucet Company; and Ken Hair, Price Pfister Incorporated; October 19, 1995.

are manufactured by one manufacturer and ''which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect water consumption.''

3. Statistical Sampling Plans for Certification Testing

The Department is proposing to establish statistical sampling plans for plumbing products in today's notice. In the case of plumbing products, compliance with water usage standards will be assured in part by having each manufacturer certify that its covered products comply with the applicable water usage standard.

In promulgating test procedures applicable to certification, one of the major goals is to provide a statistically valid approach so that there is a high probability that products which have been tested and certified as being in compliance with the applicable usage standards actually comply with those standards. Each DOE test procedure incorporates a sampling plan, and that sampling plan is designed to give reasonable assurance that the true mean performance of the product being manufactured and sold meets or conforms to the DOE water usage standard.

DOE recognizes that units of plumbing products may vary in water usage for a number of valid reasons, including differences in component parts, production and testing. The risk to the public of purchasing a non-complying product, the risk to manufacturers of selling such a product, and the burdens of performing representative testing, are reduced through the application of a statistically meaningful sampling plan and basing the certification decision on the mean water usage performance of the sampled units.

There are several critical elements of a sampling plan. One is the selection of units for testing. Units must be representative of the product, and be selected randomly from a batch or production lot. Sample size is also a critical element of a sampling plan. The result yielded by water usage performance testing of a product, consisting of tests conducted on a sample of units, will be increasingly more reliable as the size of the test sample increases. This, however, increases the testing burden on the manufacturers. Also, when the variability in performance is greater among individually tested units of a product, the reliability of the test results is less. As a result, DOE's test procedures require sampling plans based on a one-sided confidence limit approach. This approach is designed to minimize the manufacturers' testing burden while ensuring accurate determination of compliance within a specified level of confidence.

Such statistical sampling plans are specified in section 430.24. The one-sided confidence limit method places either an upper limit or lower limit on the range or interval in which the true mean performance is likely to be found. This method offers added flexibility by allowing for the testing of fewer units and thereby reducing testing costs than would the testing of a fixed number of units.

The sampling plans utilizing one-sided confidence limits require different statements for the two types of measures of energy consumption. One type of measure includes estimated annual operating cost, energy consumption and other measures of energy consumption for which consumers would favor lower values. The other type of measure includes characteristics such as efficiency, energy factor, and other energy consumption factors for which consumers would favor higher values. In regard to water usage of plumbing products, consumers would favor lower values.

To determine the measure of water usage to be reported to DOE for compliance certification, the one-sided confidence-limit approach requires that the higher value from either (i) the mean of the sample units or (ii) the upper X percent confidence limit of the true mean divided by Y, be selected. The variable X refers to a confidence limit that ranges from 90–99 percent, and the variable Y refers to a divisor that ranges from 1.01–1.10. The confidence limits would be calculated using generally accepted methods found in statistics textbooks, based on the sample mean and sample standard deviation. DOE views the latter calculation as being a one-sided confidence interval using t-statistics, with the divisor constituting a ''derating'' factor. The derating factor was included to take into account variability in the performance or efficiency of products due to many factors, including manufacturing variability and variations in the material. Furthermore, this format (confidence limits divided by a derating factor) is similar to the format required for other appliance products for which DOE requires testing.

PMI and American Standard Inc. proposed an alternate sampling plan for testing fixture fittings and fixtures based on testing two samples selected at random first, and then eight additional samples if either of the two samples exceeds the maximum water consumption. The average of all eight of the samples shall not exceed the requirements of EPCA. (PMI, No. 3, at 2; American Standard Inc., No. 4, at 2–3).

AWWA, New York State Department of Environmental Conservation (NYSDEC), NIST, and Mr. R. Michael Martin claimed that the results of a sampling plan based on a sample size of two units may not be statistically accurate and therefore opposed the above proposal. (AWWA, No. 2, at 1; NYSDEC, No. 5, at 4; NIST, No. 6, at 2; and R. Michael Martin, No. 9, at 5).

The Department agrees with the views expressed by AWWA, NYSDEC, NIST, and Mr. Martin that the two-unit sampling plan is statistically unreliable. For this reason and to maintain consistency with the existing DOE statistical sampling plans, the Department is proposing to utilize the one-sided confidence limit approach.

(a) Sampling plan for water closets and urinals utilizing one-sided confidence limits. AWWA and NYSDEC supported use of DOE's approach. AWWA stated there exists a ''high variability in the manufacture of porcelain toilets and urinals'' while NYSDEC stated that ''variation of manufacture of vitreous china'' warrants recognition. Therefore, they proposed a one-sided confidence limit statistical sampling plan for fixtures at 90%. (AWWA, No. 2, at 1; and NYSDEC, No. 5, at 4).

PMI stated that if DOE's approach of utilizing a one-sided confidence limit is to be used, the industry would support a confidence limit of 90% only if a corresponding divisor of 1.10 is allowed. (PMI, No. 2, at 1). To support its proposal, PMI submitted data indicating that testing at such level (90% at 1.10) would allow manufacturers to certify compliance with no more than four units whereas five units would be required if a more stringent level (90% at 1.05) was imposed instead.

DOE agrees with AWWA and NYSDEC that there is high variability in the manufacturing of virtreous china that would justify a confidence limit at 90%. DOE also agrees with PMI that a divisor lower than 1.10 would cause manufacturers additional expense while providing no additional assurances that the products tested are meeting the requirement of the law. PMI's proposal would minimize manufacturers'' test burden while at the same time provide an adequate level of confidence that products certified to be in compliance are actually in compliance with applicable water conservation

standards. Therefore, the Department proposes to adopt in a statistical sampling plan for fixtures utilizing one-sided confidence limits based on the following statistical parameter (90% confidence limits with a 1.10 divisor) at 10 CFR §§ 430.24(u) and (v).

(b) Sampling plan for faucets and showerheads utilizing one-sided confidence limits. AWWA and NYSDEC claimed that faucets and showerheads can be manufactured to tighter tolerances than vitreous china and proposed a statistical sampling plan that utilized a higher one-sided confidence limits and corresponding divisor. (AWWA, No. 2, at 1: and NYSDEC, No. 5, at 4).

DOE recognizes that fixture fittings are typically metal-based (e.g., chrome and brass), which means that they can be machined to much greater precision and tolerances, and which in turn, warrants a higher confidence limits and corresponding derating factor as suggested by AWWA. Although DOE agrees that fixture fittings warrant a higher confidence limit and corresponding divisor than vitreous china, the Department believes that a statistical sampling plan at the apex level (99% confidence limits, 1.01 divisor (i.e., ±1 percent tolerance))—the level typically employed for products that demonstrate low manufacturing variability—may result in a testing burden. The Department believes a statistical sampling plan at the following parameter (95% confidence limits, 1.05 divisor (±5 percent tolerance)) may be more appropriate and reasonable for manufacturers to meet. In written comments following the February 28, 1996 public meeting, PMI stated that industry would support this statistical sampling plan for fixture fittings (faucets and showerheads). (PMI, No. 2, at 1). Moreover, Moen Incorporated submitted data indicating that testing at such level would allow it to certify compliance with no more than two units.

Based on the above considerations, the Department proposes to adopt in a statistical sampling plan for fixture fittings utilizing one-sided confidence limits at the following statistical parameter (95% confidence limits with a 1.05 divisor) at 10 CFR §§ 430.24(s) and (t). DOE believes this sampling plan will minimize test burden on manufacturers while at the same time provide an adequate level of confidence that products certified to be in compliance are actually in compliance with applicable water conservation standards.

4. Modifications to Existing Language To Include Plumbing Products in the Code of Federal Regulations

Sections 430.27, 430.31–430.33, 430.40, 430.41, 430.47, 430.49, 430.50, 430.60, 430.61, 430.63, 430.70(a)(1), and 430.73 of Title 10 of the CFR currently do not address the monitoring and administration of plumbing products in the DOE Appliance Standards Program. The Department proposes to amend these sections in the Code of Federal Regulations to extend coverage to plumbing products covered by EPCA.

5. Definition for ''Electromechanical Hydraulic Toilet''

EPCA specifies the water conservation standard for ''electromechanical hydraulic toilets'' at 1.6 gallon per flush. EPCA, § 325(k)(1)(A), 42 U.S.C. § 6295(k)(1)(A). However, the term ''electromechanical hydraulic toilets'' is undefined. The Department proposes to establish a definition for this term. PMI proposed that ''electromechanical hydraulic toilets'' be defined as ''any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of, or, to aid gravity in evacuating waste from the toilet [bowl].'' (PMI, No. 15, at 1).

The definition proposed by PMI provides an acceptable description of the term ''electromechanical hydraulic toilet.'' Therefore, the Department proposes to include this definition for ''electromechanical hydraulic toilets'' in 10 CFR § 430.2.

6. Certification Reporting Requirements for Plumbing Products

(a) Types of information. Section 430.62(a)(2) of Title 10 of CFR currently requires manufacturers of covered residential products to submit, for each basic model, certain types of data and information in their certification reports to the Department. Plumbing products were added as covered products under EPCA, but presently certification requirements do not exist for plumbing products. The Department proposes to establish certification reporting requirements for faucets, showerheads, water closets, and urinals.

PMI proposed to produce a product directory for submission to DOE which would include the following information: (a) product category, (b) model number of product, (c) water use level, (d) name and address of manufacturer, (e) name and phone number of contact at manufacturer, and (f) compliance statement. (PMI, No. 3, at 2).

The Department presently requires similar types of information for certification from manufacturers of residential products and thus believes such types of information from plumbing manufacturers would be reasonable and appropriate. Therefore, DOE proposes to include in proposed 10 CFR § 430.62(a)(4) language requiring that the certification report for each basic model shall include the product type, product class, manufacturer's name, private labeler name(s) if applicable, the manufacturer's model number(s), and the water usage.

(b) Precision level of reported test results. PMI raised an issue at the February 28, 1996, public meeting regarding the level of precision (number of digits after the decimal place) required on final results for certifying compliance and requested that DOE provide such clarification in today's rulemaking.

DOE stated that Sections 325(j) and 325(k) of EPCA, 42 U.S.C. § 6295(j) and § 6295(k), specified maximum standard levels for faucets, showerheads, water closets, and urinals in terms of tenth of a gallon, or in the case of metering faucets, hundredth of a gallon. Thus, the Department believes that those levels should be observed in certifying compliance.

(c) Mathematical rounding procedures. PMI raised a second issue regarding mathematical rounding procedures, and how such procedures are to be used to convert test data into final results for the purpose of determining compliance. PMI stated that the industry subscribes to the rounding rules contained in ASME Guide SI–1, ASME Orientation and Guide for use of SI (metric) units (9th Edition, 1982), and recommended that DOE adopt these rounding rules. NIST raised a concern that the ASME rules would allow a number to be rounded such that it may potentially exceed a fixed statutory standard. (PMI, transcript, at 35; NIST, transcript, at 35–36)

The Department agrees that, based on the concern identified by NIST, it would be inappropriate to adopt the ASME rounding rules as requested to be used to convert test data into final results for the purpose of determining compliance. Instead, DOE proposes the following basic rounding rules: Five and above round up, and less than five, round down. Such rounding rules are to be applied after the final result is calculated.

R. Michael Martin and Kohler supported DOE's view that the basic rounding rules should be used to determine compliance with the EPCA's

water use standards. (R. Michael Martin, transcript, at 40; Kohler, transcript, at 41). PMI stated that the industry would support DOE's proposed mathematical rounding rules. (PMI, No 2, at 1).

The Department believes the proposed basic rounding rules are practical and appropriate because they are consistent with conventional rounding methods. In addition, DOE believes the proposed approach in applying the basic rounding rules is appropriate to ensure that consistency is maintained in converting test data into final results for the purpose of determining compliance.

(d) Effective date for initial compliance certification submissions. Section 430.62(a) states, ''Each manufacturer or private labeler before distributing in commerce any basic model of a covered product subject to the applicable energy conservation standard set forth in Subpart C of this part shall certify by means of a statement of compliance and certification report that each basic model meets the requirement of that standard,'' and section 430.62(b) adds, ''all data required by paragraph 430.62(a) of this section shall be submitted on or before the effective date of the applicable energy conservation standard as prescribed in Section 325 of the Act.''

The Department's regulations authorize imposition of penalties, consistent with EPCA, for failure to make reports or provide information required to be supplied by the Act or Title 10 CFR Part 430. 10 CFR § 430.61(a)(1) and (b). Any person who knowingly violates the compliance certification requirements may be subject to assessment of a civil penalty of no more than $100 for each violation, and each day of noncompliance shall constitute a separate violation. 10 CFR § 430.61(b).

Such submissions as described are required only after certification reporting requirements are promulgated for a covered product. DOE is proposing certification reporting requirements (see discussion in (a) of this subsection) in today's notice that when promulgated, would subject plumbing products, for which standards became effective January 1, 1994, to the requirements specified in sections 430.62(a)–(b).

American Standard Inc. raised a concern at the public meeting on February 28, 1996, that manufacturers who produce larger inventories have more models to test, that testing of certain products such as water closets are extremely labor-intensive and time-consuming, and therefore it would be unreasonable to expect manufacturers to be able to meet the certification requirements. American Standard Inc. recommended that DOE postpone for one year the effective date for the initial compliance certification submissions, which was also supported by Kohler and PMI . (American Standard Inc., transcript, at 62; Kohler, transcript, at 66; PMI, No. 2, at 2).

DOE agrees with American Standard Inc. that certain manufacturers may be overly burdened by the task of testing to meet the compliance certification requirements once such requirements are promulgated. The Department believes that a delay of the effective date for one year, as recommended by manufacturers, would allow a reasonable amount of time for plumbing manufacturers to complete required testing and submit the initial compliance certification reports. Therefore, the Department would require, in proposed 10 CFR § 430.62(a)(2), the initial certification submissions for plumbing products not later than one year following the publication of a final rule.

7. Faucet Standards on Multiple-User Sprayheads.

A manufacturer asked whether sprayheads are covered products under EPCA. Sprayheads are fixture fittings that are installed in lavatories (known as washfountains or wash sinks) for multiple users. They have multiple orifices that can independently or collectively actuate (by pneumatic hand or foot control, mechanical metering or infrared metering control) and may be considered a type of ''faucet'' subject to the applicable water conservation standard. EPCA defines the term ''faucet'' to mean ''a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.'' EPCA, § 321(31)(E), 42 U.S.C. § 6291(31)(E). However, EPCA does not further define lavatory faucets, kitchen faucets, metering faucets, lavatory replacement aerators, and kitchen replacement aerators.

DOE proposes to clarify whether sprayheads are covered product, and if so, how the faucet standards are to apply to ''sprayheads.''

(a) Sprayheads as covered products. Bradley Corporation (Bradley) recommended that the definition for ''faucet'' in Section 321(31)(E) of EPCA, 42 U.S.C. § 6291(31)(E), be amended to mean ''a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet, except that such term does not include multiple-user type fixtures.'' (Bradley, No.1, at 1–2).

R. Michael Martin stated that the term ''faucet'' is defined in Section 321(31)(E) of EPCA, 42 U.S.C. § 6291(31)(E), and that the term ''lavatory faucet,'' although not defined in the statute, the regulations, or ASME A112.18.1, is defined in the California regulations as a ''plumbing fitting designed to discharge into a lavatory.'' Mr. Martin also stated that numerous complying sprayhead-installed washfountains are currently listed in the California database. For these reasons, Mr. Martin believes that sprayheads are not exempt, and considers them to be a form of lavatory faucet and therefore a covered product. (R. Michael Martin, No. 9, at 7).

The Department has considered Bradley's recommendation, but does not have the authority to amend the statutory definition for faucet in Section 321(31)(E) of EPCA, 42 U.S.C. § 6291(31)(E). Moreover, DOE agrees with Mr. Martin's view that sprayheads are a form of lavatory faucet and thus can be considered a covered product. DOE believes that any faucet or replacement aerator used in a kitchen or lavatory capacity, or any faucet, when turned on, that gradually shuts itself off after a programmed period (metered), regardless of physical shape or design features, shall constitute a covered ''faucet'' subject to the water performance requirements of Section 325(j) of EPCA, 42 U.S.C. § 6295(j).

(b) Application of faucet standards to sprayheads with independently-controlled orifices. The Department is proposing that sprayheads be considered a covered product and that they be subject to the applicable faucet standards. Sprayheads with multiple orifices can be independently actuated by manual on/off or metering controls. EPCA prescribes a water use standard at 2.5 gpm at 80 psig for lavatory faucets and 0.25 gallons per cycle at 80 psig for metering faucets. EPCA, § 325(j)(2), 42 U.S.C. § 6295(j)(2). The Department believes that each independent orifice that manually turns on or off constitutes a separate ''lavatory faucet'' by itself subject to the applicable water usage standard for lavatory faucets. Moreover, DOE believes that each independent orifice of a sprayhead that actuates to deliver a pre-set volume of water before gradually shutting itself off constitute a separate ''metering faucet'' by itself subject to the applicable water usage standard for metering faucets.

Therefore, DOE proposes to include clarifying language to the lavatory and metering faucet standards, in 10 CFR § 430.32(o), to the effect that each orifice, depending on its mode of actuation, shall not exceed the

maximum flow rate for a lavatory or metering faucet.

(c) Application of faucet standards to sprayheads with collectively-controlled orifices. Sprayheads can be also centrally controlled such that all available orifices collectively actuate upon demand. The total water flow of a collectively-actuated sprayhead is dependent on the number of users at the lavatory in which the sprayhead is installed. This number is determined by the number of component lavatories that, based on the capacity criterion of a plumbing code, make up a single lavatory. DOE believes the maximum flow rate of such a sprayhead should be prorated by the number of users or component lavatories.

However, a lavatory may be defined to be equivalent to a different number of component lavatories depending on the following plumbing codes: (a) the Standard Plumbing Code,[2] (b) the Uniform Plumbing Code,[3] (c) the National Standard Plumbing Code,[4] (d) the National Plumbing Code,[5] and (e) the International Plumbing Code.[6]

The 1991 Standard Plumbing Code, Section 916.1, states, ''Each 18 inches of wash sink circumference (circular type) shall be equivalent to one lavatory.'' The 1991 Uniform Plumbing Code, Appendix C (No. 8), states, ''Twenty-four (24) lineal inches (609.6 mm) of wash sink or eighteen (18) inches (457.2 mm) of a circular basin, when provided with water outlets for such space, shall be considered equivalent to one (1) lavatory.'' The 1993 National Standard Plumbing Code, Section 7.18, states, ''Each eighteen inch unit of usable length of a rim of a multiple use lavatory shall be considered equivalent to one lavatory as it affects the drainage and water supply piping sizes and fixture usage requirements, provided hot and cold or tempered water is available for each eighteen inch interval.'' The 1993 National Plumbing Code, Section P.1217.1, and the 1995 International Plumbing Code, Section 417.1, both state, ''Every 20 inches (508 mm) of rim space shall be considered as one lavatory.''

DOE believes it is necessary to establish a single capacity criterion to be applicable for all lavatories. Based on the considerations of all plumbing codes, the Department believes the capacity criterion defined in Section P.1217.1 of the 1993 National Plumbing Code, and Section 417.1 of the 1995 International Plumbing Code for wash sinks (i.e., every 20 inches (508 mm) of rim space shall be considered as one lavatory) would be more versatile to lavatories of various physical configurations and temperature requirements.

Therefore, DOE proposes to include clarifying language with the lavatory and metering faucet standards, in 10 CFR § 430.32(o), to the effect that: (1) the maximum flow rate of a collectively actuated multiple-orifice sprayhead that manually turns on or off shall be the product of (a) the maximum flow rate for a lavatory faucet and, (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)) and, (2) the maximum flow rate of a collectively actuated multiple-orifice sprayhead that delivers a pre-set volume of water before gradually shutting itself off shall be the product of (a) the maximum flow rate for a metering faucet and, (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

8. Enforcement

Several commenters raised the issue of enforcement of plumbing products regulations. AWWA recommended that DOE establish: (a) a protocol for verifying industry compliance with EPCA; (b) a non-compliance warning system that gives violators of EPCA an opportunity for corrective actions to avoid enforcement sanctions; and (c) a product certification and listing program to improve EPCA compliance and minimize the need for future enforcement actions against the plumbing industry. (AWWA, No. 8, at 24).

Seattle Water Department requested rules for enforcement of the national standards (particularly for imported products) and penalties for manufacture of non-conforming products. It believes the retail marketplace is currently full of nonconforming plumbing products which is unfair to complying manufacturers while robbing consumers and the nation of much needed long term water and energy savings. (Seattle Water Department, No. 7, at 4).

The Department agrees enforcement of the standards is necessary to ensure compliance of all covered products. The Department currently has an enforcement procedure at sections 430.70–430.75 and Appendix B of Title 10 CFR Part 430, Subpart F which the Department is proposing to amend, where appropriate, to include plumbing products. DOE may use these procedures to assess civil penalties under Section 333 of EPCA, 42 U.S.C. 6303. In actions involving small businesses, DOE will be guided by the small entity enforcement policy it is required to adopt by Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, Title II, § 223).

DOE believes that its existing enforcement procedures—which encourage industry policing, prescribe enforcement testing, and provide for civil penalties for all covered consumer products (which include imports) that violate the Federal standards—are adequate for deterring would-be violators. The Department believes that it is not necessary for it to adopt a product certification and listing to improve EPCA compliance. PMI is planning to produce a product directory which will list manufacturers and plumbing products conforming to EPCA. Such a product directory, maintained by PMI and supported by industry, would be valuable to assist consumers and others in identifying plumbing products that comply or do not comply with EPCA.

C. Clarification of Certification Reporting Requirements for Residential Appliances

DOE proposes to redesignate, revise existing language, and add new language and paragraphs as necessary in the CFR sections dealing with certification and enforcement requirements for all residential appliances.

The amendments and revisions proposed for Part 430 of Title 10 of the CFR are as follows:

1. Section 430.62(a) is redesignated as 430.62(a)(1), and revised to include the DOE address to be used for compliance certification reporting.

2. Section 430.62(a), ''Compliance Certification'' is added as a new section heading.

3. Section 430.62(a)(1) is redesignated as 430.62(a)(3).

4. Section 430.62(a)(2) is redesignated as 430.62(a)(4) and revised by:

(a) rearranging, alphabetically, the certification reporting requirements for refrigerators, refrigerator-freezers and freezers, water heaters, room air conditioners, central air conditioners and central air conditioning heat pumps, pool heaters, furnaces, direct heating equipment, general service

[2] Southern Building Codes Congress International, Inc., 900 Montclair Road, Birmingham, AL 35213–1206.

[3] International Association of Plumbing and Mechanical Officials, 20001 Walnut Drive South, Walnut, CA 91789–2825.

[4] National Association of Plumbing-Heating Cooling Contractors, P.O. Box 6808, Falls Church, VA 22046.

[5] Building Officials and Codes Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, IL 60478–5795.

[6] ibid.

fluorescent lamps and incandescent reflector lamps;

(b) amending the certification report to add, alphabetically, absent reporting requirements for kitchen ranges, ovens and microwave ovens, dishwashers, clothes washers and clothes dryers; and

(c) adding, alphabetically, new certification reporting requirements for faucets, showerheads, water closets, and urinals. [see discussion in section II(B)(6)(a)]

5. A new section, 430.62(a)(2), is added to provide a one-year delay of the effective date for compliance certification by manufacturers of faucets, showerheads, water closets, and urinals. [see discussion in section II(B)(6)(d)]

6. Section 430.62(a)(3) is redesignated as 430.62(a)(5), and referenced paragraph ''(a)(2)'' within the new section is redesignated as paragraph ''(a)(4).''

7. Section 430.62(b), ''Initial Reporting Requirements,'' is deleted.

8. Section 430.62(c), ''New Models,'' is redesignated as 430.62(b), and amended by redesignating the referenced paragraph ''(a)(2)'' as paragraph ''(a)(4),'' and adding appropriate language to include plumbing products, and a mailing address to be used for submitting new model information.

9. A new section, 430.62(c), ''Discontinued Models,'' is added to specify the information required to be submitted to DOE when models are discontinued.

10. Section 430.62(d), ''Maintenance of Records,'' is amended by adding appropriate language to include plumbing products.

11. Section 430.62(e), ''Third Party Representation,'' is amended by redesignating the referenced paragraph ''(a)'' to ''(a)(4)'', and adding language allowing third party representatives to submit discontinued model information on behalf of an authorizing manufacturer.

12. A new section, 430.62(f), ''Amendment of Information,'' is added to expressly require manufacturers to submit revised compliance certification if any information contained in the prior submission has changed.

13. Section 430.70(a)(3), ''Sampling,'' is amended by adding appropriate language to include plumbing products.

14. Section 430.70(a)(6)(i), ''Testing at Manufacturer's Option,'' is amended by adding appropriate language to include plumbing products.

15. Appendix A to Subpart F, Title 10 CFR Part 430, is amended by adding language to include plumbing products; to identify the third party organization officially acting as representative of the manufacturer; and to include, as an attachment, a uniform format for certification reports on new basic models of a covered products.

16. Appendix B to Subpart F, Title 10 CFR Part 430 is amended to correct typographical errors and add appropriate language to include plumbing products.

The Department believes these proposed amendments and additions are necessary and appropriate and will clarify the certification and enforcement requirements for all residential products.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department proposes provisions to implement statutorily mandated water conservation standards and test procedures for faucets, showerheads, water closets, and urinals. Implementation of this rule would not result in environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.6 of appendix A to subpart D, 10 CFR Part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

This regulatory action is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. § 603, requires the preparation of an initial regulatory flexibility analysis for every rule which by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

The Department used the small business size standards published on January 31, 1996 by the Small Business Administration to determine whether any small entities would be required to comply with this proposed rule. 61 FR 3280 (to be codified at 13 CFR part 121). The size standards are listed by Standard Industrial Classification (SIC) code and industry description. Plumbing fixtures (water closets and urinals) manufacturing is listed under the following SIC codes: (1) SIC 3088 (plastic plumbing fixtures), (2) SIC 3261 (vitreous china plumbing fixtures), and (3) SIC 3431 (enameled iron, cast iron, and pressed metal plumbing fixtures). Plumbing fixture fittings (faucets and showerheads) manufacturing is SIC 3432. To be considered a small business, a manufacturer of plastic plumbing fixtures, vitreous china plumbing fixtures, enameled iron, cast iron, and pressed metal plumbing fixtures, or plumbing fixture fittings and its affiliates may employ a maximum of 500, 750, 750, or 500 employees, respectively.

The Department estimates there are approximately 32 domestic firms and 38 foreign firms which manufacture either plastic, vitreous china, or enameled iron, cast iron, and pressed metal plumbing fixtures, or a combination of the three various types of plumbing fixtures. DOE also estimates there are 57 domestic firms and 30 foreign firms which manufacture plumbing fixture fittings covered under EPCA.[7] Some domestic manufacturers of plumbing fixtures also manufacture plumbing fixture fittings. Moreover, many domestic manufacturers of plumbing fixtures and fixture fittings are affiliated with larger U.S. firms. The sizes of plumbing fixtures manufacturing companies and their affiliates in the U.S. range from 50 employees to 54,298 employees, and for plumbing fixture fittings manufacturing companies and their affiliates, they range from 50 employees to 51,300 employees. The Department estimates there are five to seven firms in the United States that both manufacture plumbing fixtures covered by EPCA, and have, together with their affiliates, 750 or fewer employees. DOE estimates that there are approximately 7 firms in the United States that both manufacture plumbing fixture fittings covered by EPCA, and have, together with their affiliates, 500 or fewer employees.

EPCA prescribes water conservation standards for faucets, showerheads, water closets, and urinals. The statutory water conservation standards are incorporated in the proposed rule, although the standards do not depend

[7] *America's Corporate Families and International Affiliates,* Volume I—III, Dun & Bradstreet, Inc., 1996

on rulemaking for their implementation. The Act also requires DOE to prescribe test procedures for measuring water consumption, and it further requires the use of the test procedures in ASME/ANSI Standards A112.18.1M–1989 (for faucets and showerheads) and A112.19.6–1990 (for water closets and urinals). If the water conservation standards or the test procedures for water consumption are amended by ASME and approved by ANSI, DOE is required to amend its standards or test procedures accordingly unless to do so would not meet certain statutory criteria for standards or test procedures. The standard for faucets and test procedures for faucets and showerheads were amended on September 15, 1994 in ASME/ANSI Standard A112.18.1M–1994, and DOE is now proposing to incorporate in the CFR ASME/ANSI Standard A112.18.1M–1994.

DOE believes that complying with the proposed rule (excluding the cost of compliance with the water conservation standards and test procedures directly imposed by EPCA) would not impose significant economic costs on a substantial number of small manufacturers. The test procedure mandated by EPCA (in ASME/ANSI Standard A112.19.6–1990) and that which is proposed to be incorporated by DOE (in ASME/ANSI Standard A112.18.1M–1994) are test procedures already in general use in the industry. Manufacturers contacted by the Department stated that they currently test faucets and showerheads in accordance with ASME/ANSI Standard A112.18.1M–1994, and water closets and urinals in accordance with ASME/ANSI Standard A112.19.6–1990.

The proposed rule has been drafted to minimize the burden of testing for all manufacturers, and DOE has relied heavily on recommendations that have been provided by the plumbing products trade association, their member companies and other water conservation organizations. The proposed statistical sampling procedures are based on statistical sampling procedures established for consumer appliance products at 10 CFR § 430.24, and recommendations submitted by the Plumbing Manufacturers Institute (PMI), American Water Works Association (AWWA), and New York State Department of Environmental Conservation (NYSDEC). The sampling procedures are designed to keep the testing burden on manufacturers as low as possible, while still providing confidence that the test results of units tested can be applied to units of the same basic model. The proposed compliance reporting requirements are based on recommendations from PMI and are consistent with the requirements for consumer appliance products at 10 CFR § 430.62.

DOE recognizes that some manufacturers may not be able to certify compliance immediately following publication of the DOE final rule. Such submissions generally are required before a basic model is allowed to be distributed in commerce. 10 CFR § 430.62(a). The proposed rule eases the burden of compliance for manufacturers of faucets, showerheads, water closets, and urinals, including small manufacturers, by providing that the certification reporting requirements for initial submissions would not take effect until 12 months after the publication of the final rule.

The Department invites public comment on its conclusion that the costs of complying with the proposed rule would neither affect a substantial number of small businesses, nor impose a significant economic impact on such businesses.

D. Review Under Executive Order 12612, ''Federalism''

Executive Order 12612, ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The proposed rules published today would not regulate the States. They primarily would affect the manner in which DOE promulgates residential and commercial products, water conservation standards, test procedures, and certification of compliance by manufacturers, prescribed under the Energy Conservation and Policy Act. State regulation in this area is largely preempted by the Energy Policy and Conservation Act. The proposed rules published today would not alter the distribution of authority and responsibility to regulate in this area. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

E. Review Under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights''

It has been determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

Today's Notice of Proposed Rulemaking would revise compliance certification requirements applicable to manufacturers of covered consumer products that were previously approved by the Office of Management and Budget (OMB). These proposed collections of information have been submitted to the Office of Management and Budget for review and approval under the Paper Reduction Act, 44 U.S.C. 3501, et seq.

Appendix A to Subpart F of Part 430, ''Compliance Statement,'' was previously approved by OMB and assigned OMB Control No. 1910–1400. The proposed rule would revise this form to cover certification of plumbing products; facilitate use of the form by third party representatives of covered product manufacturers; and, in an attachment, specify the format of the certification report that manufacturers currently are required to submit to DOE by 10 CFR part 430.62(a)(2). The revisions to appendix A to subpart F will make the compliance certifications more uniform and easier to complete. DOE estimates there will be no additional burden associated with these changes to the certification statement and certification report requirements in Part 430.

The proposed rule would require manufacturers of plumbing products to maintain records concerning their determinations of the water consumption of faucets, showerheads, water closets and urinals. DOE has concluded that this recordkeeping requirement is necessary for implementing and monitoring compliance with the water conservation standards, testing and certification requirements for residential and commercial faucets, showerheads, water closets and urinals mandated by EPCA.

The proposed rule also requires manufacturers to submit initial certification reports for basic models of covered faucets, showerheads, water

closets and urinals within 12 months after the publication of a final rule in the Federal Register. The initial certification reports would be a one-time submission stating that the manufacturer has determined by employing actual testing that the basic model of faucet, showerhead, water closet or urinal meets the applicable water conservation standard. After the first year, manufacturers of plumbing products would have to submit a certification report for each new basic model, or to certify compliance with a new or amended standard, before the model would be allowed to be distributed in commerce.

DOE estimates the number of covered manufacturing firms of plumbing fixtures to be approximately 70. DOE estimates the number of hours required to comply with the reporting and recordkeeping requirements in the proposed rule, after the initial year of compliance, to be approximately 4 to 16 hours per year per firm. The total annual reporting and recordkeeping burden on manufacturers of plumbing fixtures to comply with the proposed rule is expected to be from 280 to 1120 hours (70×4 − 16 hours per year). DOE estimates the number of covered manufacturing firms of plumbing fixture fittings to be approximately 87, and the number of hours required to comply with the reporting and recordkeeping requirements in the proposed rule to be approximately 4 to 8 hours per year per firm. The total annual reporting and recordkeeping burden on manufacturers of plumbing fixture fittings to comply with the proposed rule is expected to be from 348 to 696 hours (87×4 − 8 hours per year). These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

The collections of information contained in this proposed rule are considered the least burdensome for meeting the legal requirements and achieving the program objectives of the DOE compliance certification program for faucets, showerheads, water closets and urinals. In estimating the paperwork and recordkeeping burden, DOE considered that many manufacturers already submit this type of information to voluntary plumbing product listing services, such as the International Association of Plumbing & Mechanical Officials' (IAPMO's) Annual Directory of Listed Plumbing Products. These manufacturers should be able to comply with the certification required by the proposed rule without much additional burden.

DOE invites public comments concerning the accuracy of the estimated paperwork reporting burden. Send comments regarding the recordkeeping and reporting burden estimate, or any other aspect of this collection of information, to the Department in accordance with the instructions in the **ADDRESSES** section of today's notice, section IV, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for DOE.''

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's proposed rulemaking under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, they meet the requirements of those standards.

H. Review Under Section 32 of the Federal Energy Administration Act of 1974

Pursuant to Section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy is required to comply with Section 32 of the Federal Energy Administration Act (FEAA), as amended by Section 9 of the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). Section 32 provides in essence that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice adopts one commercial standard, ASME/ANSI Standard A112.19.6–1990, and incorporates another, ASME/ANSI A112.18.1M–1994. In regard to ASME/ANSI Standard A112.19.6–1990, the Act directs adoption of this commercial standard, which provides the procedures required for measuring the water consumption of water closets and urinals. Because Congress has directed the use of the standard, Section 32 of the FEAA has no application to it. In regard to ASME/ANSI Standard A112.18.1M–1994, which provides the procedures required for measuring the water consumption of faucets and showerheads, the Department has evaluated this Standard and is unable to conclude whether it was developed in a manner which fully provides for public participation, comment, and review. However, Congress has, by statute, mandated use of the ASME/ANSI Standard unless specific findings are made.

As required by Section 32(c) of the Federal Energy Administration Act, the Department will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of this standard on competition, prior to prescribing a final rule.

I. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any

disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

IV. Public Comment.

A. Written Comment Procedures

Interested persons are invited to participate in the proposed rulemaking by submitting data, comments, or information with respect to the proposed issues set forth in sections (II)(A)(1)(a), (II)(A)(2)(a), (II)(B), and (II)(C) of this notice to the address indicated at the beginning of the notice.

Comments should be identified both on the envelope and on the documents as ''Test Procedures and Certification Requirements for Plumbing Products; and Certification Requirements for Residential Appliances, Docket No. EE–RM/TP–97–600.'' Ten (10) copies are requested to be submitted. In addition, the Department requests that an electronic copy (3½″ diskette) of the comments on WordPerfect™ 6.1 be provided. All submittals received by the date specified at the beginning of this notice will be considered by the Department in developing the final rule.

Pursuant to the provisions of Title 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) a description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Public Hearing

1. Procedures for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice of proposed rulemaking. The Department invites any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed issues, to make a request for an opportunity to make an oral presentation. Such requests should be directed to the address or telephone number indicated at the beginning of this notice. Requests may be hand delivered to such address between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests should be labeled ''Test Procedures and Certification Requirements for Plumbing Products; and Certification Requirements for Residential Appliances, Docket No. EE–RM/TP–97–600,'' both on the document and on the envelope.

The person making the request should briefly describe the interest concerned and state why he or she, either individually or as a representative of a group or class of persons that has such an interest, is an appropriate spokesperson, and give a telephone number where he or she may be contacted.

Each person selected to be heard is requested to submit an advance copy of his or her statement prior to the hearing as indicated at the beginning of this notice. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

The Department of Energy reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and Section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statements will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by the Department of Energy and made available for inspection in the Freedom of Information Reading Room, (Room No: 1E–190), at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues Requested for Comment

The Department of Energy is interested in receiving comments and/or data concerning the feasibility, workability and appropriateness of the preceding issues proposed in today's proposed rulemaking. Also, DOE welcomes discussion on improvements or alternatives to these approaches. In particular, the Department is interested in gathering comments on the following:

- Incorporation by reference of the test procedure requirements for faucets and showerheads, and the water conservation standard for faucets, in ASME/ANSI Standard A112.18.1M–1994.
- Requirements to submit metric equivalents.
- Definitions of ''basic model'' for faucets, showerheads, water closets, and urinals.
- Statistical sampling plan requirements for water closets and urinals utilizing one-sided confidence limits at 90% with a 1.10 divisor, and

for faucets and showerheads, at 95% with a 1.05 divisor.

- Appropriateness of proposed modifications to existing language in the CFR and the adoption of enforcement provisions for plumbing products.
- The definition for ''electromechanical hydraulic toilet.''
- The types of information, precision of reported results, mathematical rounding procedures and the approach to apply such procedures for certifying compliance.
- The effective date for certification submissions.
- Inclusion of sprayheads as covered products, and application of faucet standards on independently actuating multiple-orifice sprayheads.
- The establishment of a single capacity criterion based on the 1993 National Plumbing and 1995 International Plumbing Code, to be used in defining maximum flow rate of collectively-actuating sprayheads.
- Amendments to the existing certification reporting requirements for all residential appliances.
- The likelihood that today's proposed rule would cause significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980.
- The information collection and recordkeeping burden on the industry of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

Issued in Washington, DC, January 22, 1997.

Brian T. Castelli,

Chief of Staff Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as follows.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.2 of Subpart A is amended by revising the definitions for ''consumer product,'' and ''energy conservation standard,'' adding new paragraphs (17) through (20) in the definition of ''basic model,'' and adding new definitions for ''ANSI,'' ''ASME,'' ''blowout,'' ''electromechanical hydraulic toilet,'' ''estimated annual operating cost,'' ''faucet,'' ''flushometer tank,'' ''flushometer valve,'' ''low consumption,'' ''showerhead,'' ''urinal,'' ''water closet,'' and ''water use'' in alphabetical order, to read as follows:

Subpart A—General Provisions

§ 430.2 Definitions.

* * * * *

ANSI means the American National Standards Institute.

ASME means the American Society of Mechanical Engineers.

* * * * *

Basic model * * *

(17) With respect to faucets, which have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest-flow mode.

(18) With respect to showerheads, which have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest-flow mode.

(19) With respect to water closets, which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect water consumption.

(20) With respect to urinals, which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect water consumption.

* * * * *

Blowout has the meaning given such a term in ASME A112.19.2M–1990. (see § 430.22)

* * * * *

Consumer product means any article (other than an automobile, as defined in Section 501(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001(1)) of a type which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual, except that such item includes fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

* * * * *

Electromechanical hydraulic toilet means any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of or to aid gravity in evacuating waste from the toilet bowl.

Energy conservation standard means:

(1) A performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product, determined in accordance with test procedures prescribed under Section 323 (42 U.S.C. 6293); or

(2) A design requirement for the products specified in paragraphs (6), (7), (8), (10), (15), (16), (17), and (19) of Section 322(a) (42 U.S.C. 6292(a)); and

(3) includes any other requirements which the Secretary may prescribe under Section 325(r) (42 U.S.C. 6295(r)).

Estimated annual operating cost means the aggregate retail cost of the energy which is likely to be consumed annually, and in the case of showerheads, faucets, water closets, and urinals, the aggregate retail cost of water and wastewater treatment services likely to be incurred annually, in representative use of a consumer product, determined in accordance with Section 323 (42 U.S.C. 6293).

* * * * *

Faucet means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

* * * * *

Flushometer tank means a device whose function is defined in flushometer valve, but integrated within an accumulator vessel affixed and adjacent to the fixture inlet so as to cause an effective enlargement of the supply line immediately before the unit.

Flushometer valve means a valve attached to a pressurized water supply pipe and so designed that when actuated, it opens the line for direct flow into the fixture at a rate and quantity to properly operate the fixture, and then gradually closes to provide trap reseal in the fixture in order to avoid water hammer. The pipe to which this device is connected is in itself of sufficient size, that when open, will allow the device to deliver water at a

sufficient rate of flow for flushing purposes.

* * * * *

Low consumption has the meaning given such a term in ASME A112.19.2M–1990. (see § 430.22)

* * * * *

Showerhead means any showerhead (including a handheld showerhead), except a safety shower showerhead.

* * * * *

Urinal means a plumbing fixture which receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system. However, this term does not include fixtures designed for installations in prisons.

* * * * *

Water closet means a plumbing fixture that has a water-containing receptor which receives liquid and solid body waste, and upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system. However, this term does not include fixtures designed for installation in prisons.

* * * * *

Water use means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under Section 323 (42 U.S.C. 6293).

* * * * *

3. Section 430.22 of subpart B is amended by adding paragraph (a)(3)(iv) and adding item numbers 13 and 14 to paragraph (a)(4), to read as follows:

Subpart B—Test Procedures

§ 430.22 Reference Sources.

(a) * * *

(3) * * *

(iv) American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

(4) * * *

13. ASME/ANSI Standard A112.18.1M–1994, ''Plumbing Fixture Fittings.''

14. ASME/ANSI Standard A112.19.6–1990, ''Hydraulic Requirements for Water Closets and Urinals.''

* * * * *

4. Section 430.23 of subpart B is amended by revising the section heading and adding new paragraphs (s), (t), (u), and (v), to read as follows:

§ 430.23 Test procedures for measures of energy and water consumption.

* * * * *

(s) *Faucets.* The maximum permissible water use allowed for lavatory faucets, lavatory replacement aerators, kitchen faucets, and kitchen replacement aerators, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(a) of Appendix S of this subpart. The maximum permissible water use allowed for metering faucets, expressed in gallons and liters per cycle (gal/cycle and L/cycle), shall be measured in accordance to section 2(a) of Appendix S of this subpart.

(t) *Showerheads.* The maximum permissible water use allowed for showerheads, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(b) of Appendix S of this subpart.

(u) *Water closets.* The maximum permissible water use allowed for water closets, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(a) of Appendix T of this subpart.

(v) *Urinals.* The maximum permissible water use allowed for urinals, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(b) of Appendix T of this subpart.

5. Section 430.24 of subpart B is amended by adding new paragraphs (s), (t), (u), and (v), to read as follows:

§ 430.24 Units to be tested.

* * * * *

(s) For each basic model of faucet,[1] a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of the mean of the sample or the upper 95 percent confidence limit of the true mean divided by 1.05.

(t) For each basic model[1] of showerhead, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of the mean of the sample or the upper 95 percent confidence limit of the true mean divided by 1.05.

(u) For each basic model[1] of water closet, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of the mean of the sample or the upper 90 percent confidence limit of the true mean divided by 1.1.

(v) For each basic model[1] of urinal, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of the mean of the sample or the upper 90 percent confidence limit of the true mean divided by 1.1.

[1] Components of similar design may be substituted without requiring additional testing if the represented measures of energy or water consumption continue to satisfy the applicable sampling provision.

§ 430.27 [Amended]

6. Section 430.27 of subpart B is amended by:

a. Adding the words ''or water'' between the words ''energy'' and ''consumption'' in paragraphs: (a)(1), (b)(1)(iii), and (l) (first sentence); and

b. Revising the existing referenced section ''§ 430.22'' in paragraph (a)(1) to read as ''§ 430.23''.

7. Subpart B of Part 430 is amended by adding Appendix S and Appendix T, to read as follows:

Appendix S to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Faucets and Showerheads

1. *Scope:* This Appendix covers the test requirements used to measure the hydraulic performance of faucets and showerheads.

2. *Flow Capacity Requirements:*

a. Faucets—The test procedures to measure the water flow rate for faucets, expressed in gallons per minute (gpm) and liters per minute (L/min), or gallons per cycle (gal/cycle) and liters per cycle (L/cycle), shall be conducted in accordance with the test requirements specified in section 6.5, Flow Capacity Test, of the ASME/ANSI Standard A112.18.1M–1994. (see § 430.22)

b. Showerheads—The test conditions to measure the water flow rate for showerheads, expressed in gallons per minute (gpm) and liters per minute (L/min), shall be conducted in accordance with the test requirements specified in section 6.5, Flow Capacity Test, of the ASME/ANSI Standard A112.18.1M–1994. (see § 430.22)

Appendix T to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Water Closets and Urinals

1. *Scope:* This Appendix covers the test requirements used to measure the hydraulic performances of water closets and urinals.

2. *Test Apparatus and General Instructions:*

a. The test apparatus and instructions for testing water closets shall conform to the requirements specified in section 7.1.2, Test Apparatus and General Requirements, subsections 7.1.2.1, 7.1.2.2, and 7.1.2.3 of the ASME/ANSI Standard A112.19.6–1990. (see § 430.22)

b. The test apparatus and instructions for testing urinals shall conform to the requirements specified in section 8.2, Test Apparatus and General Requirements, subsections 8.2.1, 8.2.2, and 8.2.3 of the

ASME/ANSI Standard A112.19.6–1990. (see § 430.22)

3. *Test Measurement:*

a. Water closets—The measurement of the water flush volume for water closets, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 7.1.6, Water Consumption and Hydraulic Characteristics, of the ASME/ANSI Standard A112.19.6–1990. (see § 430.22)

b. Urinals—The measurement of water flush volume for urinals, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 8.5, Water Consumption, of the ASME/ANSI Standard A112.19.6–1990. (see § 430.22)

8. The subpart heading for Subpart C is revised to read as follows:

Subpart C—Energy and Water Conservation Standards

9. Section 430.31 is revised to read as follows:

§ 430.31 Purpose and scope.

This subpart contains energy and water conservation standards for classes of covered products that are required to be administered by the Department of Energy pursuant to the Energy Conservation Program for Consumer Products Other Than Automobiles under the Energy Policy and Conservation Act, as amended (42 U.S.C.6291 *et seq.*). Basic models of covered products manufactured before the date on which an amended energy or water conservation standard becomes effective, (or revisions of such models that are manufactured after such date and have the same energy efficiency, energy use or water use characteristics), that comply with the energy or water conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy or water conservation standard.

10. Section 430.32 of subpart C is amended by revising the section heading, revising the introductory paragraph, and adding paragraphs (o), (p), (q), and (r), to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

The energy and water conservation standards for the covered product classes are:

* * * * *

(o) *Faucets.* The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 60 pounds per square inch (414 kilopascals), shall be as follows:

Faucet type	Maximum flow rate (gpm (L/min)) or (gal/cycle (L/cycle))
Lavatory faucets	2.2 gpm (8.3 L/min).(1)(i) (2)(i)
Lavatory replacement aerators.	2.2 gpm (8.3 L/min).
Kitchen faucets	2.2 gpm (8.3 L/min).
Kitchen replacement aerators.	2.2 gpm (8.3 L/min).
Metering faucets	0.25 gal/cycle (0.95 L/cycle).(1)(ii) (2)(ii)

Note:

(1) Sprayheads with independently-controlled orifices.

(i) The maximum flow rate of each orifice that manually turns on or off shall not exceed the maximum flow rate for a lavatory faucet.

(ii) The maximum flow rate of each orifice that delivers a pre-set volume of water before gradually shutting itself off shall not exceed the maximum flow rate for a metering faucet.

Note:

(2) Sprayheads with collectively-controlled orifices.

(i) The maximum flow rate of a sprayhead that manually turns on or off shall be the product of (a) the maximum flow rate for a lavatory faucet and (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

(ii) The maximum flow rate of a sprayhead that delivers a pre-set volume of water before gradually shutting itself off shall be the product of (a) the maximum flow rate for a metering faucet and (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

(p) *Showerheads.* The maximum water use allowed for any showerheads manufactured after January 1, 1994, shall be 2.5 gallons per minute (9.5 liters per minute) when measured at a flowing pressure of 80 pounds per square inch (552 kilopascals). Any such showerhead shall also meet the requirements of ASME/ANSI Standard A112.18.1M–1994, 7.4.4(a).

(q) *Water closets.* (1) The maximum water use allowed in gallons per flush for any of the following water closets manufactured after January 1, 1994, shall be as follows:

Water closet type	Maximum flush rate (gpf (Lpf))
Gravity tank-type toilets	[1] 1.6 (6.0)
Flushometer tank toilets	1.6 (6.0)
Electromechanical hydraulic toilets	1.6 (6.0)
Blowout toilets	3.5 (13.2)

[1] The maximum water use allowed for any gravity tank-type white two-piece toilet which bears an adhesive label, conspicuous upon installation, with the words ''Commercial Use Only'' manufactured after January 1, 1994, and before January 1, 1997, shall be 3.5 gallons per flush (13.2 liters per flush).

(2) The maximum water use allowed for flushometer valve toilets, other than blowout toilets, manufactured after January 1, 1997, shall be 1.6 gallons per flush (6.0 liters per flush).

(r) *Urinals.* The maximum water use allowed for any urinals manufactured after January 1, 1994, shall be 1.0 gallons per flush (3.8 liters per flush).

11. Section 430.33 of subpart C is revised to read as follows:

§ 430.33 Preemption of state regulations.

Any state regulation providing for any energy or water conservation standard, or other requirement with respect to the energy efficiency, energy use, or water use of a covered product that is not identical to a Federal standard in effect under this subpart is preempted by that standard, except as provided for in sections 327 (b) and (c) of the Act.

Subpart D—Petitions To Exempt State Regulation From Preemption; Petitions To Withdraw Exemption of State Regulation

12. Section 430.40 of subpart D is revised to read as follow:

§ 430.40 Purpose and scope.

(a) This subpart prescribes the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy or water conservation standard or other requirement respecting energy efficiency, energy use, or water use of a type (or class) of covered product not be preempted.

(b) This subpart also prescribes the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy or water conservation standard or other requirement respecting energy efficiency, energy use, or water use of a type (or class) of covered product.

13. Section 430.41 of subpart D is revised to read as follows:

§ 430.41 Prescriptions of a rule.

(a) *Criteria for exemption from preemption.* Upon petition by a State which has prescribed an energy or water conservation standard or other requirement for a type or class of covered equipment for which a Federal energy or water conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he determines that the State has established by a preponderance of evidence that such requirement is needed to meet unusual and compelling State or local energy or water interests. For the purposes of this section, the term ''unusual and compelling State or local energy or water interests'' means interests which are substantially different in nature or

magnitude than those prevailing in the U.S. generally, and are such that when evaluated within the context of the State's energy or water plan and forecast, the costs, benefits, burdens, and reliability of energy or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all equipment subject to the State regulation. The Secretary may not prescribe such a rule if he finds that interested persons have established, by a preponderance of the evidence, that the State's regulation will significantly burden manufacturing, marketing, distribution, sale or servicing of the covered equipment on a national basis. In determining whether to make such a finding, the Secretary shall evaluate all relevant factors including: the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others; the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State; the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the U.S., or in the current or projected sales volume of the covered product type (or class) in the State and the U.S.; and the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have. The Secretary may not prescribe such a rule if he finds that such a rule will result in the unavailability in the State of any covered product (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding. The failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(1) *Requirements of petition for exemption from preemption.* A petition from a State for a rule for exemption from preemption shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition for a rule and correspondence relating to such petition shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) The name, address, and telephone number of the petitioner;

(ii) A copy of the State standard for which a rule exempting such standard is sought;

(iii) A copy of the State's energy or water plan and forecast;

(iv) Specification of each type or class of covered product for which a rule exempting a standard is sought;

(v) Other information, if any, believed to be pertinent by the petitioner; and

(vi) Such other information as the Secretary may require.

(2) [Reserved]

(b) *Criteria for exemption from preemption when energy or water emergency conditions exist within State.* Upon petition by a State which has prescribed an energy or water conservation standard or other requirement for a type or class of covered product for which a Federal energy or water conservation standard is applicable, the Secretary may prescribe a rule, effective upon publication in the Federal Register, that such State regulation not be preempted if he determines that in addition to meeting the requirements of paragraph (a) of this section the State has established that: an energy or water emergency condition exists within the State that imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas, electric energy, or water to its residents at less than prohibitive costs; and cannot be substantially alleviated by the importation of energy or water or the use of interconnection agreements; and the State regulation is necessary to alleviate substantially such condition.

(1) Requirements of petition for exemption from preemption when energy or water emergency conditions exist within a State. A petition from a State for a rule for exemption from preemption when energy or water emergency conditions exist within a State shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition shall also include the information prescribed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section, and shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) A description of the energy or water emergency condition which exists within the State, including causes and impacts.

(ii) A description of emergency response actions taken by the State and utilities within the State to alleviate the emergency condition;

(iii) An analysis of why the emergency condition cannot be alleviated substantially by importation of energy or water or the use of interconnection agreements; and

(iv) An analysis of how the State standard can alleviate substantially such emergency condition.

(2) [Reserved]

(c) *Criteria for withdrawal of a rule exempting a State standard.* Any person subject to a State standard which, by rule, has been exempted from Federal preemption and which prescribes an energy or water conservation standard or other requirement for a type or class of a covered product, when the Federal energy or water conservation standard for such product subsequently is amended, may petition the Secretary requesting that the exemption rule be withdrawn. The Secretary shall consider such petition in accordance with the requirements of paragraph (a) of this section, except that the burden shall be on the petitioner to demonstrate that the exemption rule received by the State should be withdrawn as a result of the amendment to the Federal standard. The Secretary shall withdraw such rule if he determines that the petitioner has shown the rule should be withdrawn.

(1) Requirements of petition to withdraw a rule exempting a State standard. A petition for a rule to withdraw a rule exempting a State standard shall include the information prescribed in paragraphs (c)(1)(i) through (c)(1)(vii) of this section, and shall be available for public review, except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A statement of the interest of the petitioner for which a rule withdrawing an exemption is sought;

(iii) A copy of the State standard for which a rule withdrawing an exemption is sought;

(iv) Specification of each type or class of covered product for which a rule withdrawing an exemption is sought;

(v) A discussion of the factors contained in paragraph (a) of this section;

(vi) Such other information, if any, believed to be pertinent by the petitioner; and

(vii) Such other information as the Secretary may require.

(2) [Reserved]

§ 430.47 [Amended]

14. Section 430.47 of subpart D is amended in paragraph (a)(1), by revising the words ''energy emergency condition'' to read ''energy or water emergency condition''.

§ 430.49 [Amended]

15. Section 430.49 of subpart D is amended in paragraph (a), by adding the words ''or water'' after ''energy'' in the first sentence.

Subpart E—Small Business Exemptions

§ 430.50 [Amended]

16. Section 430.50 of subpart E is amended by adding the words ''and water'' after ''energy'' in paragraphs (a) and (b).

Subpart F—Certification and Enforcement

17. Section 430.60 of subpart F is revised to read as follows:

§ 430.60 Purpose and scope.

This subpart sets forth the procedures to be followed for certification and enforcement testing to determine whether a basic model of a covered product complies with the applicable energy or water conservation standard set forth in Subpart C of this part. Energy and water conservation standards include minimum levels of efficiency and maximum levels of consumption (also referred to as performance standards), and prescriptive energy design requirements (also referred to as design standards).

§ 430.61 [Amended]

18. Section 430.61 of subpart F is amended in paragraph (a)(4), by adding the words ''or water conservation'' after the words ''energy efficiency'' in the first sentence.

19. Section 430.62 of subpart F is revised as follows:

§ 430.62 Submission of data.

(a) *Compliance certification.* (1) Each manufacturer before distributing in commerce any basic model of a covered product subject to the applicable energy and water conservation standard set forth in Subpart C of this part shall certify by means of a statement of compliance and certification report that each basic model meets the requirements of that standard. Each manufacturer or his representative shall send a compliance certification statement and report, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

(2) The compliance certification requirements of paragraph (a)(1) of this section shall apply to manufacturers of faucets, showerheads, water closets, and urinals on [one year after publication of the Final Rule].

(3) The compliance statement, in the format set forth in appendix A of this subpart, shall certify that:

(i) The basic model complies with the applicable energy or water conservation standards;

(ii) All required testing, on which certification reports are based, is conducted in conformance with the applicable test requirements prescribed in subpart B of this part, and all test data are reported in accordance with this subpart;

(iii) All information reported in certification reports is true, accurate, and complete; and

(iv) The manufacturer is aware of the penalties associated with violations of the Act and the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(4) For each basic model of a covered product, a certification report, the format for which is set forth in appendix A of this subpart, shall be submitted to DOE. The certification report shall include the product type, product class (as denoted in § 430.32), manufacturer's name, private labeler name(s), if applicable, the manufacturer's model number(s), and for:

(i) Central air conditioners, the seasonal energy efficiency ratio.

(ii) Central air conditioning heat pumps, the seasonal energy efficiency ratio and heating seasonal performance factor.

(iii) Clothes washers, the energy factor in ft^3/kWh/cycle and capacity in ft^3.

(iv) Clothes dryers, the energy factor in lbs/kWh, capacity in ft^3, and voltage.

(v) Direct heating equipment, the annual fuel utilization efficiency in percent and capacity in Btu/hour.

(vi) Dishwashers, the energy factor in cycles/kWh and exterior width in inches.

(vii) Faucets, for each faucet, the maximum water use in gpm (L/min) rounded to one decimal place or gal/cycle (L/cycle) rounded to two decimal places, or for each flow control mechanism, the maximum water use in gpm (L/min) rounded to one decimal place or gal/cycle (L/cycle) rounded to two decimal places, with a listing of accompanied faucets by manufacturer's model numbers.

(viii) Furnaces, the annual fuel utilization efficiency in percent.

(ix) General service fluorescent lamps, the laboratory's National Voluntary Laboratory Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy in lumens per watt, lamp wattage, and the 12-month average Color Rendering Index.

(x) Incandescent reflector lamps, the laboratory's National Voluntary Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy in lumens per watt, and lamp wattage.

(xi) Kitchen ranges, ovens, and microwave ovens, the annual energy use in Btu/hour.

(xii) Pool heaters, the thermal efficiency in percent.

(xiii) Refrigerators, refrigerator-freezers, and freezers, the annual energy use in kWh/yr and total adjusted volume in ft^3.

(xiv) Room air conditioners, the energy efficiency ratio and capacity in Btu/hour.

(xv) Showerheads, the maximum water use in gpm (L/min) rounded to one decimal place, or for each flow control mechanism, the maximum water use in gpm (L/min) rounded to one decimal place with a listing of accompanied showerheads by manufacturer's model numbers.

(xvi) Urinals, the maximum water use in gpf (Lpf) rounded to one decimal place.

(xvii) Water closets, the maximum water use in gpf (Lpf) rounded to one decimal place.

(xviii) Water heaters, the energy factor and rated storage volume in gallons.

(5) Copies of reports to the Federal Trade Commission which include the information in paragraph (a)(4) of this section meet the requirements of this paragraph (a).

(b) *New models.* All information required by paragraph (a)(4) of this section must be submitted for new

models prior to or concurrent with any distribution of such models. Any change to a basic model which affects energy or water consumption may constitute the addition of a new basic model subject to the requirements of § 430.61. If such change does not alter compliance with the applicable energy or water conservation standard for the basic model, the new model shall be considered certified and not warrant additional testing. However, all information required by paragraph (a)(4) of this section for the new model must be submitted, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

(c) *Discontinued models.* A basic model is considered discontinued when its production has ceased. Such models shall be reported, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121 within six months of being discontinued. For each basic model, this report shall include: product type, product class, the manufacturer's name, the private labeler name(s), if applicable, and the manufacturer's model number. If the reporting of discontinued models coincides with the submittal of a certification report, such models can be included in the certification report.

(d) *Maintenance of records.* The manufacturer of any covered product subject to any of the energy and water performance standards or procedures prescribed in this part shall establish, maintain, and retain the records of the underlying test data for all certification testing. Such records shall be organized and indexed in a fashion which makes them readily accessible for review by DOE upon request. The records shall include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart. The records shall be retained by the manufacturer for a period of two years from the date that production of the applicable model has ceased.

(e) *Third party representation.* A manufacturer may elect to use a third party to submit the certification report to DOE (for example a trade association or other authorized representative). Such certification reports shall include all the information specified in paragraph (a)(4) of this section. The certification report must be submitted with a compliance statement as specified in paragraph (a)(3) of this section. A third party representative may also submit discontinued model information on behalf of an authorizing manufacturer.

(f) *Amendment of information.* If any compliance certification information on a statement or report previously submitted to DOE has changed, the manufacturer or his representative must submit the revised information, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

§ 430.63 [Amended]

20. Section 430.63 of subpart F is amended in paragraph (a), by adding the words ''or water'' after ''energy,'' and revising ''§ 430.23'' to read ''§ 430.24''.

21. Section 430.70 of subpart F is amended by revising paragraphs (a)(1) introductory text, (a)(3) and (a)(6)(i), to read as follows:

§ 430.70 Enforcement.

(a) *Performance standard—(1) Test notice.* Upon receiving information in writing concerning the energy or water performance of a particular covered product sold by a particular manufacturer or private labeler which indicates that the covered product may not be in compliance with the applicable energy or water performance standard, the Secretary may conduct testing of that covered product under this subpart by means of a test notice addressed to the manufacturer in accordance with the following requirements:

* * * * *

(3) *Sampling.* The determination that a manufacturer's basic model complies with the applicable energy or water performance standard shall be based on the testing conducted in accordance with the statistical sampling procedures set forth in appendix B of this subpart and the test procedures set forth in Subpart B of this part.

* * * * *

(6) *Testing at manufacturer's option.* (i) If a manufacturer's basic model is determined to be in noncompliance with the applicable energy or water performance standard at the conclusion of DOE testing in accordance with the double sampling plan specified in appendix B of this subpart, the manufacturer may request that DOE conduct additional testing of the model according to procedures set forth in appendix B of this subpart.

* * * * *

§ 430.73 [Amended]

22. Section 430.73 of subpart F is amended by adding the words ''or water'' after ''energy'' in the introductory paragraph.

23. Appendix A to subpart F of part 430 is revised to read as follows:

Appendix A to Subpart F of Part 430—Compliance Certification

Statement of Compliance With Energy or Water Conservation Standards for Appliances

Product: _____

Manufacturer's Name and Address

_____

_____

_____

This compliance statement and the attached certification report are submitted pursuant to 10 CFR part 430 (Energy or Water Conservation Program for Consumer Products) and Part C of the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto. It is signed by a responsible official of the above named company. The basic models listed in the attached certification report comply with the applicable energy or water conservation standard. All testing on which the attached certification report is based was conducted in conformance with applicable test requirements prescribed in subpart B of 10 CFR part 430. All information reported in the attached certification report is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act and the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statement to the Federal Government.

Signature of Company Official: _____

Name: _____

Title: _____

Firm or Organization: _____

Date: _____

Name of Person to Contact for Further Information:

Name: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Third Party Representative:

If any part of this Compliance Certification, including the attached certification report, was prepared by a third party organization under the provisions of § 430.62 of 10 CFR 430, provide the following information for the company official who authorized third party representations:

Name: _____

Title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

The third party organization officially acting as representative:

Third Party Organization: _____

Name: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

The third party organization officially acting as representative:

Third Party Organization: _____

Name: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Submit Compliance Certification in writing or on a computer diskette, by Certified Mail to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

Certification Report for Basic Models

(Attachment to Statement of Compliance With Energy or Water Conservation Standards for Appliances)

Date: _____

Signature of Company Official or Third Party Representative: _____

Product Type: _____

Product Class: _____

Manufacturer: _____

Private Labeler (if applicable): _____

For New or Amended Models [1]:

For Discontinued Models [2]:

24. Appendix B to Subpart F of Part 430 is revised to read as follows:

Appendix B to Subpart F of Part 430—Sampling Plan for Enoforcement Testing

I. Double Sampling

Step 1. The first sample size (n_1) must be four or more units.

Step 2. Compute the mean ($\bar{x}_1$) of the measured energy or water performance of the n_1 units in the first sample as follows:

$$\bar{x}_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right)$$

Where (x_i) is the measured energy efficiency, energy or water consumption of unit i.

Step 3. Compute the standard deviation (s_1) of the measured energy or water performance of the (n_1) units in the first sample as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1}\left(x_i - \bar{x}_1\right)^2}{n_1 - 1}}$$

Step 4. Compute the standard error $\left(s_{\bar{x}_1}\right)$ of the measured energy or water performance of the n_1 units in the first sample as follows:

$$s_{\bar{x}_1} = \frac{s_1}{\sqrt{n_1}}$$

Step 5. Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy or water performance standard (EPS) as the desired mean and a probability level of 95 percent (two-tailed test) as follows:

$$LCL_1 = EPS - ts_{\bar{x}_1}$$

$$UCL_1 = EPS + ts_{\bar{x}_1}$$

Where t is a statistic based on a 95 percent two-tailed probability level and a sample size of n_1.

Step 6a. For an Energy Efficiency Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(1) If the mean of the first sample is below the lower control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(2) If the mean of the first sample is equal to or greater than the upper control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(3) If the sample mean is equal to or greater than the lower control limit but less than the upper control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7(a).

Step 6b. For an Energy or Water Consumption Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(1) If the mean of the first sample is above the upper control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(2) If the mean of the first sample is equal to or less than the lower control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(3) If the sample mean is equal to or less than the upper control limit but greater than the lower control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7(b).

Step 7a. For an Energy Efficiency Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05\ EPS}\right)^2 - n_1$$

Where s_1 and t have the values used in Steps 4 and 5, respectively. The term ''0.05 EPS'' is the difference between the applicable energy efficiency standard and 95 percent of the standard, where 95 percent of the standard is taken as the lower control limit. This procedure yields a sufficient combined sample size (n_1+n_2) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard. Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero and if the mean energy efficiency of the first sample ($\bar{x}_1$) is either equal to or greater than the lower control limit (LCL_1) or equal to or greater than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \leq 0$ and ($\bar{x}_1$)$\geq$ max (LCL_1, 0.95 EES), the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero and the mean energy efficiency of the first sample ($\bar{x}_1$) is less than the lower control limit (LCL_1) or less than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \leq 0$ and ($\bar{x}_1$) < max (LCL_1, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6a). If the value of n_2 so calculated is greater than 20–n_1, set n_2 equal to 20–n.

Step 7(b). For an Energy or Water Consumption Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05\ EPS}\right)^2 - n_1$$

Where s_1 and t have the values used in Steps 4 and 5, respectively. The term ''0.05 EPS'' is the difference between the applicable energy or water consumption standard and 105 percent of the standard, where 105 percent of the standard is taken as the upper control limit. This procedure yields a sufficient combined sample size (n_1 + n_2) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean consumption is equal to the applicable standard.

Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero and if the mean energy or water consumption of the first sample ($\bar{x}_1$) is either equal to or less than the upper control limit (UCL_1) or equal to or less than 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $n_2 \leq 0$ and ($\bar{x}_1$)$\leq$ min (UCL_1, 1.05 EPS), the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero and the mean energy or water consumption of the first sample ($\bar{x}_1$) is greater than the upper control limit (UCL_1) or more than 105 percent of the applicable energy or water performance standard (EPS),

[1] Provide specific product information including, for each basic model, the manufacturer's model numbers and the information required in § 430.62(a)(4)(i)–§ 430.62(a)(4)(xviii).

[2] Provide manufacturer's model number.

whichever is less, i.e., if $n_2 \leq 0$ and $\bar{x}_1 > \min (LCL_1, 1.05\ EPS)$, the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6b). If the value of n_2 so calculated is greater than $20-n_1$, set n_2 equal to $20-n_1$.

Step 8. Compute the combined mean ($\bar{x}_2$) of the measured energy or water performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2}\left(\sum_{i=1}^{n_1+n_2} x_i\right)$$

Step 9. Compute the standard error $\left(s_{\bar{x}_2}\right)$ of the measured energy or water performance of the n_1 and n_2 units in the combined first and second samples as follows:

$$s_{\bar{x}_2} = \frac{s_1}{\sqrt{n_1 + n_2}}$$

Where s_1 is the value obtained in Step 3.

Step 10(a). For an Energy Efficiency Standard, compute the lower control limit (LCL_2) for the mean of the combined first and second samples using the DOE energy efficiency standard (EES) as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5) as follows:

$$LCL_2 = EES - ts_{\bar{x}_2}$$

Where the t-statistic has the value obtained in step 5.

Step 10(b). For an Energy or Water Consumption Standard, compute the upper control limit (UCL_2) for the mean of the combined first and second samples using the DOE energy or water performance standard (EPS) as the desired mean and a one-tailed probability level of 102.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5) as follows:

$$UCL_2 = EPS + ts_{\bar{x}_2}$$

Where the t-statistic has the value obtained in Step 5.

Step 11(a). For an Energy Efficiency Standard, compare the combined sample mean ($\bar{x}_2$) to the lower control limit (LCL_2) to find one of the following:

(1) If the mean of the combined sample ($\bar{x}_2$) is less than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if ($\bar{x}_2$) < max (LCL_2, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(2) If the mean of the combined sample ($\bar{x}_2$) is equal to or greater than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if ($\bar{x}_2$) ≥ max (LCL_2, 0.95 EES), the basic model is in compliance and testing is at an end.

Step 11(b). For an Energy or Water Consumption Standard, compare the combined sample mean ($\bar{x}_2$) to the upper control limit (UCL_2) to find one of the following:

(1) If the mean of the combined sample ($\bar{x}_2$) is greater than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $\bar{x}_2 > \min (UCL_2, 1.05\ EPS)$, the basic model is in noncompliance and testing is at an end.

(2) If the mean of the combined sample ($\bar{x}_2$) is equal to or less than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if ($\bar{x}_2$) ≤ min (UCL_2, 1.05 EPS), the basic model is in compliance and testing is at an end.

II. Manufacturer-Option Testing

If a determination of non-compliance is made in Steps 6, 7 or 11, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3, of units be tested, with n3 chosen such that $n_1+n_2+n_3$ does not exceed 20.

Step B. Compute the mean energy or water performance, standard error, and lower or upper control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, above.

Step C. Compare the mean performance of the new combined sample to the revised lower or upper control limit to determine one of the following:

a.1. For an Energy Efficiency Standard, if the new combined sample mean is equal to or greater than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever is greater, the basic model is in compliance and testing is at an end.

a.2. For an Energy or Water Consumption Standard, if the new combined sample mean is equal to or less than the upper control limit or 105 percent of the applicable energy or water consumption standard, whichever is less, the basic model is in compliance and testing is at an end.

b.1. For an Energy Efficiency Standard, if the new combined sample mean is less than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever, is greater, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

b.2. For an Energy or Water Consumption Standard, if the new combined sample mean is greater than the upper control limit or 105 percent of the applicable energy or water consumption standard, whichever is less, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

c. Otherwise, the basic model is determined to be in noncompliance.

[FR Doc. 97–3173 Filed 2–19–97; 8:45 am]

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Federal Register

Thursday
February 20, 1997

Part III

Department of Education

The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.297A]

The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: To award grants to Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language for (1) the development of curricula to address the needs of Native Hawaiian elementary and secondary students, which may include programs of instruction conducted in the Native Hawaiian language and mathematics and science curricula incorporating the relevant application of Native Hawaiian culture and traditions; (2) preteacher training to ensure that student teachers within the State, particularly those who are likely to be employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language and traditions; (3) inservice teacher training to ensure that teachers, particularly those who are likely to be employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language and traditions; and (4) the development and implementation of teacher recruitment programs.

Eligible Applicants: Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Deadline for Transmittal of Applications: April 7, 1997.

Deadline for Intergovernmental Review: June 7, 1997.

Available Funds: $500,000.

Estimated Number of Awards: 1.

Estimated Size of Awards: $500,000.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

Supplementary Information: The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program supports, among other things, the development of mathematics and science curricula incorporating the relevant application of Native Hawaiian culture and traditions. One field of study that is particularly suited to this program is aquaculture. Aquaculture, the science of the cultivation of marine life, is rooted in Hawaiian culture. A comprehensive aquaculture program would assist Native Hawaiian students in reaching challenging standards in science and mathematics in an intellectually stimulating environment and give them a greater understanding and appreciation of their Native Hawaiian culture.

Invitational Priority: Under 34 CFR 75.105(c)(1), the Secretary invites applications from eligible organizations or entities that would develop and implement a comprehensive aquaculture program that would be conducted in remote or rural areas of the Hawaiian Islands. While the Secretary is particularly interested in applications that meet this priority, these applications will not receive preference over applications that fail to meet the priority.

Selection Criteria: The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is as follows:

(a) *Meeting the purposes of the authorizing statute*—20 points.

(b) *Extent of need for the project*—20 points.

(c) *Plan of operation*—20 points.

(d) *Quality of key personnel*—10 points.

(e) *Budget and cost effectiveness*—10 points.

(f) *Evaluation plan*—15 points.

(g) *Adequacy of resources*—5 points.

For Applications or Information Contact: Beth Baggett, U.S. Department of Education, 600 Independence Avenue, S.W., Portals 4500, Washington, D.C. 20202–6140. Telephone (202) 260–2502. 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.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web (at http://www.ed.gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 7909.

Dated: February 13, 1997.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 97–4184 Filed 2–19–97; 8:45 am]

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Federal Register

Thursday
February 20, 1997

Part IV

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Tether Anchorages and Anchorage Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–095; Notice 3]

RIN 2127–AG50

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Tether Anchorages for Child Restraint Systems; Child Restraint Anchorage System

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM); request for comment.

SUMMARY: This document proposes to require that motor vehicles and add-on child restraints be equipped with a means independent of vehicle safety belts for securing the child restraints to vehicle seats. The adoption of the proposal would avoid problems of incompatibility between child restraints and vehicle safety belts and increase the correct installation of child restraints. This proposal would reduce allowable head excursion, which would have the effect of requiring child restraints to be equipped with an upper tether strap, and would require vehicles to have two factory-installed, user-ready anchor points for attaching the tether. It would also require vehicles to have two rear vehicle seating positions equipped with a specialized lower anchorage system, and require child restraints to be equipped with means of attaching to that system.

The proposal for the lower anchorages is based on two of the systems discussed at an October 1996 NHTSA public workshop concerning alternative systems for providing dedicated means for attaching child restraints to vehicle seats. Almost all of the different systems evaluated and discussed at the workshop appeared comparable in terms of demonstrated safety and public acceptance. However, one system appeared to be less expensive and have the advantage of using hardware familiar to consumers. This system is the ''uniform child restraint anchorages (UCRA) system,'' referred to as such by a consortium of manufacturing groups in a June 28, 1996 petition for rulemaking to the agency. The International Standards Organization (ISO) Working Group on child restraint systems recognized in a November 1996 meeting the need for this system to permit improvements in the short term.

The other notable dedicated system is one supported by European members of the ISO Working Group. This alternative, which is completing development, uses a two-prong nonflexible item of hardware on the child restraint to mate with two fixed anchorages at the bottom of the back of the vehicle seat without the use of any belt webbing. Under today's proposal, either of these systems could meet the proposed requirement for a dedicated lower anchorage system, but manufacturers installing the fixed anchorage system would also have to ensure that the system is compatible with the UCRA system, so that UCRA-type child restraints can be used in all vehicles equipped with either anchorage system.

To the extent possible, this proposal also harmonizes with the actions of other regulatory agencies around the world. This proposal seeks to harmonize with Canadian and Australian regulations by requiring an upper tether anchorage and with prospective European regulations by allowing a non-UCRA anchorage system.

This proposal pertains to the compatibility of child restraints with motor vehicle seats, and not that of child restraints with aircraft seats. The Federal Aviation Administration and NHTSA are developing possible requirements and procedures for improving the compatibility of child restraints in aircraft. If the agencies decide that rulemaking is warranted on that issue, such rulemaking will be commenced as a separate action.

DATES: Comments on this notice must be received by the agency no later than May 21, 1997.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to NHTSA's Docket Section at the following address: Until March 10, 1997: Room 6130, After March 10, 1997: Room 5109, 400 Seventh Street, S.W., Washington, D.C., 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: At NHTSA, for nonlegal issues: Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202–366–4919). For legal issues: Deirdre Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

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X. Comments

I. Statement of the Problem

The effective use of child restraints is important because of the number of children killed and injured in vehicle accidents. Annually, about 600 children less than five years of age are killed and over 70,000 are injured as occupants in motor vehicle crashes. Data from the National Center for Health Statistics (for 1991) indicates that motor vehicle

occupant fatalities were the third leading cause of death for this age group (NCHS, 1993).

While child seats are highly effective in reducing the likelihood of death or serious injury in motor vehicle crashes, the degree of their effectiveness depends on how they are installed. NHTSA estimates that the potential effectiveness of child seats, when correctly used, is 71 percent. However, it is estimated that imperfect securing of children in the child seats and/or of the child seats in vehicles reduce that effectiveness from the potential 71 percent to an actual 59 percent. That is, as a group, child seats (those that were used correctly together with those that were misused) have an actual effectiveness of 59 percent.

Child restraint effectiveness is reduced by limitations imposed by vehicle belt design, and by belt anchorage locations. Child seats are generally designed to attach to a vehicle by means of the vehicle's lap belt system. While child seats provide high levels of safety when correctly attached to a standard vehicle seat assembly with only a lap belt, in most vehicles different types of seat belt systems exist in addition to or in lieu of a lap belt. Among the different types are belt systems with a locking latchplate, a non-locking (sliding) latchplate, a reversible lockable retractor, an emergency-locking retractor, or an automatic seat belt. Some of these belt systems, such as those equipped with a locking retractor, are able to hold a child seat without use of attachment accessories, but a parent must correctly manipulate the system, such as by pulling the belt completely out of the retractor and then feeding excess slack back into it after buckling in the child seat. Some belt systems can be used to secure a child seat only when used with an accessory item that impedes movement of the belt or child seat in a crash, such as a locking clip or supplemental strap. Some belt systems, such as an automatic seat belt, may not be compatible with a child seat at all.

The agency recognizes the difficulty of designing vehicle seat belts to restrain both child restraint systems and a wide range of weights and sizes of individuals. Some vehicle seats have the seat belt anchorage positioned far forward of the vehicle ''seat bight'' (the intersection of the seat cushion and the seat back). Forward-mounted anchor points may better protect an adult using the vehicle seat belt system by drawing the vehicle belt low across the pelvis where the body can best tolerate the forces in a crash. However, when used with a child seat, the belt anchor is so far forward of the seat bight that the vehicle belts cannot initially provide any resistance to the forward, longitudinal motion of a child seat reacting to a decelerating crash pulse. The child restraint moves forward until it is sufficiently far forward of the belt anchorages that the belt finally can resist the forward, longitudinal motion of the child seat. This forward movement of the child restraint can result in excessive forward movement of the child's head, and a greater likelihood of head impact.

Child restraint effectiveness is also reduced by incorrect securing of children and child restraints due to the complexities of adapting vehicle belts to those purposes and due to failure to follow instructions. To properly install child restraints, devices such as lockable retractors, locking clips, and supplemental belts must be used in many cases. Unfortunately, it appears that many people installing a child seat are either unfamiliar with the use of these devices (which generally are not used or needed except in conjunction with a child restraint), not able to understand or unwilling to read instructions concerning their proper use, or unable to surmise from their design how to use them correctly. People generally are frustrated about the difficulty in installing child seats correctly in vehicle seats. Recent user trials conducted in the U.S.[1] and Canada[2] found that virtually all the people surveyed in the studies expressed high levels of dissatisfaction with conventional means of attaching child restraints in vehicles. NHTSA receives an average of about 50 calls a day to its Consumer Complaint Hotline from people asking for step-by-step guidance in installing their child seats. When an article appears in the media about incompatibility problems between child restraints and vehicle seats, those calls typically increase to over 500 a day. All of these callers express frustration at the difficulty of installing a child seat securely, and all urge NHTSA to make the installation easier. NHTSA understands that child restraint manufacturers also receive a large number of similar calls and asks that commenters verify this.

A four-state study done for NHTSA in 1996 examined people who use child restraint systems and found that approximately 80 percent of the persons made at least one significant error in using the systems. (''Patterns of Misuse of Child Safety Seats,'' DOT HS 808 440, January 1996.) Observed misuse due to a locking clip being incorrectly used or not used when necessary was 72 percent, and misuse due to the vehicle safety belt incorrectly used with a child seat (unbuckled, disconnected, misrouted, or untightened) or used with a child too small to fit the belts was 17 percent.

II. Improved Anchorage System

a. Standardized System

The difficulty with using vehicle safety belts to attach child restraints arises from the fact that those belts are primarily designed to restrain and protect larger and older vehicle occupants. Given the inability to change vehicle belt design and anchorage location because of this purpose, the agency is seeking a means of securing a child restraint that is independent of the safety belt. For a number of years, industry groups and governmental bodies have explored improving the securement of a child seat on a vehicle seat. The child seat and motor vehicle industry is unanimous that the means of attaching child restraints to the vehicle interior should be easier, more efficient and without incompatibility problems. Further, all agree that there should be a universal and independent means of attaching child restraints. That is, there should be means that are either identical or at least compatible, regardless of vehicle make or model, and that are dedicated solely for use in securing child restraints. The importance of universality across vehicle make or model also compels a universal requirement for the anchorage system, and would mitigate against having the system be available on an optional basis.

The concept of a universal and independent anchorage system was embraced by the ''Blue Ribbon Panel on Child Restraint and Vehicle Compatibility,'' which NHTSA Administrator Ricardo Martinez, M.D., formed in February 1995 to improve the use and attachment of child safety seats.[3] In its May 30, 1995 report recommending ways to improve the compatibility between child restraints

[1] ''An Evaluation of the Usability of Two Types of Universal Child Restraint Seat Attachment Systems,'' General Motors Corporation, 1996.

[2] ''The ICBC Child Restraint User Trials,'' Rona Kinetics and Associates Ltd. Report R96–04, prepared for the Insurance Corporation of British Columbia, December 1996.

[3] The Blue Ribbon Panel included child safety advocates and representatives of the motor vehicle, child safety seat and seat belt industries, including representatives from Ford, Chrysler, General Motors, Mercedes Benz, Volkswagen, BMW, Volvo, Nissan, Toyota, Honda, Century, Gerry, Fisher-Price, Cosco, Evenflo, Kolcraft, Riley Hospital, DANA Foundation, American Academy of Pediatrics, University of Michigan, TRW, and Takata, and advocates Stephanie Tombrello and Annemarie Shelness.

and vehicle seating positions, the panel recommended that there be an entirely separate anchorage system for child restraint installation, given the complex variables affecting the proper installation of child restraints using existing vehicle safety belts.

While there is universal agreement on the need to improve the ease with which child seats can be properly secured to vehicle seats and concurrence with the merits of a separate anchorage system, there is disagreement on which system is best. It is assumed that a ''universal'' anchorage system must standardize the means of attachment, so that it and it alone would be required for all affected vehicles, and it alone would be the system with which child seats would be required to be compatible. This is needed to ensure universal compatibility between child seats and vehicles.

b. Competing Concepts

In 1990, the ISO began work on a universal child seat anchorage system (''ISOFIX''). The ISOFIX concept originated as a 4-point rigid system, where four sturdy braces are mounted on the bottom of a child restraint. Each brace has a latch at its end. Two of the latches connect, through holes at the vehicle seat bight, to a metal bar in the seat frame. The other two latches, at the bottom braces, connect to a bar below the vehicle seat cushion. The ISOFIX system is supported by Volvo, as well as others.

Other concepts for universal anchorage systems have developed as alternatives to the 4-point ISO system, many in response to perceived problems with the ISOFIX system, such as ISOFIX being too rigid, too susceptible to false latching, too bulky, unreasonably expensive, and too heavy.

Transport Canada developed the CANFIX system, which consists of two rigid rear anchorages at the seat bight (rather than the four points of ISOFIX), plus an upper tether. This system envisions all vehicles to be equipped with upper tether anchorage locations. CANFIX is supported by Australia, which refers to the system as CAUSFIX. At this time, neither Canada nor Australia requires the CANFIX or CAUSFIX but both are interested in pursuing such a requirement in the near-term. It is noted, however, that Transport Canada has stated that in lieu of rigid lower anchorage points, it could support soft anchorages such as those of the ''UCRA'' system described below, in addition to an upper tether.

General Motors (GM) helped develop a ''uniform child restraint anchorage (UCRA)'' system consisting of two lower anchorages near the bight line and an upper tether anchorage. The lower anchorages have small latches that are compatible with easy-to-use buckles (as well as tether hooks) that would be installed on the child seat. The top tether anchorage would have a buckle or tether hook that is compatible with a tether and latch or hook on the child seat.

GM joined with thirteen other vehicle and child restraint manufacturers in petitioning NHTSA to require the UCRA system on vehicles and componentry compatible with the anchor system on child seats. The joint petitioners are: the American Automobile Manufacturers Association (AAMA), which includes General Motors, Chrysler, and Ford; five companies of the Association of International Automobile Manufacturers (AIAM) (Honda, Isuzu, Nissan, Subaru, and Toyota); the Juvenile Products Manufacturer's Association (JPMA), which includes child restraint manufacturers Century, Evenflo, Fisher-Price, Gerry and Kolcraft; and Indiana Mills and Manufacturing, a supplier of belt systems and hardware.

As another alternative to the ISOFIX 4-point rigid system, several European ISO manufacturer members are currently developing a hybrid system. The system consists of two lower anchorage points located in the seat bight and an upper tether anchorage point located behind the vehicle seat back. A child restraint system could be attached to the two lower anchorage points by means of either a buckle (such as the UCRA buckle) or the ISOFIX connector. The object of this option is to achieve worldwide compatibility between the UCRA and ISOFIX types of connectors.

The four systems described above are the four options, known as ''Schemes'' A through D, that the ISO has been considering for the past year. The four-point rigid anchor system (ISOFIX) is known as Scheme A; the two-point rigid anchor and rigid attachment, plus tether, is Scheme B; the two-point flexible anchor and flexible attachment, plus tether, is Scheme C; and the two-point rigid or semi-rigid anchor and flexible attachment is Scheme D.

Another approach for a universal anchorage system was advanced by Cosco, a child restraint manufacturer. Cosco suggested in a July 1, 1996 petition for rulemaking to NHTSA that vehicle manufacturers alone should be responsible for improving compatibility between child seats and vehicle seats and the ease of installation of child seats. Cosco believed that vehicles should provide a dedicated Type I lap belt for child seats, at or rear of the vehicle seat bight. Cosco calls its system the ''Car Seat Only (CSO)'' system. Cosco envisions that the CSO system would require no changes in the design and manufacture of child restraints.

III. Public Workshop

The relative merit of each of the systems was discussed at a public workshop NHTSA held on October 16 and 17, 1996 in Washington, D.C. Attending were about 100 persons from the U.S., Canada, Europe, Japan and Australia, representing governments and manufacturers of motor vehicles and child restraints, as well child safety advocates.[4]

NHTSA held this two-day meeting to discuss the various alternatives of universal child restraint anchorage systems that are being considered by the agency, safety advocates, and automotive and child safety organizations, such as the Society of Automotive Engineers (SAE) and the ISO. The five options described above were presented and discussed as to design characteristics, safety performance, public acceptance and economic considerations. The meeting focused on bringing to discussion the characteristics of the various alternatives and not necessarily on reaching a consensus on a system. Participants had the opportunity to experiment with the UCRA and hybrid systems in actual vehicles that were provided by their respective manufacturers.

a. Summary of Presentations

The following discussion summarizes the remarks of each presenter.

1. ISOFIX 4-point Rigid Systems

Thomas Turbell (Sweden), presenting on Scheme A (ISOFIX), reviewed the ISO work of the last six years on the 4-point system. He said that the first ideas on an anchorage system envisioned a fixation point in the vehicle where forward-facing child seats and rear-facing seats could be installed. The ISOFIX type 1 system (two rigid points), the ISOFIX Type 2 system (''DELTAFIX,'' two rigid points and one point in the front) were compared in an early user trial with the conventional Swedish child restraint system (installation by the seatbelt and by two lower tethers attached to the seat frame). Eighty percent of the users installed the

[4] A transcript of the meeting has been placed in NHTSA Docket No. 96–095, Notice 01, and is available from Neal R. Gross, Court Reporters and Transcribers, 1323 Rhode Island Avenue, N.W., Washington, D.C., 20005 (telephone 202–234–4433).

ISOFIX type 1 system correctly the first time, 60 percent the DELTAFIX, and only 30 percent the conventional system. Eighty-nine percent of the subjects indicated that they wanted the new ISOFIX type 1 system. Ninety percent were willing to pay a 50 percent increase over a normal price of a child seat at that time.

Work on the system continued in subsequent meetings of the ISO group in Stockholm in 1993, and Munich, where a list of features considered essential for the system was developed. For example, ''misuse should be almost impossible, the cushion of the car seat should have no influence on the system, and * * * the performance should be better than the present systems.'' A ''UNIFIX'' proposed by the UK was later changed to the UNIFIX–2 four-point, and in 1993 in San Antonio, the ISO group decided that this was the system to develop. In 1993, the group had its first draft ISO standard on the system, and in 1994 it had a sixth draft completed.

In London in 1995, the ISO group split the draft standard into three parts because there were problems with certain aspects of it. The Blue Ribbon Panel indicated a positive regard for the ISOFIX system, and the group received a resolution from the European Parliament pushing them to introduce the ISOFIX as soon as possible.

In San Diego in 1995, General Motors presented its ideas on the UCRA and the Blue Ribbon Panel modified its earlier support for ISOFIX. In subsequent meetings in Cologne and London in 1996, GM presented its findings on its user clinic, and the Hybrid system was presented. Since then, a consumer clinic has been conducted on the different ISO schemes and a working group meeting has been held in Albuquerque.

After reviewing the history of the development of the ISOFIX, Mr. Turbell noted concerns to consider. He believed that the anchorage system should be unrestricted by design patents. ''[Patents] will probably stop [an internationally] standardized system.'' He noted a concern about small cars being able to fit anchorage systems in a small rear seat, stating ''[W]e can't let the available space in the smallest rear seat decide the size of the child restraints.'' He also stated his belief that rigid systems might have an advantage over other systems with regard to the ease with which an air bag switch-off device can be incorporated.

2. CANFIX 2-Point Rigid System

France Legault (Transport Canada), presenting Scheme B (CANFIX) (the system is also known as CAUSFIX in Australia), explained that Canada varied from the four-point ISOFIX system because of Canada's high regard for tethers on child seats and tether anchorages in vehicles. Canada requires anchorages in passenger cars, and will soon introduce a regulation extending the requirement to trucks, multipurpose passenger vehicles, and sport utility vehicles.

Ms. Legault stated that CANFIX has one flexible top tether anchored to the body of the vehicle, and two lower rigid points based on the ISOFIX system. CANFIX has the possibility to include improved tether installation with better adjustability, e.g., in a reel or ratchet mechanism. It also has the possibility of a tether interlock, which would prevent the entire system from being installed if one of the points is not attached, and the possibility of an air bag switch-off. She said that before CANFIX was presented to the ISO group in 1995, Canada conducted sled testing and found that performance of the system was slightly improved over a conventional type of child restraint system. In that work, Canada also was able to design and build a device to test anchorages in a vehicle by pulling on them.

Canada's position on a universal child restraint anchorage system is that while it has sponsored the two-point rigid system, Canada is also open to the idea of soft anchors at the bottom ''depending on usability and cost. * * *'' However, Canada definitely supports a tether. Ms. Legault indicated that Canada will retain its head excursion and chest acceleration criteria, which have the effect of requiring a tether, because of the perceived safety benefits of a tether. Canada will be improving its tether regulation to require factory installation of the actual hardware for the anchorage. Currently, Canada requires only a hole or a threaded hole, and the consumer has to obtain and install the bolt and latchplate.

Canada believes harmonization is an important consideration in developing a universal child restraint anchorage system. Cost is important, and well as useability. Ms. Legault said that a positive engagement feature (e.g., a click or other indication on an engaged attachment) would be important for usability. She is concerned about a ''transition period,'' where new and old vehicles and child seats could be intermixed. New child restraints equipped with components for an anchorage system must be capable of use with older vehicles lacking a system. Ms. Legault said that testing with a CANFIX prototype showed that, in about 85 percent of its vehicles (lacking receptors for the rigid points), the prongs would go in between the seat cushion and seat back, so that the seat belt could still be used to attach the child seat.

Canada is in the process of testing the CANFIX and several conventional restraints to make sure that the tether will provide additional protection, not just when it is properly used but also when it is used with varying amounts of slack. Canada will be testing high-mounted tethers and low-mounted tethers. Early test results show that a tether improves performance in head and chest acceleration and head excursion, even if the tether is loose. A tether also reduces neck forces and moments.

Canada conducted surveys to determine the use rate of tethers. In a 1992 survey of owners of vehicles that provided no tether anchorage, about 25 percent installed the anchorage and used it. Of vehicles that had standard anchorages, tether use doubled. In addition, new data from the Province of Quebec show that its tether use increased from 47 percent to 65 percent after vehicles became equipped with a tether anchor, even when motorists had to take the extra step of installing the tether anchorage hardware.

3. UCRA Soft Anchor System

David Campbell (Century Products), Kazuhiko Miyadara (Toyota), and Jack Havelin (GM), presented Scheme C (UCRA) and the petition for rulemaking on the UCRA. Mr. Campbell stated that the key objectives of its work on a uniform child restraint anchorage system are ''to find a single world-wide system, to address the issue of compatibility and misuse, while improving dynamic performance of current restraints.'' He stated that the system should be independent of the adult seat belt system so that manufacturers can have the flexibility to optimize the performance of the anchorage system for child restraints and allow the adult seat belt system to be optimized for the other occupants in the vehicle. Mr. Campbell stated that child restraint manufacturers believe that the UCRA system is the best system because the buckle and latch plate system is intuitive:

> They are the type of systems that are currently available in vehicles * * *. Secondly, it will minimize misuse. You won't have the routing issues that we have through current child restraints today with the vehicle lap belts because they are attached and you know how to use it.

The UCRA also is designed so that current child restraints can be easily adapted to use it. This could be done by

means of a special belt provided by restraint manufacturers. The belt would have buckles on both ends to use with the UCRA latchplates, and would route through the current belt path used today.

Mr. Campbell said that the manufacturing costs of the UCRA are lower than those for some of the other systems. There also is less added weight. He agreed with most of NHTSA's estimates about the weight increases of the various systems, but believed the UCRA would add only about 1 to 1.6 pounds (lb), rather than NHTSA's estimate of 4.5 lb. He stated that it would take less leadtime to begin implementing a UCRA requirement as opposed to the alternative systems, because the UCRA uses ''existing technology—known systems, known belts, known buckles, known latch plates.'' Expanding on the cost issue, the presenter stated that current child restraints cost and sell at retail between $35.00 and $90.00 in the U.S.:

> Our market price is very sensitive, and one of the objectives we have is to increase the usage rate and not have a negative effect on the current usage rate. Soft anchors are predicted to add something in the order of magnitude of $20.00 to the cost of a child restraint. The Canadian CANFIX, the estimates were about $55.00 at retail, and for the ISOFIX it was $95.00. * * * Car seat loaner programs could be affected by this.

Mr. Campbell also stated that the UCRA systems meets Standard 213's performance criteria without attaching the tether. Tethered, it meets Canada's requirements. He stated that use of the tether does significantly reduce head and knee excursions, but there is some trade off in chest accelerations and HIC values, and the use of the tether in a higher position can help reduce that HIC.

Mr. Miyadara discussed past and current work evaluating usability, safety and cost issues for a two-point rigid system, a two-point soft system and current child restraint systems.

A past study evaluated usability in a customer preference clinic of current, past and future users. No significant difference was found between the two-point hard and the two-point soft system. Safety was assessed in dynamic testing. Some differences in HIC and chest G values were found, but the actual effect that those differences could have on a child occupant were unknown. The presenter expected, though, that safety could be somewhat improved with regard to chest Gs. The presenter said that one of Toyota's biggest concerns with both a two-point rigid and a two-point soft system is with potential ''loose fit'' of a child restraint on a vehicle anchorage system.

A study of vehicle and child seat cost impacts indicated that a two-point soft system should be much more acceptable to the customer.

Mr. Miyadara discussed current work on addressing the ''loose fit'' issue. Toyota has been jointly developing a device that could be used with a soft system to avoid the problem of consumers installing a child seat so that its fit is too loose. Toyota is evaluating a strap type device with belt adjuster, strap type with A-lock, lever-type and ratchet type. Toyota believes that it can work out the loose fit issue for a soft system in the near future.

Toyota's future work includes a customer preference clinic on the Schemes A through C systems, and dynamic testing.

Mr. Miyadara concluded by stating that Toyota's goals in joining in the AAMA et al. petition is to achieve international harmonization and provide increased safety to children by eliminating or decreasing misuse and improving crash performance, at a cost acceptable to the consumer. Further, to address the problems of incompatibility as soon as possible, the system should be implemented quickly. Mr. Miyadara said Toyota does not believe there is any reason to select the two-point rigid system over the two-point soft system. He also suggested that NHTSA consider conducting a customer preference clinic of its own.

Mr. Havelin addressed what he believed to be confusion about GM's position on a universal anchorage system. He said that GM supports an internationally harmonized requirement. Mr. Havelin stated that GM believes that an anchorage system should, foremost, increase child restraint use rates (citing the statistic that three out of four of the fatally injured children in the U.S. under the age of five are not using a child restraint), and secondly, reduce the potential for misuse and improve crash protection. GM suggested that NHTSA ''establish the template'' for international harmonization by issuing an NPRM based on three principles. ''First, what does our common customer want, that is, the child seat manufacturer's customer as well as the vehicle manufacturer's customer. We think the results of customer clinics need to be tempered to some degree by sound benefit/cost analysis * * * And finally, that template should be based on valid science. * * * [S]ome [consumer clinics and cost analyses] are better than others and we need to be focused on which ones are valid and which ones are not.''

Mr. Havelin said that GM believes consumers prefer the UCRA system because the dual straps on the child seats use familiar anchorage hardware, and provide an intuitive, secure installation. Also, the tether is obvious and provides a secure anchorage. All three of the strap anchors give a positive indication when correctly attached. He said that other reasons the UCRA is preferred is that the child seat would be light and compact, and without any threatening surfaces (e.g., rigid prongs) associated with it. GM believes that the UCRA is within the acceptable cost range for consumers.

The presenter also highlighted other perceived benefits of the UCRA, such as that it need not be tethered to meet Standard 213's performance requirements, can be retrofitted into existing vehicles, incorporates what GM considers to be ''fully developed and field-proven hardware, and can be implemented faster than the other attachment systems.''

4. European Industry Hybrid System

Klaus Werkmeister (Germany), presenting Scheme D, provided some historical background on the development of a universal child restraint anchorage system. He believed that interest in a worldwide universal system started in the late 1980's to address a high rate of severe accidents where children were killed or injured. Experts determined that the real problem with those accidents was not the severity of the crash, but the considerable misuse rate of child seats due to the wrong adaptation of seat belts.

In preparing for an April 1996 meeting in Cologne of the ISO Working Group of Child Restraint Systems, German vehicle manufacturers met to identify criteria they believed were important for an anchorage system. They developed a list of 12 properties. First, there should be no top tether, due to concerns about its non-use. Second, the system must have two lower symmetrical anchorage points, because unacceptable performance may result from an unsymmetrical configuration. Third, due to the configuration and dimensions of interior vehicle compartments, especially of smaller cars, there must be a 250 mm to 280 mm lateral spacing between the latch points. Fourth, the latch points must have a degree of stability to ensure that excursion limits are not exceeded. Fifth, the child restraint must be able to attach through a one-hand operation, to ensure that the restraint can be easily installed.

Sixth, there must be a means to prevent attaching the child restraint on one side only. Seventh, the user must be able to tension the child restraint with one hand. Eighth, there must be no reduction of seat comfort for adult passengers. Ninth, the locking device that attaches the child seat to the vehicle system must be attached to the child restraint, not the vehicle, to limit overall cost impacts. Tenth, to avoid design restrictions, the locking device need not be required to be a pushpad buckle. Eleventh, to ensure that a child restraint does not have excessive webbing or ratcheting devices, the length of the adjustment system used to tension the system should not exceed 200 mm. Lastly, the dimensions of the latch points on the vehicle should be as specified in Scheme A.

The presenter said that dynamic testing of the four-point rigid and the soft anchor system showed a reduction in safety performance when the systems are not properly tightened. Also, a non-symmetrical configuration resulted in very high head acceleration.

Mr. Werkmeister said that the Scheme D system incorporates ideas from both rigid and soft anchor systems. The system calls for defining a field around the ISOFIX fixture, which might include an area behind the seat bight (where hard anchors could be located), or an area in front of the seat bight (where semi-rigid anchors could be). A connector would be used to attach the child seat to the anchorage on the vehicle. At the option of the child restraint manufacturer, the connector could be attached to a piece of webbing (such as in the UCRA system), or could be built into the child seat (as in the ISOFIX rigid systems). The presenter estimates that the cost of the connector system would be about $12 for the vehicle and $9 to $15 for the child seat.

The presenter expressed concerns about use rates for a top tether, believing that use rates will be far less than Canada's 65 percent. He also discussed concerns about the width between anchorage points and a symmetrical configuration of the child restraint. He emphasized the need for design flexibility in an anchorage system. He believed manufacturers should be provided maximum design flexibility to meet performance requirements and market demands, and believed that Scheme D best provides this.

5. Car Seat Only System

John Reynolds and Carol Dingledy (Cosco), presented the ''Car Seat Only (CSO)'' system. Mr. Reynolds stated that Cosco looked at three critical issues when evaluating universal anchorage systems. First, Cosco looked at performance and determined that a system must not reduce the safety performance of existing child restraints. Second, Cosco looked at ''implementation,'' or the transition phase between the existing and new systems, the primary problem being the mix of new car seats with old cars, and old car seats with new cars. Third, Cosco looked at how the systems could affect the cost of child restraints, and in turn, overall use rates. Mr. Reynolds stated that after evaluating the systems under these criteria, Cosco decided to develop its CSO system. Cosco believed that because the system is a simple lap belt, it would have the least negative impact in terms of implementation and transition. Further, the CSO system would have the lowest cost to the car seat user, since the cost to the restraint manufacturer is virtually none.

Ms. Dingledy elaborated on Cosco's concerns with implementation time and cost. She said that adopting a system other than the CSO will require considerable research on the part of child seat manufacturers to determine if seats comply. She said that, given the variety of car seats that must be tested (e.g., infant-only, convertible, forward- and rear-facing) and the different types of vehicle seats, just researching a new system prior to rulemaking will take at least many months, if not a year or so. She also indicated that research is needed to determine whether a rigid system might place excessive forces on a child's neck, particularly a young child who has less developed neck muscles. She was also concerned that the actual implementation of competing systems would require long leadtimes to implement (possibly two to five years development time, plus 10 years production time), as well as a great deal of public education. The presenter stated that this is in contrast to the CSO, which can be implemented much more quickly and which requires little education. Ms. Dingledy said that international harmonization of an anchorage system does not appear to be realistic in the near term.

The presenter discussed cost concerns at length. She said that a system that significantly increases the price of car seats will decrease the number of new seats purchased at retail, possibly resulting in (1) more used child seats being purchased or (2) more children being incorrectly restrained in seats they have outgrown or by adult belts when they are too small for the belts. She believes consumers in the U.S. will resist purchasing car seats that retail between $100 and $200, and that even a $20 increase would slash sales dramatically. She indicated that the average price of a convertible restraint is $63, but about one quarter of the car seats purchased cost $50 or less; less than 5 percent cost $100 or more. She believes that perhaps 10 percent of persons purchasing car seats would be unable to purchase a seat if prices increase dramatically. She emphasized a concern about the impacts of cost increases on loaner programs.

Ms. Dingledy estimated that a 10 percent decrease in child seat use rates would result in approximately 40 additional child fatalities annually. She also said that about three million car seats are sold each year to retail stores and loan programs. The presenter cautioned that a 10 percent reduction in the number of seats sold means 300,000 children per year riding without a new car seat, which translates into 1.2 million additional children riding unrestrained.

Ms. Dingledy stated that questions arising about the CSO system concerning the possibility that adults may mistakenly use the CSO belts are unwarranted. She said that an adult would prefer a lap/shoulder belt to a lap only belt due to the superior performance and comfort of a Type II belt. She also said that the CSO belt could be installed at a location that makes it inaccessible for use with an adult, and could be prominently labeled or color contrasted to distinguish it from an adult belt system.

At the conclusion of her remarks, Ms. Dingledy introduced Frank Rumpleton (appearing on behalf of the Juvenile Products Manufacturers Association) (''JPMA''), who presented the views of the North American car seat manufacturers. He said that the number one priority of these manufacturers is to increase the usage and more importantly the proper use of child restraint systems. In addition, they wish to ensure that the changes made to child seats are simple, intuitive and easy for the caregivers to use. They also support worldwide harmonization. Underlying all these priorities, however, is the belief that initiatives must be cost effective, because of a direct correlation between cost and use rates. He said that every dollar of cost at least doubles at the retail shelf. He suggested that the cost of an anchorage system could be better absorbed on the vehicle side than on the child restraint side.

The presenter said that JPMA categorically rejects the four-point ISOFIX system and the two-point CANFIX or CAUSFIX rigid system, because of cost. He said that JPMA supports soft anchor systems, which includes the UCRA, CSO and Scheme D.

JPMA hoped that all parties attending the workshop would focus on the soft systems as a starting point and focus on the similarities and the positive aspects of each of these proposals, to develop a solution that maximizes the potential use of child restraints and minimizes the cost to the ultimate consumer.

b. Clinics

Separate presentations were made on the public acceptance and support of the development of a universal anchorage system. The Insurance Corporation of British Columbia (ICBC) along with Rona Kinetics reported on the findings of its clinic on usability of various alternatives. The study surveyed 76 subjects in Vancouver, Canada representing a cross section of age, sex, and experienced/unexperienced groups. General Motors presented the findings of a February 1996, clinic that was conducted in Troy, Michigan with a sample of about 400 subjects. Toyota also presented a customer preference study on various types of soft and rigid anchor systems that was conducted in Japan on rigid and soft systems. Finally, a study was recently initiated in the UK and a progress report on its findings of an initial small number of subjects surveyed was presented.

Generally, the findings of these clinics were in agreement on two major issues: 1) all subjects surveyed seem to prefer a universal anchorage system over the current child restraints and 2) no significant difference in consumer acceptance was detectable when comparing between a rigid and soft anchorage system.

c. Cost

The participants agreed that the cost of the rigid options is much higher than the soft anchorage system, with *added costs* to the child restraint system of about $100 for the 4-point ISOFIX, $60 for the CANFIX and $20 for the UCRA soft anchorage system. Cosco, whose alternative does not incur additional costs to current child restraints, raised important concerns regarding the potential negative effects of high increases to the retail price of current child restraints. Concerns over families not being able to afford the increase and over loaner programs with fixed budgets for purchasing and providing free child seats to low income families were discussed. The issue of cost increases was in conflict with European countries expectations, according to the attendants from Sweden who indicated that these added costs do not have such implications as expected in the U.S. market.

d. Tether

Other discussions addressed specific issues pertinent to the development of universal child restraint anchorage systems. One major issue that was discussed pertained to the upper tether. A representative from the Insurance Institute for Highway Safety presented an overview of the experiences and possible reasons for non-use of the upper tether in the US during the 1980s. On the other hand, a participant from Australia reported that the use of the upper tether in Australia is about 98%. Transport Canada also reported substantial increases in use of the tether in Canada. These experiences seem to indicate that the high usage of upper tether stems from the fact that the tether anchor points are provided on the vehicle and are visible to and easily accessible for use by consumers. There appeared to be an agreement among participants that a child restraint with an upper tether provides better protection to the child during a crash.

e. Agreement on Differences

In the interactive exchange among attendees during the course of the workshop, several important points relating to development of a universal child seat anchorage system emerged. The following key views were expressed:

- User clinics indicate that consumers are overwhelmingly unhappy with the manner with which current child seats are attached to vehicle seats and wish to see improvement.
- The various systems evaluated in consumer trials (ISOFIX, schemes A through C) do not differ much in terms of safety performance (assuming proper installation) and public acceptance.
- Schemes B, C and D (CANFIX, UCRA and the Hybrid) are virtually variations of the same system, except for the hardware used to connect the child seat to the vehicle. CANFIX has specified a rigid anchor and rigid connectors on the child seat. UCRA specifies a buckle and latchplate system; the buckle would be on a piece of webbing attached to the child restraint and the latchplate would be on a semi-rigid stalk at the vehicle seat bight. The Hybrid system would specify a 6 mm bar (e.g., a D ring) that could connect to a child seat either in front of or behind the vehicle seat bight. The UCRA system differs from the Hybrid system only with regard to the connector piece that fastens the child restraint to the vehicle.
- Purchasers of child restraints in the U.S. are very sensitive to price. Sixty-four percent of the car seats sold in the U.S. sell for less than $60. Consumers in this country are unwilling to pay the $300 it costs on average for a child seat in Sweden.
- The European manufacturers generally still prefer a rigid system, while U.S. manufacturers oppose it. Canada has indicated a willingness to move from a rigid two-point plus tether (Scheme B) to a soft two-point plus tether system.
- Scheme D (the Hybrid system) has potential in accommodating both rigid and soft systems. It would provide the greatest design flexibility, in that it would specify minimum elements of the vehicle anchor (e.g., a 6 mm bar) and a location that could connect to a child seat either in front of or behind the vehicle seat bight. It would provide vehicle manufacturers the option of supporting the anchor rigidly or semi-rigidly. Child restraint manufacturers could choose any means to attach to the anchor. A child seat could have a telescopic or a rigid device, or a soft attachment (piece of webbing), so long as the child seat can attach to the anchor.
- Each system has strengths but also possible weaknesses. Questions were raised about the cost, weight and development time needed for a rigid system, the slack that could be introduced into the belts of a soft system and the suitability of a soft system with fold-over seats, the need for anchors to be visible to consumers in a Hybrid system, the possibility of slack and misrouted belts with the CSO system, and the actual use of a top tether in tethered systems.
- The various systems under consideration are unencumbered by patents of any kind. Britax (a European child restraint manufacturer), when asked about a certain patent application, expressly declared that it holds no patents or applications for patent or other claims that would hinder third parties from making ISOFIX equipped vehicles or child restraints using rigid or semi-rigid anchorages.

f. Future Work

Manufacturers of motor vehicles and child restraints extensively explored the differences between the UCRA and European hybrid systems with an agreement to further develop this option to harmonize between the European vehicle manufacturers and Britax and the US and Japanese child restraint/vehicle manufacturers. These participants expressed that future efforts would be made to elaborate on progress of this development at a November 7 and 8, 1996, ISO Working Group on child safety meeting in Albuquerque,

New Mexico and future meetings of the Group.

IV. Subsequent Developments

a. Albuquerque, New Mexico

During the November 7 and 8, 1996 meeting of the ISO Working Group on Child Restraint Systems (ISO/TC 22/SC 12/WG 1), the Group voted on a proposition containing two resolutions on the specifications for the anchorage of a universal child restraint anchorage system. The first resolution recognized the need to allow two anchorage systems: one based on two-prong nonflexible hardware (a system that is under development), and another based on flexible UCRA-type hardware (a system that is available today). A second resolution opposed an upper tether anchor in motor vehicles.

Following the Albuquerque meeting, the Secretariat of the ISO Working Group opposed the proposition—which was intended to advise different governments on how to treat the use of ISOFIX with and without a top tether—on the basis that it goes beyond the mandate of the Working Group. A re-voting of an amended resolution was conducted by correspondence with the delegations of country members, and was due back to the Secretariat on December 6, 1996. The voting on this resolution was to select between: i) specifying a top tether anchorage in vehicles; ii) not specifying the tether; or, iii) either of these options. It was also agreed that two reports—one for the rigid and one for the rigid/semi rigid options—will be prepared by members of the Working Group to describe and specify these systems.

The result of the re-voting was a resolution to produce two draft standards for universal child restraint attachment interfaces. One draft standard would cover an attachment system comprising the UCRA-type attachments on the lower points. The other standard would cover the rigid anchorage system. The standards would not include specifications for an upper tether anchorage. (The results of the re-voting and copies of the rough drafts of the two reports were placed on December 13, 1996 in Docket No. 96–095, Notice 01 for the readers' review.)

b. Additional Information

On November 21, 1996, some of the UCRA petitioners provided the agency with additional information supporting their petition. NHTSA representatives met with representatives from General Motors, Century Products, Indiana Mills and the Lear Corporation, at the request of the latter, to discuss the resolutions of the ISO Working Group meeting in Albuquerque. (A December 13, 1996 memorandum describing this meeting and attaching the handouts is entry number 16 in Docket 96–95, Notice 1.) The petitioners emphasized that the North American child restraint manufacturers strongly favor the UCRA system with an upper tether and have doubts that a determination can be made at this time that the rigid system would be a long term solution. They also presented the findings of an evaluation that Indiana Mills performed in response to a NHTSA call for harmonization during the public workshop. (The agency had requested that hardware manufacturers explore the feasibility of an anchorage system that would accommodate buckles, snap hooks and ISO-type connectors with a flat latch or round link, for consideration at the Albuquerque ISO meeting.) Indiana Mills described the advantages and disadvantages of the various types of hardware and its reasons for supporting the existing technology of a flat latch plate/buckle system. Lear Corporation presented cost data for rigid and soft attachments to various types of vehicle seating systems. It stated that the vehicle added cost data should be considered as a complement to the NHTSA study cost figures. Specifically, it included cost figures on items, such as covers and trim of rigid anchors, that were not included in the costing of the NHTSA study. The data showed that the costs of the soft anchorage system per seat on the vehicle range from about $4 to $10, as compared to about $13 to $30 for the rigid anchorage points system.

c. Petition on Scheme D (Hybrid System)

On December 18, 1996, BMW, Chrysler, Ford, Land Rover, Mercedes-Benz, Volkswagen, and the University of Michigan Child Passenger Protection Research Program, petitioned NHTSA to consider an approach based on Scheme D and modify the suggestions made in the UCRA petition. These petitioners supported a system incorporating two ''latch plates'' formed of 6 mm diameter elements for the vehicle, ''coupled with the alternatives for the [child restraint system], namely, tether hooks or buckles on belts with tilt-lock adjusters for tension release, or the rigid ISOFIX connectors on a sliding element.'' The petitioners believe that this system will offer vehicle and child restraint manufacturers the greatest design flexibility, and will further international harmonization at an early date.

V. Evaluation of Concepts

During the course of the agency's deliberations on a universal child restraint anchorage system and as a result of the discussions at the October 1996 workshop and other information, the agency has tentatively determined that child seats can be better secured to a vehicle (thereby reducing incompatibility problems and increasing safety) by providing three anchorage points between the restraint and a vehicle seat. One point is at the top center of the restraint (attachment of a child restraint to a vehicle would be accomplished at that point through a top tether), and the other two are at the vehicle seat bight.

a. Top Tether

ISO Schemes B and C (CANFIX/CAUSFIX and UCRA) include provisions for a top tether. Cosco indicated it would support a tether requirement, although the manufacturer is concerned whether tethers will be used in this country. The European systems do not call for tethers.

As a result of the agency's deliberations on this rulemaking,[5] the agency reevaluated its view of a top tether on child restraints. NHTSA currently does not require a tether or a tether anchorage on vehicles. The agency does not prohibit a tether, but generally requires child restraints to meet Standard 213's 30 mph dynamic testing requirements without attaching a tether to reflect the historically low use rate of tethers in this country.

NHTSA tentatively concludes that a top tether should be provided to better secure a child restraint. By restraining the top portion of a child seat, a tether would supplement the vehicle belt system in limiting forward movement of the child restraint in a crash. With less forward movement, head excursion can be reduced.

This document proposes a performance requirement that would have the practical effect of requiring a tether on child seats. A new head excursion requirement for forward-facing seats would be added to limit excursion to 720 mm (28.35 inches) forward of the Z-point on the test seat assembly when a child seat is attached

[5] On November 15, 1996, the American Academy of Pediatrics (AAP) petitioned NHTSA to amend Standard 213 to require child restraint manufacturers to supply tether straps on all child seats and require vehicle manufacturers to provide tether anchors at all rear seating positions. AAP also requested that child restraint manufacturers be required to make tether straps for existing car seats available to consumers by mail order and at retail outlets. NHTSA granted this petition on January 14, 1997.

to the standard seat assembly in accordance with the manufacturer's instructions. To meet this requirement, manufacturers will likely have to provide a top tether, which would be attached in the test for this new requirement. NHTSA believes that the head excursion limit of 720 mm is practicable with a tether because it is the same as the Canadian requirement and because most, if not all, child restraint manufacturers currently produce child restraints for sale in Canada and thus already meet the requirement for those products. The 720 mm requirement would promote harmonization with Canadian requirements. Further, the European child restraint manufacturers believe that a 720 mm limit could be achieved with the rigid anchorage system with two lower anchorages and no upper tether.

Test data strongly support the safety value of a tether. AAMA et al. submitted test results in support of a requirement for a tether anchorage, stating:

> Test results clearly demonstrate that a fastened tether can significantly reduce dummy head excursion measurements which most developers and evaluators use as the primary predicator [sic] of a CRS's performance in field accidents * * *.
>
> An Australian report cites forward-facing CRS test results, indicating that ''as well as reducing head excursion, a top tether, with the right high mounted geometry, significantly reduces head acceleration and neck loads in frontal impacts'' [footnote excluded] * * *. Recent computer simulations and tests of the recommended UCRA concept suggest that * * * a fastened tether significantly reduces dummy head excursion during high severity frontal impacts.

Computer simulations conducted by petitioners AAMA et al. showed a reduction in force levels experienced by a restrained dummy's head, neck and chest when a tether was used as compared to no tether, and a reduction in head and knee excursions. Actual testing of child restraint systems with and without a tether showed that with the tether attached, there generally were reductions in head injury criterion (HIC) values and chest g's, and in head and knee excursions.

These findings are consistent with NHTSA's limited testing of tethers. In two tests of an Evenflo Scout forward-facing convertible seat with the inboard anchor of the lap belt restraining the child restraint to the test seat assembly positioned four inches forward of the seat bight, the HIC and 3 ms chest acceleration clip were 631 and 59.6 g's respectively. When the child restraint was tethered on its top, these HIC and chest clip measurements were reduced to 503 and 42.2 g's, respectively.

In her comments at the October public workshop, Ms. Legault of Transport Canada reported that on-going testing of tethered, untethered and loosely-tethered restraints indicate improved head acceleration, head excursion and chest acceleration with a tether strap, even when the strap is loose. Additionally, upper neck forces and moments were also improved with a tether. (Transcript of October 17, 1996, pp. 32–34.) (However, Indiana Mills tests showed increased HIC and chest g's for a child seat with a dual strap anchorage with a tether, compared to one without a tether. Comments are requested explaining these increases.)

However, nonuse of the tether has been a problem in the U.S. In an effort to boost use rates, NHTSA once proposed requiring all vehicles under 10,000 lb GVWR to have tether anchorages at all rearmost seating positions, to make it possible for motorists to easily attach the tether straps on their child restraints to the vehicle. 45 FR 81625; December 11, 1980. At the time of the proposal, tether use was about 50 percent. NHTSA terminated rulemaking on this proposal after determining that (a) since the proposal, there was a continual shift toward untethered seats, so that most seats did not need a tether to meet Standard 213's requirements; (b) motor vehicle manufacturers had increasingly been voluntarily providing provisions, such as indentations to identify anchorage points and pre-drilled or threaded holes, in their vehicles to facilitate the attachment of tether straps; and (c) the most effective way to promote child safety would be to amend Standard 213 to require all child restraints to meet Standard 213's requirements without attachment of the tether. July 5, 1985; 50 FR 27632.

Petitioners AAMA et al. believe that a tether will be used. GM's consumer focus group testing indicates a positive response toward a tether, particularly if the tether anchorage is equipped with all the components needed for use with the child restraint. The petitioners state, ''Australian field experience shows very high tether use rates are obtainable when *factory installed* tether anchorages are provided.'' (Emphasis in text.) Indeed, top tether use is reported in excess of 95 percent in Australia, primarily due to requirements for installation of the anchorages and to early and continuous public education on the use of tethers. ''Options for a Universal Child Restraint Attachment System,'' M. Lumley, June 14, 1996, revised October 10, 1996. Petitioners are also encouraged by information from the Canadian Province of Quebec indicating a 65 percent tether use rate in vehicles required to have just a tether anchorage, and not the tether hardware. ''This in spite of the fact, that vehicle owners must install the tether anchorage hardware themselves or return to their dealer to have it installed.''

In an effort to increase tether use in Canada, Transport Canada is proposing to require vehicles to have a factory-installed, user-ready tether anchorage, with hardware included. Transport Canada believes that tether use will increase if an anchorage equipped with all needed parts for consumer use is provided at the factory. NHTSA tentatively believes that this information from petitioners AAMA et al. and from Transport Canada provides a basis for concluding that tethers would be used if child seats are equipped with a tether and vehicles are equipped with a factory-installed, easy- and ready-to-use tether anchorage. Accordingly, in view of the potential added safety value of a tether, the agency proposes requiring installation of a ready-to-use tether anchorage at the two seating positions that would be required to have the lower anchorages dedicated for attaching a child restraint system. (See *infra*, section VI.c.) For purposes of harmonization, the proposed requirements for the tether anchorages are essentially identical to those proposed by Transport Canada.

However, because NHTSA does not know the extent to which tethers will be used in this country, the agency believes the standard should also retain the present head excursion requirement, which limits excursion to 813 mm (32 inches) without use of a tether strap. Retaining the requirement would ensure a minimum level of safety performance when the tether strap is not used. Further, NHTSA proposes that child restraints dynamically tested on a child restraint anchorage system with UCRA anchorages should be subject to the 813 mm (32 inches) head excursion requirement without attaching the tether. This accords with the AAMA et al. petition, which suggests not attaching the tether. Comments are requested on this issue. Comments are also requested on the potential of using tethers in aircraft.

b. Lower Anchorage Points

Improving the lower anchorage points of a child seat to the vehicle would make it easier for parents to correctly attach a child seat to the vehicle.

NHTSA stated in the Federal Register notice announcing the workshop that an

anchorage system should accomplish the following:

- Improve the *compatibility* between child restraint systems and vehicle seats and belt systems, thereby decreasing the potential that a child restraint was improperly installed;
- Ensure an adequate level of *protection* during crashes;
- Ensure correct child restraint system use by ensuring that the child restraint systems are *convenient* to install and use;
- Ensure that the child restraint systems and anchorages are *cost effective*; and
- Achieve *international* compatibility of child restraint performance requirements for uniform anchorage points.

In remarking on the various ISO schemes and in other presentations, participants in NHTSA's workshop concurred with and elaborated on these considerations.

1. Improve Compatibility

All of the anchorage systems appear to improve compatibility between child restraint systems and vehicle belt systems. Consumers comparing ISO Schemes A, B and C systems against conventional child restraints indicated that the new methods of attachment are easier than current methods. Cosco's CSO system was not evaluated in these studies, but to the extent that the CSO does not depend on a locking clip or other means to adapt the belt to a child restraint, an improvement over existing belt systems, at least concerning that aspect of design, can be assumed. The CSO belt would still have to be routed correctly through the child restraint. All anchorage systems would improve compatibility between child restraint systems and forward-mounted anchors. Views were expressed at the October 1996 workshop that Schemes A, B and C systems would improve compatibility between child restraints and contoured vehicle seats. A rigid anchor system may suspend the child restraint above the contoured seat, and a UCRA would provide some resistance to the side-to-side motion of a child seat on a humped contoured seat. The CSO might not be as effective on humped seats in limiting side-to-side motion of a child restraint.

2. Safety Performance

ISO Schemes A, B and C systems have performed satisfactorily in dynamic tests. The CSO system has not been tested, but it simulates the standard seat assembly used in Standard 213 compliance tests.

Consumer clinics indicate that ISO Scheme A, B and C systems are comparable in terms of a user's ability to correctly install them. Users are able to install child restraints correctly in those systems. Scheme D and the CSO were not evaluated.

The degree to which an anchorage system will be correctly used outside the context of a clinic is unknown at this time, but design differences between the systems could affect such use. Attendees at the public workshop expressed concern with potential misuse problems that could arise by virtue of the design of each system. A type of misuse that could occur with a rigid system (ISOFIX four-point or CANFIX) is if the user does not fully attach all points of the system. Test data indicate that performance of the child restraint is severely degraded if one or more points are not attached. Some attendees believed that users must be able to see clearly where to insert the child seat connector to the vehicle system, and that a guide of some sort is needed if the attachment point is behind the seat bight. Some believed that an education campaign is needed to teach people how to use the system since a rigid bar anchorage is unfamiliar in this country.

Proponents of the UCRA system believe that the soft anchor system is superior to a rigid system in that the connectors are buckles and latches that are consumer-familiar in design to the seat belt hardware on vehicles. Proponents believe that users will know ''intuitively'' how to use the connector and will recognize the sound and feel of the click that indicates a positive attachment. Several participants expressed concern about a possible misuse problem arising due to the presence of webbing on the connectors, i.e., that slack in the webbing will negate a tight fit of a child seat on the system. Toyota indicated it is developing a means of addressing this potential problem.

Cosco believes the CSO system ''is the most intuitive system suggested because people have been using this type of system for years.'' NHTSA believes that while users might be familiar with the system, the CSO system poses some of the same problems as the lap belt currently used to attach child restraints. The belt would have to be correctly routed through the child restraint, which is a problem occurring with present seats. Slack in the belt would negate a secure fit of the child seat, so an adjuster of some sort would be needed, and it would have to be positioned on the belt where a user could maneuver around the child seat to tighten the belt. The seat belt would have to be long enough to permit it to be fastened around all types of child restraints, including restraints for children with special needs. A common complaint with current child seats is the difficulty of routing the belts through the system and pulling the belt tight. It appears that the CSO system might not alleviate those problems in all restraints. Further, there is the potential that the CSO belt would be inadvertently used by an adult occupant as a restraint, particularly in a seating position equipped with a lap belt, even if the CSO belt were labeled.

It may be possible to attach child seats with either a rigid anchor (ISOFIX four-point rigid, CANFIX) or a soft anchor (UCRA) system design to a vehicle seat in the same way that current child seats are attached, using the occupant belt system (and meet minimum performance criteria). Thus, it may be possible to use them in a vehicle that lacks an anchorage system. The ability to attach a child seat in a conventional manner, i.e., using the vehicle belt, is an essential feature addressing the use of new child seats with old vehicles, and vice versa (old child seats with new vehicles). Ms. Legault of Transport Canada said that testing with a CANFIX prototype showed that, in about 85 percent of its vehicles (lacking receptors for the rigid points), the prongs could be inserted between the seat cushion and seat back, so the seat belt could still be used to attach the child seat. All child seats with UCRA-designed anchorages can be attached to a vehicle by use of the existing vehicle safety belt, because the UCRA design is based on a simple addition of buckles to current models of child seats. The CSO design would also result in all child seats being able to be attached in a conventional manner. It is unknown whether the four-point ISOFIX seat could be attached with an existing vehicle belt and perform satisfactorily.

The various systems differ in their ability to allow child seats and vehicles to be retrofitted with features of the anchorage system. The ability to retrofit is desirable, since it would increase the number of seats that provide improved protection. Retrofitting seats and vehicles would provide all children the benefits of the improved technology. It does not appear that the four-point ISOFIX or the two-point CANFIX allows for retrofitting either the child restraint or the vehicle. These rigid anchorage systems necessitate an elaborate redesign of existing child seats. The anchorage pins on the vehicle seat would have to be precisely aligned with the prongs on the child seat to ensure that the system performs properly. Alignments of this nature are generally

not believed to be feasible in the aftermarket.

Proponents of the UCRA system state that existing seats can be installed using the UCRA system if the system is supplemented by a special belt with buckles at each end that are compatible with the UCRA latchplates on the vehicle. The belt would be provided to the owner of the old (pre-standard) child seat to route through the existing belt route path on the child seat. Further, proponents of the UCRA system believe that vehicles can be retrofitted with the UCRA system. The CSO system calls for no change in the design of a child seat, so old child seats could be used with a CSO system in a vehicle. Cosco did not indicate whether vehicles can readily be retrofitted with the CSO belt system, although it appears as feasible as retrofitting them with the UCRA system.

3. Consumer Acceptability

Consumer clinics indicate that ISO Scheme A (rigid four-point), B (CANFIX) and C (UCRA) systems are comparable in terms of consumer acceptance. Participants in GM's clinic indicated a preference for UCRA. Scheme D and the CSO were not evaluated in the clinics. Participants in all the clinics indicated a desire to see an improvement in the way child restraints are attached to vehicles. With regard to bulk and added weight to a child restraint, the CSO adds no weight, and the UCRA appears to have an advantage over a rigid system and the CANFIX. The rigid prongs and supporting structure on a rigid system add much more weight than the buckles of a UCRA and also protrude from the child restraint.

4. Costs and Burdens

Cost is an area where the systems differ greatly. The cost of the rigid options is much higher than the soft anchorage system, with added costs to the child restraint system of about $100 for the four-point ISOFIX, $60 for the CANFIX and $14 for the UCRA soft anchorage system. The agency is concerned that the $60 to $100 added costs of the rigid systems could engender public dissatisfaction with child restraints, reduce child restraint use rates and significantly reduce the number of seats available through car seat loaner programs. The CSO system does not incur additional costs to current child restraints.

Schemes A, B and C systems are fairly design restrictive, in specifying the geometry and location of assorted components on the vehicle and child seat. Scheme D (Hybrid) and the CSO specify only the features of the vehicle system, and not of the child seat. Design flexibility allows manufacturers latitude in meeting market demands and developing new technology, yet would be a trade-off in standardization of the anchorage system.

5. Harmonization

Harmonization was one of the major goals of the agency's October 1996 public workshop. NHTSA stressed the importance of international harmonization during the workshop and urged ISO member country member delegates to agree on a unique child restraint anchorage system.

The UCRA system would harmonize with Canada, Australia, New Zealand and Japan in specifying a top tether. With the top tether proposal, the proposed rule would harmonize with Transport Canada's current head excursion threshold and with its planned new regulation proposing to require manufacturers to provide anchors for tethers in motor vehicles. The rigid anchor system is endorsed by European members of the ISO Working Group.

6. Leadtime and Availability

The different systems are at varying stages of development in design concept. Final design of the four-point ISOFIX system and the two-point rigid CANFIX have not been completed, although proponents of those systems believe that completion is imminent. Design of the UCRA system is completed.

The view was expressed at the October 1996 workshop that the leadtime needed to implement a requirement for a rigid system would be much longer than that needed to implement the UCRA system. This is because the UCRA uses ''existing technology—known systems, known belts, known buckles, known latch plates'' (quoting David Campbell). Cosco argues that its CSO system would be the fastest to implement.

7. Proposed System

The agency has decided to base a proposal for a universal child restraint anchorage system primarily on the UCRA system. The four-point and two-point rigid and the UCRA appear comparable in terms of safety performance and public acceptance, but the UCRA appears to have advantages over the others with respect to its cost impact, near-term availability and ability to address intermix and retrofit issues. Further, the UCRA system has advantages in terms of its usability. The agency believes the familiarity of its components (particularly the crucial connector pieces—buckles and latchplates—that attach a child seat to the vehicle system) is a definite advantage over the other systems. Also, the UCRA system is not as bulky or heavy as the other systems, which increases its usability.

In addition, NHTSA believes that the soft anchor system has a potential for use in restraining child seats in aircraft. The Federal Aviation Administration (FAA) stated in a submission to NHTSA's docket for the October 1996 public workshop on a universal anchor system that ''preliminary review and evaluation of the proposed ISOFIX systems under consideration by [NHTSA] suggest that the UCRA concept presents the best solution in the aircraft environment.'' 96–95–N01–008. FAA is concerned that the rigid prongs of an ISOFIX-type child seat may not be compatible with aircraft seat cushions or suited for narrow aircraft seats.

While NHTSA has decided to propose the UCRA system due to its advantages in cost, usability, potential for use in aircraft, and the fact that it is proven technology available today, the agency is still interested in the possibility of achieving harmonization on a universal anchorage system. To that end, NHTSA is proposing to permit vehicle manufacturers to substitute the two lower rigid points of ISO Scheme D (the Hybrid system) in place of the UCRA anchors, provided that the vehicle is also equipped with adapters that enable the lower rigid points to accommodate UCRA-type child restraint systems.

The European manufacturer members of the ISO Working Group on Child Restraints Systems believe that their countries will require the two rigid anchorage points in the future.[6] Accommodating both hardware systems would be consistent with the agency's goal of solving the problem of incompatibility between child restraints and motor vehicles as expeditiously as possible, while promoting harmonization. The UCRA system, being a well developed and familiar current technology, is currently available. The non-flexible system would be given the opportunity to be developed, tested and evaluated in the market place to prove what its proponents believe to be its superiority as the child restraint anchorage technology of the future.

NHTSA tentatively concludes that the two proposed systems can coexist in the

[6] It should be noted that the work thus far by the ISO has been at the Working Group level. Any ISO standard on this matter has still to go to higher committee before it becomes a standard.

short term. The UCRA system will not hinder any development of the non-flexible hardware system. The proposed rule allows vehicle manufacturers to install a 6 mm pin to attach a child restraint that is equipped with jaw-type non-flexible hardware. The proposed rule would not prevent manufacturers of child restraints from developing a restraint with non-flexible hardware, and would facilitate a transition to future technology. However, in the interest of eradicating incompatibility problems henceforth, child restraints with non-flexible hardware would be required to have components (e.g., buckles), permanently attached to the child restraints, that are compatible with the UCRA anchorages. This proposal considers the UCRA system to be paramount, and a rigid system would be allowed as long as the UCRA system is universal for all vehicles and child restraint systems.

c. Discussion of Alternatives

A number of other approaches have been suggested to minimize or eliminate incompatibility between child seats and vehicle seats. This section addresses these alternatives to the approach proposed today.

1. SAE Recommended Practice J1819

In 1994, the Society of Automotive Engineers (SAE) published its Recommended Practice SAE J1819, ''Securing Child Restraint Systems in Motor Vehicle Rear Seats,'' to promote compatibility between child seats and vehicle rear seats and seat belts. J1819 provides voluntary design guidelines to vehicle manufacturers for certain characteristics of rear seats and seat belts, such as seat cushion shape and stiffness, and seat belt anchorage location, belt length, buckle and latchplate size, and lockability. In addition, J1819 provides design guidelines to child seat manufacturers for child seat features that correspond to the vehicle features.

J1819 specifies a ''Child Restraint System Accommodation Fixture'' to represent a child seat, so that designers of both the vehicle and child seat can evaluate each product for compatibility.

NHTSA tentatively concludes that J1819 alone does not fully solve incompatibility problems. It is a tool for evaluating incompatibility, not a requirement that vehicle seats and child restraints must be compatible.

In the October 1996 workshop, Mr. Howard Willson (who chairs the Children's Restraint Systems Standards Committee of the SAE) stated that J1819 might be amended to add ''a test for seat contour.'' The test would enable vehicle manufacturers to ''identify seating positions where it's probable that child restraints will not work well because of seat contour.'' He also stated

> I doubt that we will agree to simply design our seating positions so that they're all as flat as the seats in a pick-up truck used to be, for example. There is an appeal to a shaped seat, an appeal to the users. (Transcript of October 18, pp. 8–9.)

At the same workshop, Mr. David Campbell said that a child restraint anchorage system—

> should be independent of the adult seat belt system so that manufacturers can have the flexibility to optimize the performance of the anchorage system for child restraints and allow the adult seat belt system to be optimized for the other occupants in the vehicle. (Transcript of October 12, p. 40.)

NHTSA tentatively agrees with this statement. Further, NHTSA recognizes that it is very difficult for a single system to optimize the safety protection for adults of all ranges and child restraints of different types. Nonetheless, the agency requests comments discussing possible design alternatives to a universal child restraint anchorage system.

2. Lockability

In 1993, NHTSA amended its occupant crash protection standard (Standard 208) to adopt a ''lockability'' requirement effective September 1, 1995. The rule requires vehicle lap belts or the lap belt portion of lap/shoulder belts to be capable of being used to tightly secure child safety seats, without the need to attach a locking clip or any other device to the vehicle's seat belt webbing, retractor or any other part of the vehicle. 58 FR 52922, October 13, 1993. The requirement applies to seating positions other than the driver's position on vehicles with a gross vehicle weight rating of 10,000 pounds or less.

The rule requires the lap belt to be lockable and specifies test procedures demonstrating compliance with the lockability requirement. The rule does not specify how the vehicle belt is to be locked, except to prohibit locking by ''inverting, twisting or otherwise deforming'' the belt webbing. An example of a permitted means of locking a belt is extending the belt all the way, then feeding in the slack.

NHTSA tentatively concludes that the lockability requirement is insufficient alone in addressing incompatibility problems. While the requirement ostensibly makes a locking clip obsolete, it still depends on the user knowing enough and making the effort to manipulate the belt system. Also, the vehicle belt must be routed correctly through the child restraint, which may not be an easy task in all cases. Further, the lockability requirement does not address incompatibility problems arising from forward-mounted seat belt anchors. Excessive forward movement of a child seat can still occur, even if the feature is engaged and the belt is ''locked.'' Comments are requested on this issue. NHTSA is considering deleting the lockability requirement as unnecessary if requirements for a child restraint anchorage system are adopted. A lockability requirement may not be needed for a seating system with a universal anchorage system since the vehicle's belt would no longer be used for attaching a child restraint. However, lockability might be needed to attach child seats that are not equipped for a universal anchorage system, even if the vehicle seat has such a system.

3. Cosco's CSO system

Cosco's CSO system is appealing in its simplicity and low cost, but the CSO system is essentially no different from the current lap belt means of attaching child restraints to vehicle seats. NHTSA is concerned that the CSO system might not make attaching a child seat significantly easier than it is today. As noted previously, the CSO belt would have to be correctly routed through the child restraint, which manufacturers believe many consumers find difficult to do. In addition, from photographs of the CSO system, it might be difficult to tighten the belt. Consumers have expressed concern about their child seat not being secure on the vehicle seat because of the lateral side-to-side motion of the child restraint that occurs no matter how tightly the lap belt is adjusted. On a contoured, humped, seat, there is even more lateral ''play.'' The CSO system might not be able to address these concerns. Cosco provided no data on these issues assessing the viability of this approach. Another concern relates to the potential that the CSO belt would be inadvertently used by an adult occupant as a restraint, even if the CSO belt were labeled. It is also unknown how consumers will accept the addition of more seat belt systems in the rear seat, in addition to the Type I and II belts already provided in the rear seat. The agency requests data or comment on any research that has been done on the CSO system evaluating its acceptability by consumers, its performance with child restraints, the potential for correct use with child restraints and for misuse by adult passengers. Focus group testing comparing the CSO system to the UCRA and other standardized systems would be especially helpful.

VI. Proposal for New Vehicle Standard

a. Highlights of Proposal

The most significant requirements proposed by this document are highlighted below.

(1) A new safety standard would require all passenger cars and light trucks and vans to be equipped with a child seat anchorage system, defined in the standard, at two rear seating positions. If an air bag cutoff switch is provided that deactivates the air bag for the front passenger position, one system would have to be provided in that position, and another in a rear seating position. If there is no rear seat and no air bag cutoff switch, an anchorage system would be disallowed in the front passenger seat. A built-in child seat may be substituted for one of the systems, but not both, since rear-facing built-in systems are currently unavailable.

(2) The system would consist of two lower anchorages at the vehicle seat bight (the intersection of the seat cushion and the seat back) and a top tether anchorage. The lower anchorages could consist of either UCRA-type latchplates or rigid anchorages (ISO Scheme D), provided that connectors are provided with the Scheme D anchorages that enables a child seat with UCRA buckles to be used with the rigid anchorages. The child restraint system standard (Standard 213) would be amended, in effect, to require child seats to be equipped with a top tether, and with attachment components (e.g., buckles) that are compatible with the UCRA latchplates on the vehicle.

(3) The proposed requirements would specify the construction of the child restraint anchorage system, the location of the anchorages, and the geometry of related components, such as the hardware that attaches to a child seat.

(4) A new safety standard would specify performance and location requirements for the tether anchorages. The standard would apply to all tether anchorages installed in a vehicle, regardless of whether the anchorage is required by a safety standard or voluntarily installed by the manufacturer. The agency tentatively believes that all anchorages should be subject to the proposed performance and location requirements to ensure that any anchorage used in the vehicle performs properly.

(5) To prevent the anchorages from failing in a crash, the vehicle anchorages, including structural components of the assembly, would have to withstand specified loads in a static pull test.

(6) Child restraint systems would be dynamically tested under Standard 213 when attached to the vehicle system. The standard seat assembly specified in the standard to test add-on child seats would be revised to incorporate the upper and lower anchorages of a child restraint anchorage system. It would have both UCRA anchorages (Scheme C) and rigid anchors (Scheme D). A head excursion limit of 813 mm (32 inches) would have to be met without attaching the top tether.

(7) A child seat equipped with features enabling it to be attached to an anchorage system would also have to meet the present 813 mm head excursion requirement of Standard 213 when tested with just a lap belt. This is to ensure a minimum level of safety performance when the child seat is used in a vehicle that does not have an anchorage system.

(8) In addition, each child restraint would have to meet a 720 mm (28 inches) head excursion requirement when tested according to the manufacturer's instructions. A tether provided with the child restraint may be attached in this test.

(9) Instructions for using the anchorage system would have to be provided with each child restraint and in the vehicle owner's manual.

As discussed above, this proposal is based on the premise that a child restraint anchorage system would make child seats compatible with motor vehicles, and thus increase the safety value of restraints. The approach taken by this proposal would be to rectify the vehicle-to-child restraint incompatibility problem along two lines: vehicles would be required to have a child restraint anchorage system with components ''ready'' to attach a child seat, and child restraints would be required to have components ''ready'' to attach to the vehicle system. By having a dedicated anchorage system for child restraint systems, manufacturers can optimize the designs of their vehicle belt and child restraint systems to provide higher safety protection to both adults and children.

A potential but seemingly necessary limitation in the proposed compliance tests is that the vehicle system is statically tested by devices that replicate the loads imposed by a child seat, and a child restraint is dynamically tested on a seat assembly simulating a vehicle seat. That is, an actual vehicle anchorage system would not be tested with an actual child restraint, and vice versa. This is to avoid possibly complicating enforcement efforts if an apparent failure arises in a compliance test. If vehicles were tested with actual child seats, and vice versa, and if a vehicle anchorage system, for example, were found to fail the proposed requirements, an issue could arise as to whether the failure was with the vehicle system, or with the child seat attached to the vehicle system. To avoid this complication, the compliance tests must be as controlled as possible to remove unknown influences on the performance of regulated parts.

While the actual vehicle-to-child seat attachment would not be tested, NHTSA believes that the performance obtained in the compliance test will reflect the real-world performance of the anchorage system and the child restraint. This is because the geometry of the belts and latchplates primarily responsible for the vehicle-to-child seat interface would be precisely specified by this proposal. These components would have to be provided on vehicles and child seats precisely as specified in the standards. In turn, these components, in the same geometry as that specified in the standards, would be used in the compliance tests. Thus, the vehicle-to-child seat interface should be adequately tested.

b. Applicability

The requirement for a child restraint anchorage system would apply to passenger cars and trucks and multipurpose passenger vehicles (MPVs) under 10,000 pounds (lb) gross vehicle weight rating (GVWR) (hereafter referred to as ''LTVs''), except as noted below.

Petitioners AAMA et al. suggested, with respect to trucks and MPVs, that the requirement be limited to those with a GVWR of 8,500 lb or less and an unloaded vehicle weight of 5,500 lb or less. AAMA stated:

> The GVWR range suggested was incorporated using the identical GVWR range currently required to meet the dynamic performance requirements of FMVSS 208 for occupant protection. The relatively small number of vehicles larger than those within this range, the physical dynamics of these size vehicles and the unexpected use of CRSs [child restraint systems] in them, support maintaining this GVWR range for this proposal.

NHTSA agrees that vehicles with GVWRs of more than 10,000 lb are much less frequently used to carry young children (as compared to vehicles with GVWRs of less than 10,000 lb) and thus should be excluded from a requirement to provide a child restraint anchorage system. However, child restraint systems could be used in vehicles with a GVWR between 8,500 and 10,000 lb, such as in vehicles used for transportation to child care programs. In the interest of best ensuring that a child restraint anchorage

system would be available when needed and to minimize incompatibility problems between child restraints and vehicle seats to the extent possible, NHTSA proposes to apply this rule to trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 lb or less. Comments are requested on this issue.

AAMA et al. suggested excluding walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service. The agency agrees that these vehicles are unlikely to be used for transporting children in child safety seats. NHTSA made the determination in the rulemaking adopting the lockability requirement, *supra,* that these vehicles are not likely to be used to carry children in child seats. Accordingly, NHTSA proposes to exclude these vehicles from today's proposed vehicle standard.

The AAMA petitioners suggested that the standard should not apply to a vehicle that ''the manufacturer designates as not intended for CRS use.'' The petitioner further suggested that ''[v]ehicles not intended for CRS use shall include this information in the vehicle's owner's manual'' and on a label in the vehicle. The agency has tentatively decided against this approach. NHTSA does not know, and petitioners did not explain, why manufacturers should be permitted to exclude a vehicle from the proposed requirements, given that such a provision could substantially reduce the number of vehicles that are equipped with an anchorage system. Reducing the universe of vehicles equipped with the anchorage system would eviscerate the ''universality'' of the system, which could result in many consumers not having an improved means of attaching a child restraint in their vehicle.

c. Seating Positions

This proposal would require the child seat anchorage system (i.e., a top tether anchorage and lower anchorages) in two rear seating positions. NHTSA proposes requiring the system to be placed in a rear seating position because available data indicate that the rear seating positions are the safest positions in which to install a child restraint system. Vehicles that lack a rear seating position capable of fitting a rear-facing child seat would be required to provide a system in the front seat if the vehicle has a cutoff switch that deactivates the air bag installed at the right front passenger position in the vehicle. However, a child restraint anchorage system would also have to be installed in the rear seat of these vehicles, because a rear seat that is too small to fit a rear-facing child restraint can nonetheless probably fit a forward-facing seat. If the vehicle lacks a rear seat and does not have an air bag cutoff switch, an anchorage system would be disallowed in the front passenger seat. A built-in child seat may be substituted for one of the anchorage systems, but not both, since built-in seats currently cannot accommodate a rear-facing restraint.

There was no consensus among the petitioners as to the number of child restraint anchorage systems that should be required and where in the rear they should be. Many believe that the system should be installed at each of the outermost designated seating positions of the second row (and a tether anchorage in the rear lap-belt center position). The Japanese vehicle manufacturers believe that only one rear seat position should be required to have the system. Fisher-Price, a child restraint manufacturer, believes that the rear center seating position is recognized as the safest and that the system should therefore be required there.

NHTSA has tentatively determined that each vehicle with a rear seat should have at least two rear seating positions that can properly hold a child restraint system. The agency is concerned whether there is a need for an anchorage system at more than two seating positions. NHTSA requests information on this issue, such as demographic data on the number of children in child restraints typically transported in a family vehicle. It is noted that nothing in the proposed standard would prohibit a vehicle manufacturer from voluntarily providing child restraint anchorage systems in rear seats at more than the required seating positions, if a purchaser wants additional systems.

This proposal does not specify that both anchorage systems would have to be provided at an outboard position. In some vehicles with large interiors, it may be possible to install one of the required systems in a center seating position.

d. Construction

Requirements are proposed for the construction of the child restraint anchorage system. The system would consist of two child restraint anchorages at the vehicle seat bight and a tether anchorage.

1. Lower anchorages

The proposed rule would permit manufacturers to conform lower anchorages to either option A, consisting of requirements based on the UCRA system (ISO Scheme C), or option B, based on the Hybrid system (Scheme D).

Option A (UCRA System)

For vehicles incorporating the UCRA system, the standard would specify that lower anchorages are located 280 mm apart, measured to the centerline of each latchplate when fully extended in a plane parallel to the vehicle's longitudinal axis. When fully extended, the tip of each latchplate must not extend more than 50 mm forward of the seat bight. The 50 mm value was suggested to ensure accessibility of the lower anchorages. The petitioners and the ISO ad hoc group specified this figure in a November 15, 1996 draft ISO/WD13216–1i report. [7] NHTSA tentatively believes the value is reasonable to ensure that the lower latchplates are not so rearward that they may be buried in the seat bight, yet are not so forward that excessive forward movement of a child seat could result.

The standard would also specify the geometry of related components, such as webbing and latchplates (tongues) of the lower anchorage points. NHTSA is proposing the latchplate geometry that was suggested in the petition by AAMA et al. The agency is proposing to specify the geometry of these components as necessary to ensure the universality of the anchorage system. [8] It negates the likelihood that a used child restraint with particular attachment components would be ''handed down'' or sold to a person owning a vehicle with an incompatible anchorage system. Further, since a simple, effective way of testing anchorage systems with varying components has not been devised, specifying the geometry is the best means of ensuring that anchorage systems will securely attach a child restraint, and provide an adequate level of child protection.

The lower anchorages would be equipped with specialized latchplates that would attach to buckles on a child seat. The geometry of the components is such that the webbing, buckles and latchplates are similar in design to components found on current adult occupant belt systems. This is to ensure that the components and their operation are familiar to persons installing a child seat. The geometry of the components is such that they are smaller in size than

[7] This figure is consistent with the ISO/WD 13216–1i report that are in the December 13, 1996 submittal to Docket No. 96–095, Notice 1.

[8] While the geometry of the vehicle latchplates would be mandated, child restraint systems would not have designs specified, other than that to have ''components permanently attached to the system that securely fasten to the [vehicle's] latchplates'' (proposed S5.9(a)). However, the agency anticipates the use of UCRA buckles.

like components on the adult occupant belt systems. This is to reduce the likelihood that the person installing a child restraint might confuse the belts and buckles of the child seat anchorage system with the adult occupant belt systems.

Several participants at the October 1996 workshop expressed concerns or suggestions about aspects of the UCRA's belt systems. Klaus Werkmeister expressed concern that the UCRA system's lower anchorages could be lost in the seat bight of a foldover seat after the seat is flattened to make room for cargo and then reinstalled as a seat. On the other hand, John Gane said that the ICBC clinic had folding rear seats and that these didn't interfere with either the hard or soft anchor systems. Transcript, October 17, 1996, page 228–230. Comments are requested on this issue.

Mr. Gane also suggested that the ICBC clinic indicated that the side straps for the UCRA should be distinguished from the straps comprising the harness for the child. He said that when the straps were not distinguished, ''we had a huge failure rate of people to understand how the seat was intended to work.'' *Id.*, p. 220. (Some clinic participants attached the vehicle anchor belt to the child restraint's internal harness.) ICBC later modified the UCRA child restraint to color code the belts. Comments are requested on whether the straps of the UCRA should be distinguished, and if so, what measures should be required to distinguish them (e.g., color coding and/or labeling).

Howard Willson stated that the webbing-supported anchorages of the UCRA should be required to have a specific stiffness so that users can use one hand to attach the child seat connector to the anchorage. The AAMA et al. petitioners also suggested that the latchplates should not displace rearward more than 25 mm under a 50 N rearward load. Comments are requested on the need for such a requirement, the level at which a requirement should be set, the means of testing a requirement, and limiting side-to-side deflection of the latchplates which may degrade the ability to attach the child seat with just one hand. Comments are also requested on any other performance that should be required of the UCRA system to ensure that it will be effective.

Option B (Scheme D)

For vehicles incorporating the ISO Scheme D system, the standard would specify anchorage dimensional and marking requirements developed in draft by the ISO in ''ISO/WD 13216–1i Road Vehicles-Child Restraint Systems-Standardized Universal Attachment to Vehicle (ISOFIX)—Part 1: Dimensions and General Requirements,'' (November 15, 1996). The rule would require the lower anchorages to be 6 mm diameter transverse horizontal round bars with a minimum effective length of 25 mm. The spacing between the bars would be 280 mm apart, center-to-center. This value is harmonized with ISO to be agreeable with manufacturers of European, Japanese and U.S. motor vehicles. [9] Other specifications for the location of the lower anchorage bars would also be set forth in the standard. The anchorage location zone would be determined using a child restraint apparatus (see Figures 1, 2 and 3 of the proposed standard).

Vehicle manufacturers incorporating the Scheme D system would also be required to provide connectors that would enable the system to be used with a UCRA-type child seat. The connector would have a component on one end that latches onto the 6 mm bar, and a UCRA latchplate on the other for attaching a UCRA child seat to the anchorage system. Comments are requested on the degree to which the geometry of the connector should be specified. A connector would have to be provided for each Scheme D lower anchorage point. NHTSA believes that a connector should be provided to ensure that parents having a UCRA-type child restraint can use the restraint in any vehicle. This aspect of the proposal was not included in the petition from BMW et al. Those petitioners suggested that a connector from a child restraint to the vehicle anchorages should be provided on the child restraint, by the child restraint manufacturer. Comments are requested on this issue.

2. Upper Anchorage

The tether anchorage would be harmonized with Canadian and Australian requirements. Canada is preparing to require vehicles to have a factory-installed, user-ready tether anchorage. While AAMA et al. originally petitioned to require a specialized buckle that would be compatible with a latchplate on a child seat tether, petitioners have indicated a desire to harmonize with Canada and Australia. Thus, a simple anchor (such as a ring) on the vehicle would be sufficient, although a more sophisticated anchor could be provided if it is compatible with the tether hook that today's NPRM proposes to require on child restraints.

e. Performance

The main performance requirement for the anchorage system would specify strength criteria for the lower and upper anchorages and related hardware. In addition, the standard would require the system to meet Standard 209's belt and buckle requirements, such as those relating to abrasion, resistance to light, corrosion resistance and temperature resistance. Comments are requested on whether Standard 213's buckle release requirements (S5.4.3.5) should also be met. Among other things, those requirements specify that a buckle must not release when subjected to a force of less than 40 N, and shall release when a force of not more than 62 N is applied.

The proposed strength criteria are to prevent the anchorages from failing in a crash. The anchorages, including structural components of the assembly, would have to withstand specified loads in a static pull test.

The performance criteria for the lower anchorages would require that, in a static test of the anchorages: (a) no portion of the latchplate for each anchorage shall move more than 125 mm forward of the seat bight when subjected to a forward force of 5,300 N and, (b) there shall be no complete separation of any anchorage component of the assembly (including webbing, straps, latchplates, adjustment and anchorage hardware and retractors).

The static pull test would specify that each lower anchorage is tested to withstand the application of a 5,300 N forward load. In the test, a force of 5,300 N would be applied to each anchorage in the forward direction parallel to the vehicle's longitudinal vertical plane. The force would be applied by means of a belt strap that is of sufficient length to extend not less than 250 mm forward from the vertical plane intersecting the seat bight. The belt would be fitted at one end with hardware for applying the force, and at the other end with hardware for attachment to the anchorage latchplate. The 5,300 N force is attained within 30 seconds, with an onset force rate not exceeding 135,000 N per second, and is maintained at the 5,300 N level for ten seconds. The test procedure and force level were selected to harmonize with the proposed Canadian regulations on the upper tether, as well as with the suggested force level of the UCRA petition. The same test is proposed for the rigid anchor system with the adapter attached to each anchor point.

[9] This figure is consistent with the ISO/WD 13216–1i report that are in the December 13, 1996 submittal to Docket No. 96–095, Notice 1.

A static pull test would also be specified in a new standard [10] for the upper tether anchorage, in accordance with Canada's proposed tether anchorage requirement. The force level and application rate would harmonize with the proposed Canadian regulations on the upper tether. The standard would specify that each structural component of the anchorage shall withstand a force of not less than 5,300 N, and that there shall be no complete separation or failure of any anchorage component. Comments are requested on whether more specificity is needed for these strength requirements, and on whether other performance requirements should be included in the standard.

Each tether anchorage would be tested separately. However, more than one tether anchorage installed on a row of seats would be tested simultaneously.

f. Instructions

The standard would require that instructions about attaching a child restraint to the vehicle anchorage system be provided in the vehicle owner's manual. The instructions would have to indicate the seating positions equipped with a child restraint anchorage system, and include instructions that provide a step-by-step procedure, including diagrams, for properly attaching a child restraint system to a vehicle anchorage system equipped with UCRA-type anchorages. In addition, for a vehicle equipped with a rigid anchorage system, instructions would also have to be provided for properly attaching a child restraint to the rigid system.

VII. Proposal for Amendments to Child Seat Standard

a. Applicability

Standard 213 would be amended to require all child seats, other than belt positioning seats, to be equipped with components that are compatible with the UCRA anchorages on the vehicle system. Belt-positioning seats, which are a type of booster seat designed for older children, are designed to use a vehicle's lap and shoulder (Type II) belt system to restrain the child occupant. Because a vehicle's belt system is not necessarily directly routed around or through a belt-positioning seat to secure it to a vehicle, and because upper torso protection is provided by the shoulder portion of the Type II belt, there does not appear to be any incompatibility between a vehicle seat or its seat belts and belt-positioning seats. Also, because a Type II belt system is placed around the child occupant who is seated on a belt-positioning seat, there would be a minimal amount of forward movement of the child and child seat before forward movement is restrained by the Type II belts.

b. Required Components

Requirements would be established for the components of the child seat that attach to the vehicle system. A child restraint would be permitted to have components that attach to rigid or semi-rigid Scheme D anchorages (Hybrid system), but the restraint must nonetheless have the UCRA attachments permanently attached to it. This would ensure that persons owning any type of child seat can use the restraint in any vehicle (i.e., all vehicles would be able to attach a UCRA-type seat, either attached to a UCRA system, or by way of UCRA connectors to Hybrid anchorages). The agency requests comments on whether child restraints intended to be used with systems that have Hybrid anchorages should be required to provide an adapter, rather than the UCRA components.

By way of reduced allowances on head excursion, each child seat would be required to have a tether that attaches to the vehicle. To minimize the chances of incompatibility between the seat and the vehicle, the standard would specify the exact geometry of the tether hook.

The regulatory text for this proposal does not include a provision that the child seat components attaching to the lower anchorages of the vehicle system have retractors to take up excessive slack in the belts. NHTSA requests comments on whether a retractor is needed or is manual adjustment enough to ensure that the child seat will be snug against the vehicle seat back. Excessive slack in the connecting belts could result in excessive head and knee excursions for the child occupant, and a greater likelihood of head impact.

In the October 1996 workshop, Kazuhiko Miyadara, Jocelyn Pedder of Transport Canada, and others indicated that a soft anchor system should have a means of taking up slack in the belts. Comments are requested on what type of retractor, if any, should be specified for the UCRA.

c. Dynamic Performance

The dynamic test specified in Standard 213 would be used to evaluate the performance of the child seat when attached to the universal vehicle anchorage system. The standard seat assembly specified in the standard to test add-on child seats would be revised to incorporate a child restraint anchorage system meeting the proposed specifications. A child restraint would be attached to the system using the appropriate buckles and other components of the child restraint. Injury criteria and other performance requirements specified in Standard 213 would have to be met when the child seat is attached to the anchorage system.

Forward-facing restraints would be required to meet a head excursion limit of 720 mm (28.35 inches) when tested in accordance with its manufacturer's instructions. To meet this requirement, most manufacturers would likely have to provide a top tether, which would be attached in the test for this new requirement. Restraints would also be required to meet a head excursion limit of 813 mm (32 inches) when the tether is not attached, to ensure that a minimum level of safety is provided in a misuse situation. Each child seat would also have to meet the 720 mm (tethered) and 813 mm (untethered) head excursion limits when attached by a lap belt. This test would be to ensure a minimum level of safety performance when the child seat is used in a vehicle that does not have a UCRA or rigid anchor system.

NHTSA believes that Standard 209's belt and buckle requirements relating to abrasion, resistance to light, corrosion resistance and temperature resistance, should apply to the webbing and hardware installed on a child seat to connect to a vehicle system as required by the existing provisions of S5.4 of Standard 213. The agency tentatively concludes that these belt and buckle requirements of Standard 209 should apply to ensure the safe performance of the belts and associated hardware.

d. Instructions and Labeling

Standard 213 would be amended to require that instructions about attaching a child restraint to the vehicle anchorage system be provided in the printed instructions accompanying each restraint. The instructions would have to provide a step-by-step procedure, including diagrams, for properly attaching a child restraint system to a vehicle anchorage system equipped with UCRA-type anchorages, and if the child restraint is intended for a vehicle equipped with a rigid or Hybrid anchorage system, instructions for properly attaching to such a system. NHTSA also proposes amending Standard 213's labeling requirements, to either add a new provision or amend an existing one such as S5.5.2(g), to instruct owners to secure the child restraint system with either a vehicle

[10] Assuming a final rule on this subject is issued, the requirements set forth in the proposed tether standard could be incorporated into the standard on the child restraint system anchorage system, rather than in a separate standard.

belt or components attaching to a vehicle's child restraint anchorage system.

S5.5.2(j) of Standard 213 would already require a label instructing owners to secure the top tether strap of the child restraint. That section states that in the case of each child restraint system equipped with an anchorage strap, the following must be permanently labeled:

SECURE THE TOP ANCHORAGE STRAP PROVIDED WITH THIS CHILD RESTRAINT AS SPECIFIED IN THE MANUFACTURER'S INSTRUCTIONS.

Comments are requested on what changes, if any, should be made to this labeling requirement to increase the likelihood that parents will attach the top tether strap.

VIII. Proposed Effective Date

In their petition, AAMA et al recommended a schedule for phasing in the suggested requirements, should those requirements be adopted. The petitioners requested different schedules for vehicle manufacturers, child restraint manufacturers, and final-stage vehicle manufacturers and alterers. The latter group of manufacturers are typically small businesses. (See table 2, below.) The schedules suggested by AAMA et al. are based on the assumptions that (a) the attaching system envisioned by the petitioners is adopted, and (b) a final rule is issued by January 1, 1997.

The petitioners suggest that vehicle manufacturers be permitted two alternatives in phasing in complying vehicles, beginning September 1, 1998. Under the first alternative, 10 percent of the vehicles manufactured in the first model year after September 1, 1998, would be required to have the child restraint anchorage system (manufactured on or after September 1, 1998, through August 31, 1999), 30 percent of the vehicles manufactured in the second model year (ending August 31, 2000), 50 percent in the third model year (ending August 31, 2001), and 100 percent in the fourth year (ending August 31, 2002). Under the second alternative, no vehicle need comply with the proposed standard before September 1, 2000, but 75 percent of a manufacturer's vehicles produced on or after September 1, 2000 through August 31, 2001 (model year 2001) would have to comply with the requirements, and 100 percent of its vehicles manufactured on or after September 1, 2001 would have to comply.

The requested schedule for child seat manufacturers also includes two alternatives for phasing in complying child seats, beginning September 1, 1998. The petition refers to child restraints manufactured in a particular ''model year,'' which apparently assumes the September 1 to August 31 cycle traditionally used to designate vehicle model years. Under the first alternative, 5 percent of the child seats manufactured in the first ''model year'' after September 1, 1998 would be required to have the components enabling the child restraint to attach to the universal vehicle system (model year ending August 31, 1999), 15 percent of the child restraints manufactured in the second model year (ending August 31, 2000), 25 percent in the third model year (ending August 31, 2001), and 100 percent in the fourth year (ending August 31, 2002). Under the second alternative, no child restraint need comply with the proposed amendments to Standard 213 before September 1, 2000, but 50 percent of a manufacturer's restraints produced on or after September 1, 2000 through August 31, 2001 (model year 2001) would have to comply with the requirements, and 100 percent of its child seats manufactured on or after September 1, 2001 would have to comply.

The petitioners provided the following table showing the requested phase-in schedules for vehicle and child seat manufacturers:

PETITIONERS REQUESTED PHASE-IN ALTERNATIVES (PERCENT OF PRODUCTS REQUIRED TO COMPLY)

Model year	Vehicle manufacturers alternative #1 (percent)	Vehicle manufacturers alternative #2	Child seat manufacturers alternative #1 (percent)	Child seat manufacturers alternative #2
1999	10	0	5	0
2000	30	0	15	0
2001	50	75	25	50
2002	100	100	100	100

The requested schedule for final-stage manufacturers and alterers would provide these manufacturers the option of using the phase-in schedule for vehicle manufacturers, described above, or the alternative of having the requirements become mandatory on September 1, 2001 for 100 percent of a manufacturer's vehicles, and not before.

NHTSA has made the following tentative decisions about leadtime. The agency believes that the proposed requirement that vehicles provide a user-ready tether anchorage and that child seats provide a tether can be made effective at a much earlier date than a requirement for the lower anchorages of a child restraint anchorage system. Passenger cars, in particular, generally are already equipped with a tether anchor (Canada has required a tether anchorage in passenger cars since 1989), so it appears that a user-ready anchorage can be provided in the near future. Canada is proposing an effective date of September 1, 1999 for its tether hardware requirement for passenger cars. NHTSA proposes that its tether anchorage requirement for passenger cars be the same as the Canadian proposal.

For LTVs, Canada has also proposed that its tether anchor (hole) requirement be effective September 1, 1999, and its tether hardware requirement effective a year later. In view of these dates and that anchorages (holes) are apparently not as currently available on LTVs as on passenger cars, NHTSA proposes a September 1, 2000 effective date for its tether hardware requirement for LTVs.

With regard to child restraints, restraints manufactured in the U.S. and sold in Canada already are equipped with a tether to meet Canadian requirements. NHTSA believes that most U.S. manufacturers produce child restraints for sale in Canada. NHTSA is considering an effective date of September 1, 1999 for its proposal to effectively require tethers by way of reducing Standard 213's head excursion requirement.

As to a requirement for the lower anchorages, the petitioners did not explain why a phase-in is needed, or why more than four years would be needed to implement the requirement. The agency is determined to remedy the

problem of incompatibility of child restraints and motor vehicles as promptly as possible and requests comments on the feasibility of having full implementation (100 percent of affected vehicles) in a shorter period, e.g., two years after the publication of a final rule. GM indicated in the UCRA petition that if allowed, it would begin installing the UCRA system on vehicles before completion of this rulemaking on UCRAs. (NHTSA replied in an August 27, 1996 letter that manufacturers are permitted to voluntarily install the system before completion of a final rule.) Given that the UCRA technology is developed and available, and capable of being installed in today's vehicles, the agency believes the system could be implemented within two years. The same issue arises with regard to the effective date for requiring child restraints to be equipped with buckles and other components compatible with the UCRA system. Comments are requested on why a phase-in is needed, and on whether a shorter compliance date is possible.[11]

NHTSA recognizes that the rigid attachment system may need longer time to implement, especially on vehicles that may need to redesign their vehicle seats and/or floor pans. This was acknowledged by the international safety community in the December 6, 1996 ISO resolution that the rigid system is a hardware alternative that needs some time for development, as compared to the flexible hardware option. (See section IV.a., *supra.*) The agency's proposal would allow the long term rigid anchors solution to coexist with the UCRA approach that is available today. Even though the proposed lead time of 24 months may not be sufficient for the rigid anchorage hardware technology, the proposed rule provides vehicle manufacturers with the option of implementing the rigid system (with connectors) once it is developed, while providing a UCRA-type system in the short term.

IX. Rulemaking Analyses and Notices

a. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is economically significant within the meaning of Executive Order 12866 and significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has prepared a Preliminary Economic Assessment (PEA) for this notice which discusses issues relating to the potential costs, benefits and other impacts of this regulatory action.

A copy of this analysis has been placed in the docket for this rulemaking action. Interested persons may obtain copies of this document by writing to the docket section at the address provided at the beginning of this notice.

To briefly summarize the analysis, NHTSA estimates that the cost of a rule requiring the UCRA system would be approximately $160 million. The cost of the rule related to the vehicle would range, per vehicle, from $3.88 (one UCRA in front seat only) to $7.76 (for one UCRA in front seat and one in back seat or two UCRAs in rear seats). NHTSA estimates that 15 million vehicles would be affected: 9 million passenger cars and light trucks with ''adequate'' rear seats, 3 million vehicles with no rear seat, and 3 million vehicles that can only accommodate a forward-facing child seat in the rear seat (not a rear-facing infant seat). The cost of the rule for vehicles is estimated to be about $105 million. The cost of the UCRA attachments on the child seat is estimated to be about $55 million (3.9 million child restraints (excluding belt-positioning boosters) at $14 per seat).

The benefits of the rule are estimated to be 24 to 32 lives saved per year, and 2,187 to 3,615 injuries prevented.

As discussed in the PEA for this proposal, in view of the cost of the UCRA attachments on a child restraint, estimated to be about $14 per restraint, NHTSA requests information on the price elasticity of child restraints. NHTSA is concerned about the potential effects of this rule on the purchase behavior of consumers. As one participant in the October 1996 workshop pointed out, if consumer demand is sufficiently sensitive to new car seat prices, the resulting changes in car seat usage could partially or totally offset the benefits of the proposed rule. NHTSA has estimated that the proposed rule will raise the price of the average car seat by $14. For a $50 car seat, this represents a 28 percent increase in price. On the other hand, each of the States and the District of Columbia require the use of child restraints in motor vehicles. To what extent, if at all, would an increase in the price of a child restraint lead to a decrease in demand for the product, notwithstanding child restraint use laws mandated by each State? Also, NHTSA and child restraint manufacturers have been inundated with calls from parents asking for help in installing seats correctly. Would this interest in child safety motivate a sufficiently large number of people to pay $14 for changes to a child restraint that would make a restraint easier to install and more secure on a vehicle seat? NHTSA is especially interested in comments from consumers on these questions.

Consumers have essentially four choices: buy a car seat despite the higher price, buy a used seat, seek a giveaway or loaner program, or forego the seat altogether. If a 28 percent price increase were to result in a 10 percent decrease in new sales and thus a corresponding decline in usage (assuming options two and three are not available), then the estimated benefits of the rule (24 to 32 fatalities prevented per year) could be offset by an estimated 24 fatalities from reductions in the number of seats in use. Consumers turning to the used car seat market would receive no benefit from the proposed rule. The offsetting effects would be reduced if there is a corresponding increase in giveaway and loaner programs, but by virtue of the price increase these programs would have to find new or additional funding.

The agency does not know how many programs exist and requests information on this issue. A cost increase could result in fewer seats being purchased by the program for loan or giveaway. On the other hand, persons responsible for some State loaner/giveaway programs informed the agency that if the new seats cost more, they would be able to find the funding to keep up with demand. They also said that the time saved installing child seats in each vehicle and making adjustments would be worth the difference in price.

Unfortunately, NHTSA has not located any data or estimates of the actual sensitivity of new child restraint sales to price changes. For the sake of comparison, a large proportion of consumer goods exhibit greater sensitivity to price than that described in the hypothetical example above, even in the short run. If new child restraint purchases in fact exhibit the same magnitude of price sensitivity as many other consumer goods, the proposed rule could increase rather than reduce the overall risks to the Nation's children.

For these reasons, NHTSA strongly encourages data, analyses, and comment on this issue. The agency also requests comments on ways to mitigate these effects, such as ways to minimize effects on price. For example, the $14 cost increase includes the cost of two buckles that attach to latchplates of the

[11] A phase-in of an amendment to an equipment standard is uncommon. It should be noted that to implement a phase-in requirement, the agency would require manufacturers to provide information on the total annual sales of their seats, so that the agency can determine whether the requisite number of seats complied with the new requirements.

UCRA system on the vehicle. Would costs be reduced if the latchplates were part of the child restraint and the buckles part of the vehicle system? This assumes that the buckle hardware is of higher cost than the latchplates. Should NHTSA conclude that both (1) the combination of expected child restraint price changes and consumer sensitivity to those price changes is sufficiently large and (2) there are no cost-effective ways to mitigate these effects such that the final rule will result in a net increase in child safety, NHTSA would need to reconsider the proposal.

b. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96–354), as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of proposed rules on small entities. NHTSA has included an IRFA in the PEA for this proposal.

NHTSA tentatively believes that the proposed rule could have a significant impact on a substantial number of small entities. The proposed rule would affect motor vehicle manufacturers, almost all of which would not qualify as small businesses, and portable child restraint manufacturers. NHTSA estimates there to be about 10 manufacturers of portable child restraints, four or five of which could be small businesses.

Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration assistance. One of the criteria for determining size, as stated in 13 CFR 121.601, is the number of employees in the firm. There is no separate SIC code for child restraints, or even a category that they fit into well. However, there are categories that could be appropriate. To qualify as a small business in the Motor Vehicle Parts and Accessories category (SIC 3714), the firm must have fewer than 750 employees. The agency has considered the small business impacts of this proposed rule based on this criterion. On the other hand, to qualify as a small business in the category including manufacturers of baby furniture, the firm must have fewer than 500 employees. Comments are requested on which Standard Industrial Classification code would best represent child restraint manufacturers.

The IRFA discusses the possible impacts on small entities and requests information that would assist NHTSA in further analyzing those impacts. As discussed in the IRFA, the incremental cost increase of $14 to the current price of a child restraint would significantly raise the price of child restraints, which could have a significant economic impact on a substantial number of small businesses. NHTSA does not know the elasticity of demand for child restraints. While child restraint use is mandated by each State, there is significant nonuse of restraints. An increase in the price of a child restraint could lead to a decrease in demand for the product, notwithstanding the restraint use laws.

According to information from Cosco (see summary, above, of NHTSA's October 1996 public workshop), the average purchase price of a convertible car seat today is $63. About 25 percent of the car seats purchased cost $50 or less; less than five percent cost $100 or more. Cosco estimated that at least 10 percent of the people would not be able to purchase a car seat if prices increased significantly.

Comments are requested on the effect that raising child restraint prices by $14 (UCRA attachments) to possibly $100 (hard anchor system) would have on small businesses that manufacture child restraints. Would an across-the-board increase in price reduce small business sales? What is the magnitude of the impact?

As discussed above in section IX.a., a loaner program could have fewer seats available. Assuming that would be the case, NHTSA seeks information on the extent to which the number of seats a program makes available impacts on the organization itself. For example, do proceeds from loaner or giveaway programs (where a nominal fee might be charged) support the not-for-profit organization's activities?

NHTSA tentatively believes that there are no alternatives to the proposal which would accomplish the stated objectives of 49 U.S.C. § 30101 *et seq.* and which would minimize any significant economic impact of the proposed rule on small entities. As discussed above in section V.c., ''Discussion of Alternatives,'' NHTSA considered a number of other approaches to minimize or eliminate incompatibility between child seats and vehicle seats. SAE Recommended Practice J1819, ''Securing Child Restraint Systems in Motor Vehicle Rear Seats,'' does not appear sufficient alone to solve incompatibility problems. It is a tool for evaluating incompatibility, not a requirement that vehicle seats and child restraints must be compatible. Further, it is very difficult for a single system to optimize the safety protection for adults of all ranges and child restraints of different types. The current ''lockability'' requirement does not appear sufficient alone in addressing incompatibility, because it still depends on the user knowing enough and making the effort to manipulate and correctly route the belt system. Also, the lockability requirement does not address incompatibility problems arising from forward-mounted seat belt anchors. The ''Car Seat Only (CSO)'' system suggested by Cosco probably would not make attaching a child seat significantly easier than it is today. The CSO belt would have to be correctly routed through the child restraint, which is a problem occurring with present seats, and appears hard to tighten. Also, Cosco provided no information showing that the CSO belt would improve the securement of a child restraint on contoured (especially humped) seats. Another concern relates to the potential for inadvertent use by an adult occupant.

Comments are requested on possible alternatives to the proposal which mitigate any significant economic impact of the proposed rule on small entities, while accomplishing the objectives of 49 U.S.C. § 30101 *et seq.*

c. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

d. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. NHTSA has included an evaluation in the PEA for this proposal. The costs and benefits of the proposal are discussed above and throughout the PEA. (As explained above, the cost would be approximately $105 million for vehicles, and $55 million for child restraints. The benefits would be saving approximately 24 to 32 children's lives per year, and preventing 2,187 to 3,615 injuries. An independent means of attaching child restraints would also enable vehicle manufacturers to optimize the design of vehicle belt systems for adult occupants.)

Participants in a NHTSA public meeting held in March 1995 at the Lifesavers National Conference on Highway Safety Priorities, who typically work in State highway traffic safety agencies, community traffic safety programs and State or local law enforcement agencies, expressed strong support for a requirement for a universal child restraint anchorage system, such as that proposed in this NPRM. Support for a universal child restraint anchorage system, such as that proposed in the NPRM, was also expressed at NHTSA's October 1996 public workshop on various types of anchorage systems. As discussed above in sections V.c. and IX.b., and in the PEA, the agency does not believe that there are feasible alternatives to the proposal, including SAE Recommended Practice J1819, the lockability requirement or Cosco's CSO system.

e. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

f. Executive Order 12778 (Civil Justice Reform)

This proposed rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

X. Comments on the Proposal

Interested persons are invited to submit comments on the proposal. 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 for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The 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 rules 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.

List of Subjects 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as set forth below.

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.210a would be added to read as follows:

§ 571.210a Standard No. 210a; Child restraint anchorage system.

S1. *Purpose and scope.* This standard establishes requirements for a system for anchoring child restraint systems to increase the likelihood that child restraints are properly secured in motor vehicles.

S2. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less, except walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service.

S3. *Definitions.*

Child restraint anchorage means any component involved in transferring child restraint loads to the vehicle structure, including but not limited to, the attachment hardware on the vehicle structure, webbing and straps attached to the vehicle and hardware attached thereto, the seat frames, seat pedestals, and the vehicle structure itself.

Child restraint anchorage system means a system that is designed for attaching a child restraint to a vehicle at a particular designated seating position and for transferring child restraint loads to the vehicle structure and that consists of—

(1) Two lower child restraint anchorages at the seat bight; and

(2) A tether anchorage for attaching a top tether strap of a child restraint system.

Child restraint apparatus means the fixture depicted in Figures 1, 2 and 3 of this standard which simulates the dimensions of a child restraint, and which is used to determine the space required by the child restraint and the location and access to the lower anchorages.

Seat bight means the intersection of the vertical plane tangent to the forward most point of the seat back and the horizontal plane tangent to the uppermost point of the seat cushion.

Tether anchorage is defined in 49 CFR 571.210b, ''Tether anchorages for child restraint systems.''

S4. *Requirements.* Each motor vehicle shall meet the requirements in this section when, as specified, tested in accordance with S5 and this paragraph.

S4.1 *Type.*

(a) Except as provided in S4.1(b) through (d) of this section, each vehicle shall be equipped with a child restraint anchorage system for at least two rear designated seating positions.

(b) A vehicle may be equipped with a built-in child restraint system conforming to the requirements of Standard No. 213 (49 CFR 571.213) in lieu of one of the child restraint anchorage systems required by S4.1(a) of this section.

(c) A vehicle that meets the conditions concerning rear seats in either S4.5.4.1(a) or S4.5.4.1(b) of Standard No. 208 (49 CFR 571.208) and

that has an air bag cutoff switch meeting the requirements of S4.5.4 of Standard 208 shall have a child restraint anchorage system installed for a designated seating position in the front seat, and for a position in the rear seat if the vehicle has a rear seat.

(d) A vehicle that has no forward-facing designated seating positions to the rear of the front seating positions and no air bag cutoff switch meeting the requirements of S4.5.4 of Standard 208, shall not have a child restraint anchorage system installed for a designated seating position in the front seat.

S4.2 *Lower anchorages.*

The child restraint anchorage system shall have two lower anchorages and shall conform to either S4.2.1, or S4.2.2 and S4.2.3, at the manufacturer's option.

S4.2.1 *Flexible anchorages.*

S4.2.1.1 *Configuration and Geometry.*

A child restraint anchorage system shall incorporate two lower anchorages with latchplates conforming to the configuration and geometry specified in Figure 4 of this standard.

S4.2.1.2 *Location.*

(a) When fully extended in a plane parallel to the vehicle's longitudinal axis, the centerlines of the two latchplates are 280 mm apart.

(b) When fully extended in a plane parallel to the vehicle's longitudinal axis, the tip of each latchplate must not extend more than 50 mm forward of the seat bight.

S4.2.1.3 *Strength.*

When tested in accordance with S5 of this standard, a child restraint anchorage system shall meet the following requirements:

(a) No portion of the latchplate for each lower anchorage shall pass through a vertical, transverse plane that is 125 mm forward of the seat bight; and

(b) There shall be no complete separation of any anchorage component component (including webbing, straps, hooks and buckles, latchplates, adjustment and attachment hardware and retractors).

S4.2.2 Rigid or semi-rigid anchorages.

S4.2.2.1 Configuration and geometry.

A child seat anchorage system shall incorporate two lower anchorages that are 6 mm diameter transverse horizontal round bars with a minimum length of 25 mm.

S4.2.2.2 Location.

(a) The transverse spacing of the bars shall be 280 mm, center-to-center.

(b) The lower anchorage bars are located with respect to the child restraint apparatus rearward extensions as shown in Figures 2 and 3 of this standard, with the child restraint apparatus placed on the vehicle seat cushion and against the vehicle seat back. Anchorage bars that are rigidly supported are to be 50 mm rearward of the rearmost surface of the fixture, while semi-rigidly supported bars may be located from 50 mm rearward to 10 mm forward of that surface. The center of rigidly supported lower anchorage bars shall be at least 120 mm behind the vehicle seating reference point.

(c) Rigidly supported lower anchorage bars must be in a zone from 10 to 20 mm above the bottom surface of the child restraint apparatus, while semi-rigidly supported bars must be in a zone from 0 to 20 mm above that surface.

S4.2.2.3 Strength.

When tested in accordance with S5 of this standard, a child restraint anchorage shall meet the following requirements:

(a) No portion of any component attaching to the lower anchorage bars shall move forward more than 125 mm.

(b) There shall be no complete separation of any anchorage component.

S4.2.3 Connectors.

Each vehicle equipped with lower anchorages conforming to S4.2.2 of this standard shall be equipped with connectors that permit the attachment of a child restraint that is equipped with components which attach to lower anchorages conforming to S4.2.1. Each connector shall be equipped with a latchplate conforming to the configuration and geometry specified in Figure 4 of this standard. When attached to a lower anchorage, the tip of each latchplate must not extend more than 50 mm forward of the seat bight when the connector is fully extended.

S4.3 Tether anchorage.

The child restraint anchorage system shall incorporate a tether anchorage conforming to 49 CFR 571.210b, ''Tether anchorages for child restraint systems.''

S4.4 Webbing, buckles and belt adjustment hardware.

S4.4.1 Webbing.

The webbing provided with a child restraint anchorage system shall—

(a) After being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS No. 209 (49 CFR 571.209), have a breaking strength of not less than 75 percent of the strength of the unabraded webbing when tested in accordance with S5.1(b) of FMVSS 209; and

(b) Meet the requirements of S4.2(e) through (h) of FMVSS No. 209 (49 CFR 571.209).

S4.4.2 Buckles and belt adjustment hardware.

Each belt buckle and item of belt adjustment hardware used in a child restraint anchorage system shall conform to the requirements of S4.3(a) and S4.3(b) of FMVSS No. 209 (49 CFR 571.209).

S4.5 Marking and Guidance.

For lower anchorages conforming to S4.2.2, at least one lower anchorage bar is to be readily visible to the person installing a child restraint. The vehicle seat cushion or seat back shall include markings or features to assist in the correct lateral positioning of the child restraint system as it is moved rearward to engage the lower anchorages.

S4.6 *Instructions.*

The vehicle owner's manual shall:

(a) Indicate the seating positions equipped with a child restraint anchorage system;

(b) Include instructions that provide a step-by-step procedure, including diagrams, for properly attaching a child restraint system to a vehicle anchorage system equipped with lower anchorages conforming to the requirements of S4.2.1 (with or without use of a connector); and,

(c) Include instructions for properly installing a child restraint system in a vehicle anchorage system equipped with lower anchorages conforming to the requirements of S4.2.2, if the vehicle is equipped with such anchorages.

S5 *Test procedures.*

S5.1 *Lower anchorages.*

Test each lower anchorage separately, with or without connectors provided with the vehicle. Apply a force of 5,300 N to each anchorage in the forward horizontal direction parallel to the vehicle's longitudinal axis. Apply the force by means of a belt strap that extends at least 250 mm forward of the seat bight. The belt is fitted at one end with hardware for applying the force, and at the other end with hardware that attaches to an anchorage or connector. Apply force to the belt strap so that the 5,300 N force is attained within 30 seconds, with an onset force rate not exceeding 135,000 N per second, and is maintained at the 5,300 N level for at least 10 seconds.

S5.2 *Tether anchorage.*

Tether anchorages are tested according to the procedures specified in 49 CFR 571.210b, ''Tether anchorages for child restraint systems.'

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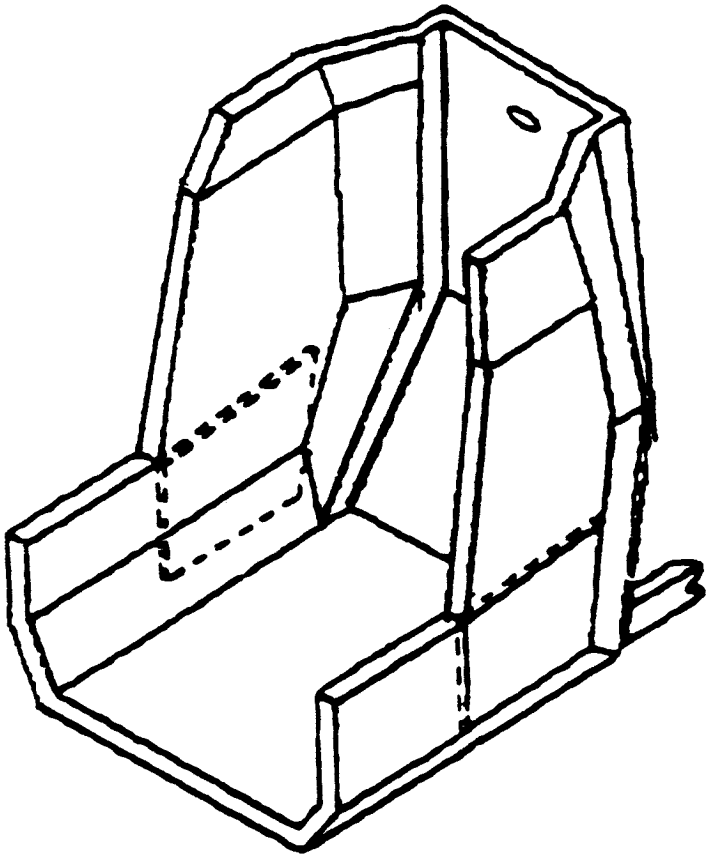


Figure 1—Child Restraint Apparatus-Isometric

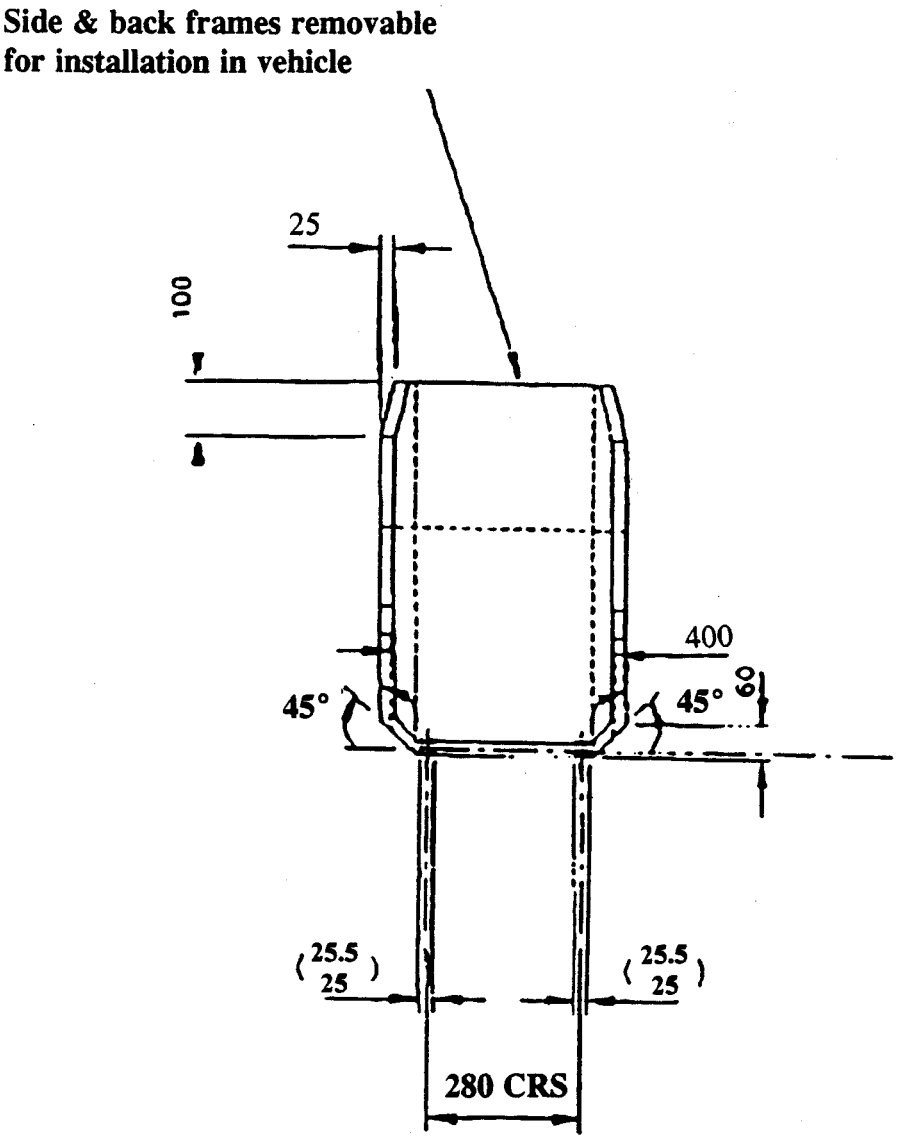
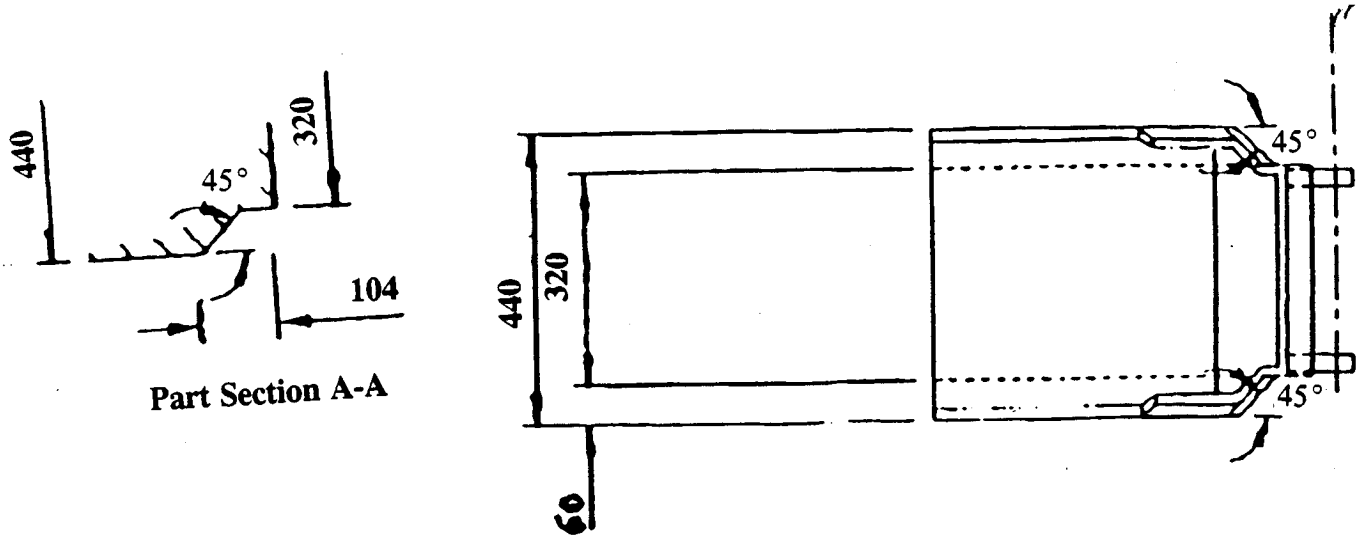


Figure 2a—Child Restraint Apparatus Anchorages Front View



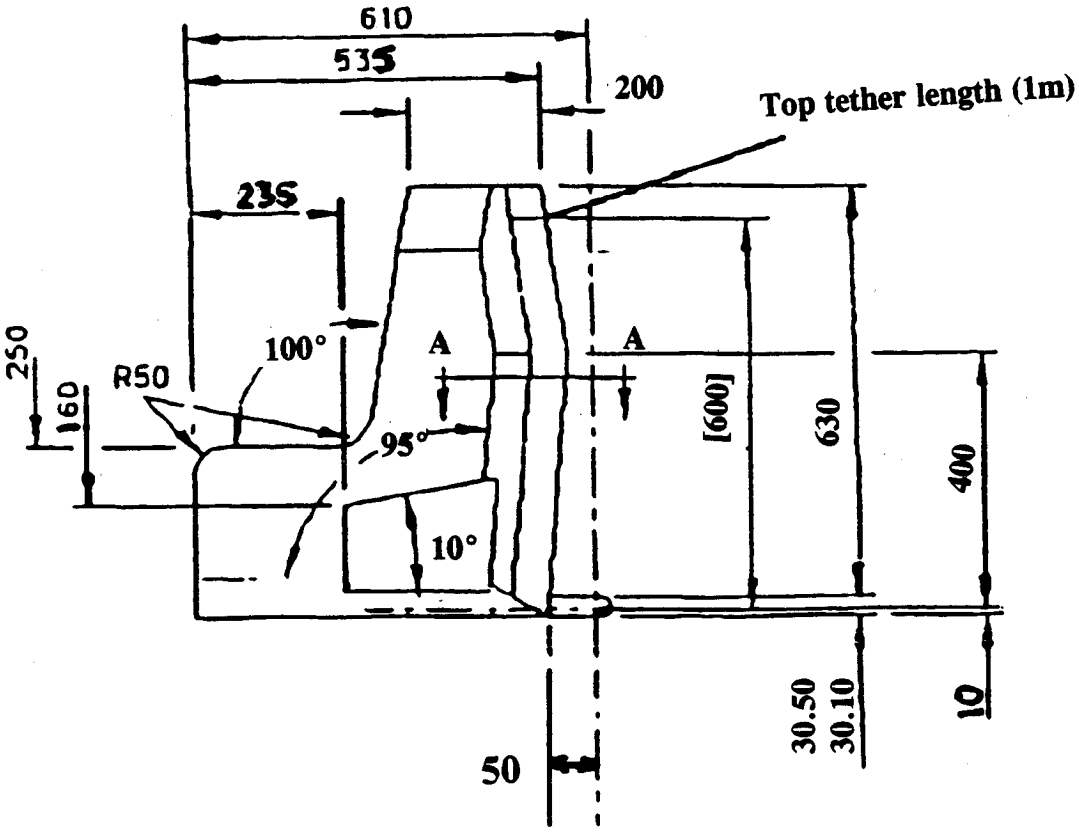


Figure 2b—Child Restraint Apparatus Anchorages Side and Plan View

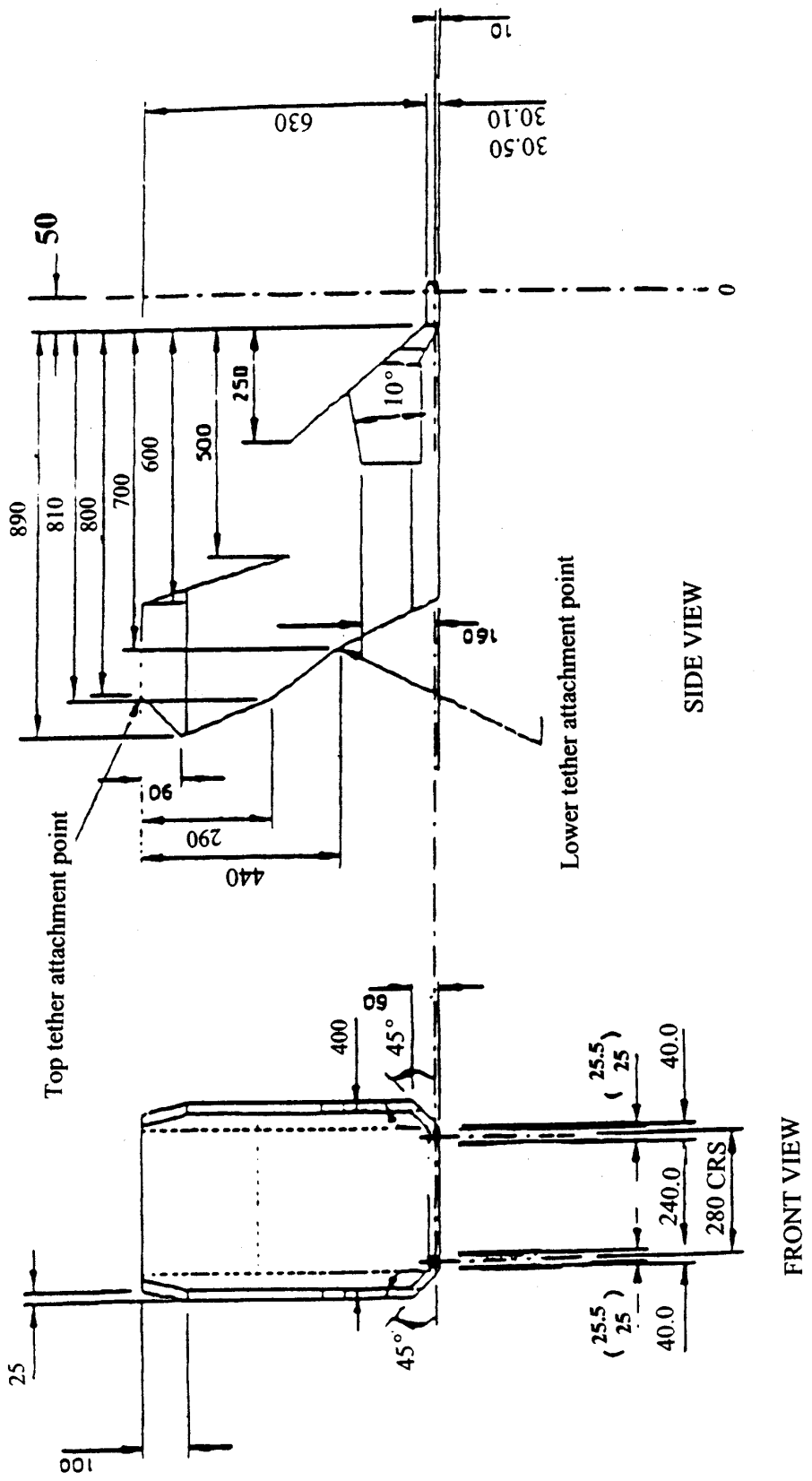


Figure 3a-Child Restraint Apparatus Anchorages
Rear-Facing
Front and Side Views

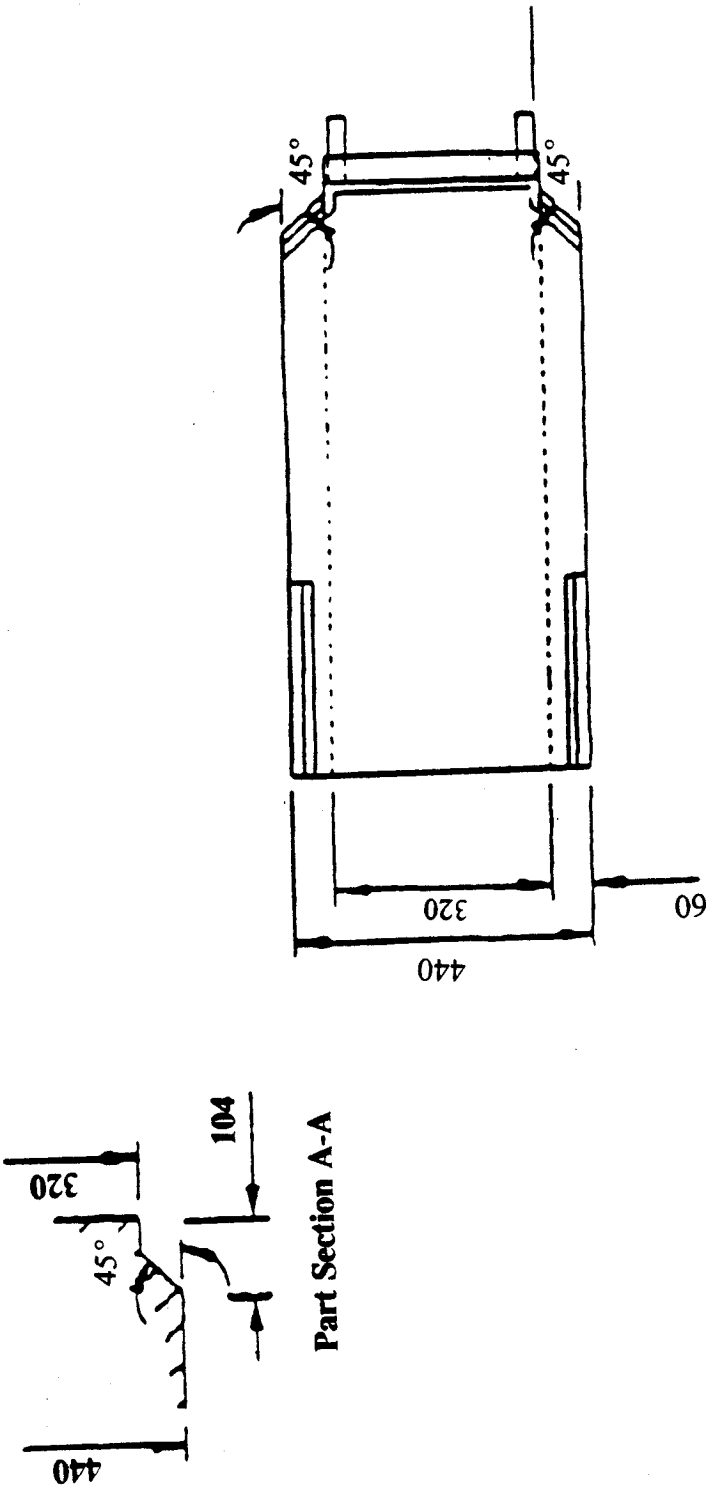


Figure 3b-Child Restraint Apparatus Anchorages
Rear-Facing
Plan View

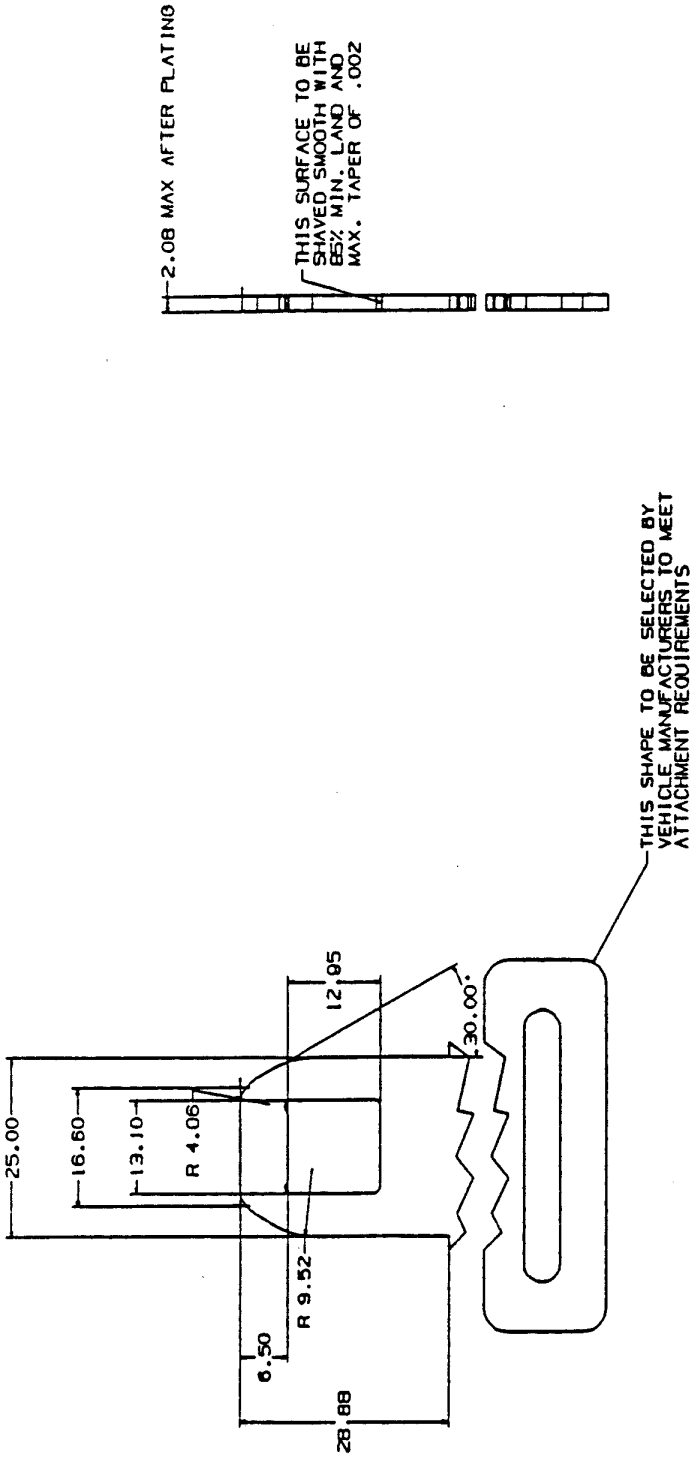


Figure 4 -- Child Restraint Attachment Plate Specifications

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3. Section 571.210b would be added to read as follows:

§ 571.210b Standard No. 210b; Tether anchorages for child restraint systems

S1. *Purpose and scope.* This standard establishes requirements for the strength and location of tether anchorages to ensure proper anchoring of child restraint systems.

S2. *Application.* This standard applies to tether anchorages installed in passenger cars manufactured on or after September 1, 1999, and in multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 2000.

S3. *Definitions.*

Tether anchorage means any component that transfers loads from tether anchorage hardware to the vehicle structure.

Tether anchorage hardware means any component that transfers tether strap loads to a tether anchorage and is designed to accept a tether strap hook.

Tether strap means a device that is fitted with a tether strap hook and secured to the rigid structure of a child restraint system and that transfers the load from that system to the anchorage hardware.

Tether strap hook means a device, illustrated in Figure 11 of Standard No. 213 (49 CFR 571.213), used to attach a tether strap to tether anchorage hardware.

S4. *Requirements.* Each tether anchorage shall meet the requirements of this section.

S4.1 *Configuration.*

S4.1.1 Except as provided by S4.1.2, each tether anchorage shall—

(a) Be equipped with tether anchorage hardware that is easily accessible and that permits the attachment of a tether hook meeting the configuration and geometry specified in Figure 11 of Standard No. 213 (49 CFR 571.213) of this section;

(b) Be located in accordance with S4.2 of this section; and

(c) Be sealed to prevent the entry of exhaust fumes.

S4.2 *Anchorage positioning requirements.*

S4.2.1 *Passenger cars and multipurpose passenger vehicles.* The vertical centerline of each tether anchorage and each tether anchorage hardware component shall be located within the shaded zone shown in Figures 2, 3, 4 and 8 of this standard, with reference to the shoulder reference point of a template described in section 3.1 of SAE Standard J826 (June 1992), where

(a) The H-point of the template is located at the unique Design H-point of the seat, as defined in section 2.2.11.1 of SAE Recommended Practice J1100 (June 1993), at the full rearward and downward position of the seat;

(b) The torso line of the template is at the same angle from the vertical plane as the seat back with the seat adjusted to its full rearward and full downward position and the seat back in its most upright position; and,

(c) The template is positioned in the vertical longitudinal plane that contains the H-point of the template.

S4.2.2 *Trucks and buses.* Subject to S4.3.2.1, the vertical centerline of each tether anchorage and each tether anchorage hardware in a truck or bus shall be located within the shaded zone shown in Figures 5, 6, 7, and 8 of this standard, with reference to the H-point of a template described in section 3.1 of SAE Standard J826 (June 1992), where

(a) The H-point of the template is located at the unique Design H-point of the seat, as defined in section 2.2.11.1 of SAE Recommended Practice J1100 (June 1993), at the full rearward and downward position of the seat;

(b) The torso line of the template is at the same angle from the vertical plane as the seat back with the seat adjusted to its full rearward and full downward position and the seat back in its most upright position; and

(c) The template is positioned in the vertical longitudinal plane that contains the H-point of the template.

S4.3.2.1 The centerline of a tether anchorage in a truck or bus may be located outside the shaded zone referred to in S4.3.2 if a routing device that is of sufficient strength to withstand the loads referred to in S4.4 is installed within that shaded zone.

S4.4 *Strength.*

S4.4.1 If a tether anchorage is installed for only one designated seating position on a seat, the tether anchorage with the tether anchorage hardware installed shall, when tested in accordance with S5, withstand a force of 5,300 N. There shall be no complete separation or failure of any anchorage component.

S4.4.2 If a tether anchorage is installed for more than one designated seating position on a bench seat, each tether anchorage with the tether anchorage hardware installed shall, when tested in accordance with S5, withstand the simultaneous application of a force of 5,300 N to each assembly of tether anchorage and tether anchorage hardware. There shall be no complete separation or failure of any anchorage component.

S5 *Test procedure.*

With the seat adjusted to its full rearward and full downward position and the seat back in its most upright position, attach a belt strap that extends not less than 250 mm forward from the vertical plane intersecting the seat bight (the intersection of the surfaces of the seat cushion and the seat back). The strap is fitted at one end with hardware for applying the force and at the other end with a bracket for attachment to the tether anchorage hardware and passes over the top of the vehicle seat back as shown in Figure 8 of this standard. Apply a force of 5,300 N to each anchorage in the forward horizontal direction parallel to the vehicle's longitudinal axis. The 5,300 N force is attained within 30 seconds, with an onset force rate not exceeding 135,000 N per second, and is maintained at the 5,300 N level for one second.

Figure 1—[Reserved]

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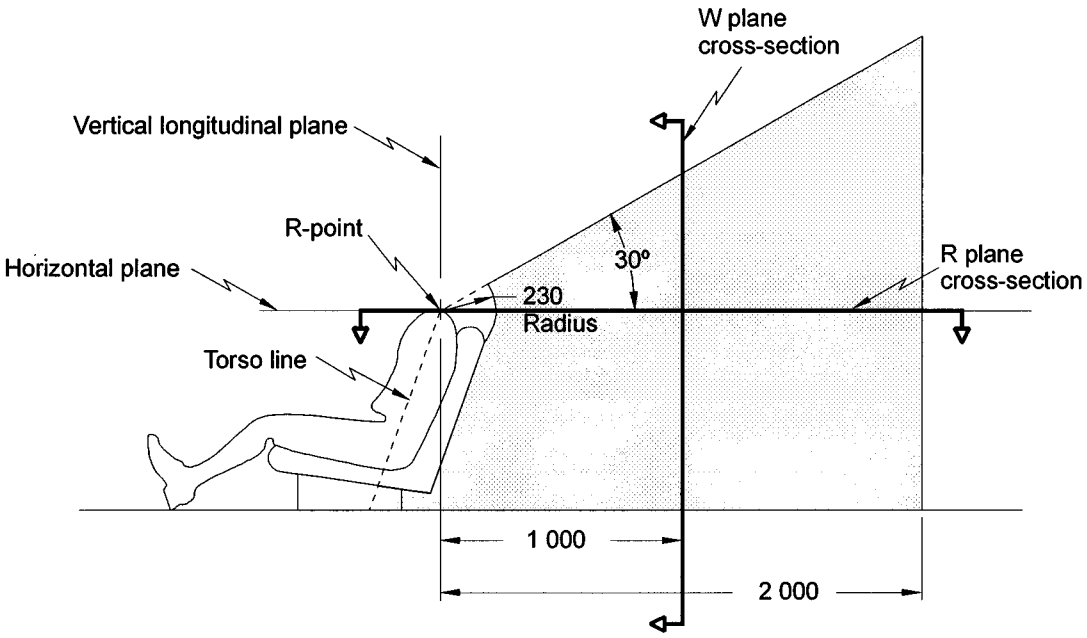
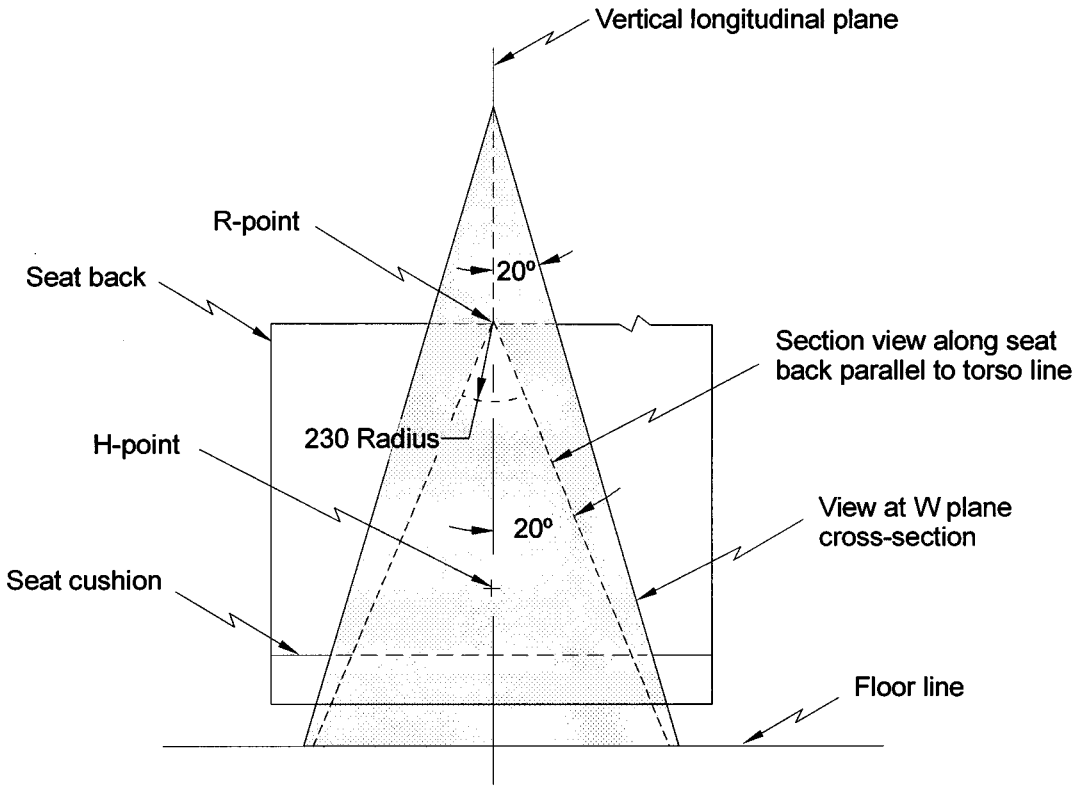


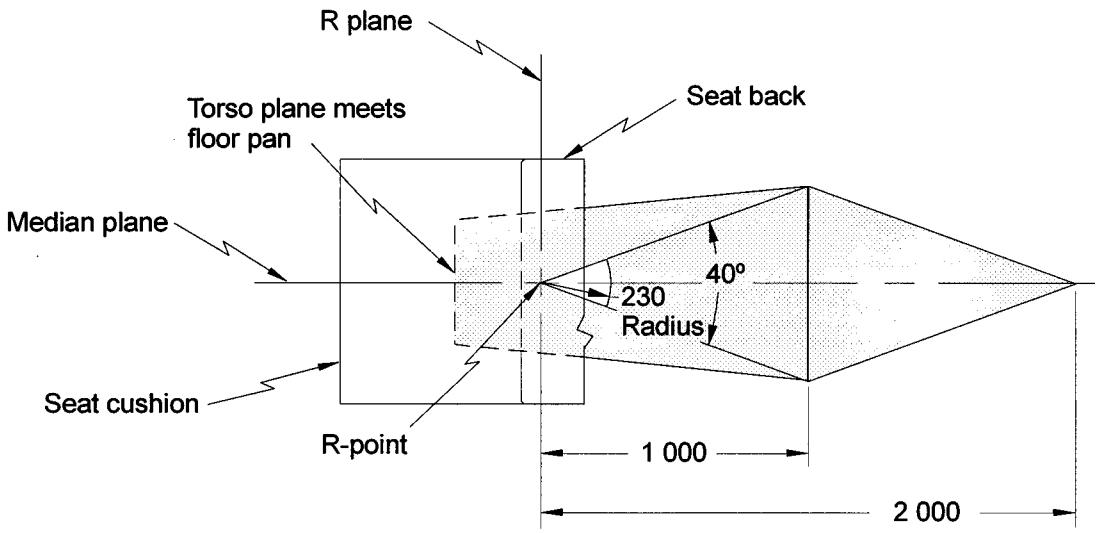
Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
R-point : shoulder reference point
Drawing not to scale

Figure 2—Side View, Tether Anchorage Location for Passenger Cars and Multi-Purpose Passenger Vehicles



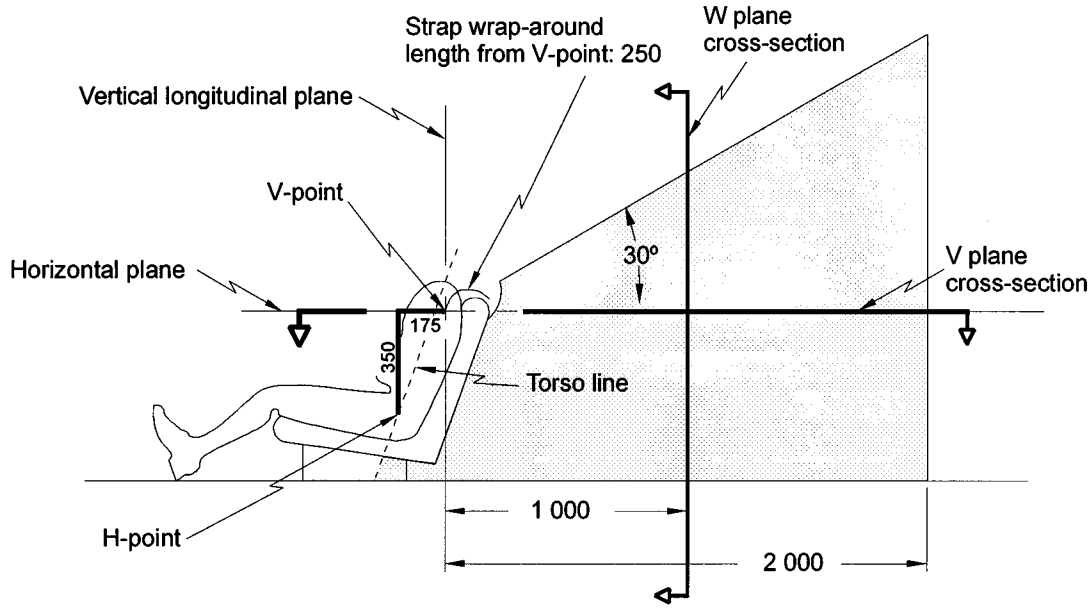
Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
R-point : shoulder reference point
Drawing not to scale

Figure 3—Rear View, Tether Anchorage Location for Passenger Cars and Multi-Purpose Passenger Vehicles



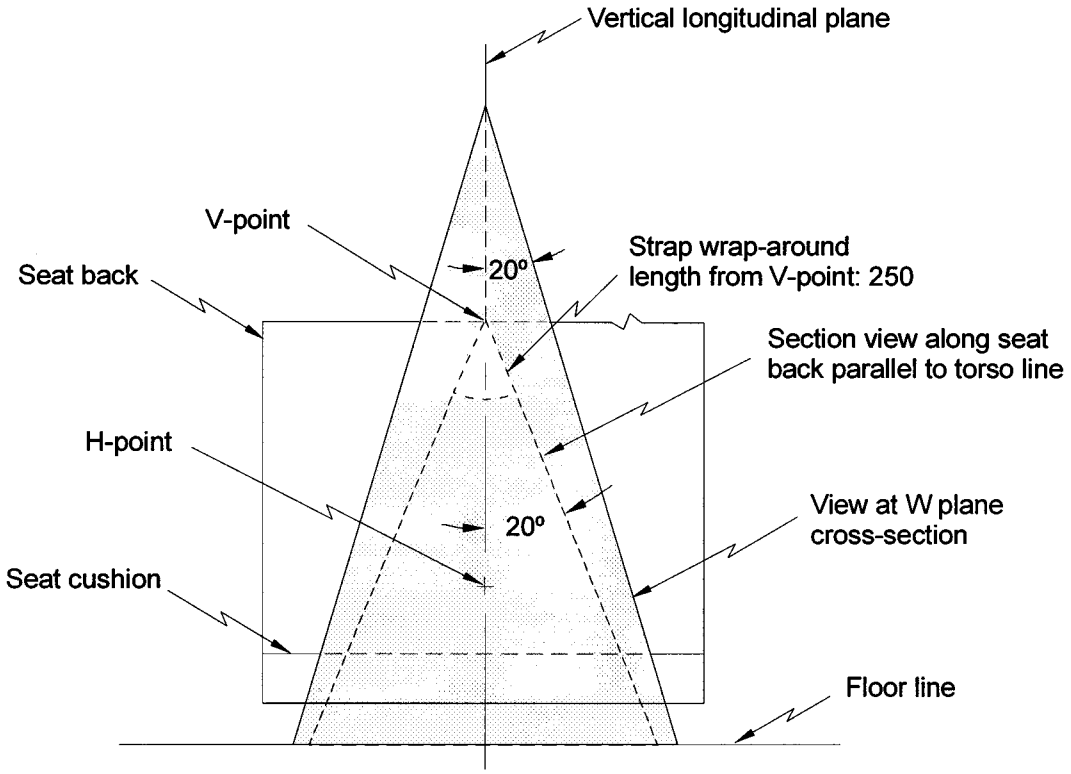
Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
R-point : shoulder reference point
Drawing not to scale

Figure 4—Plan View, (R-Point Level), Tether Anchorage Location for Passenger Cars and Multi-Purpose Passenger Vehicles



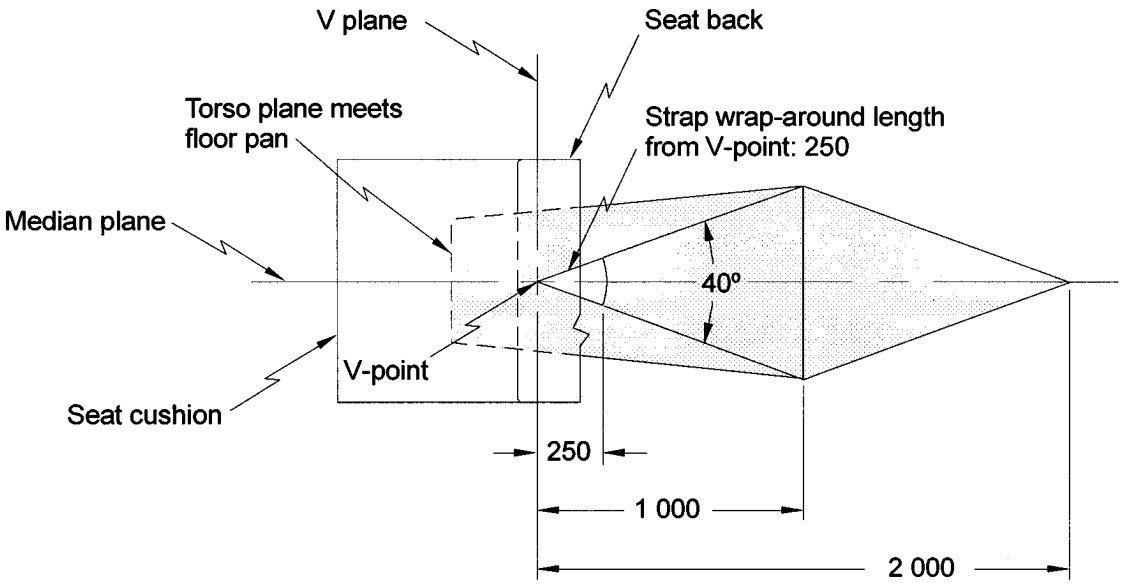
Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
V-point : V-reference point, 350 mm vertically above and 175 mm horizontally back from H-point
Drawing not to scale

Figure 5—Side View, Tether Anchorage Location for Trucks



Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
V-point : V-reference point, 350 mm vertically above and 175 mm horizontally back from H-point
Drawing not to scale

Figure 6—Rear View, Tether Anchorage Location for Trucks



Notes:
Dimensions in mm, except where otherwise indicated
Centreline of tether anchorage to be located within shaded zone
V-point : V-reference point, 350 mm vertically above and 175 mm horizontally back from H-point
Drawing not to scale

Figure 7—Plan View, (V-Point Level), Tether Anchorage Location for Trucks

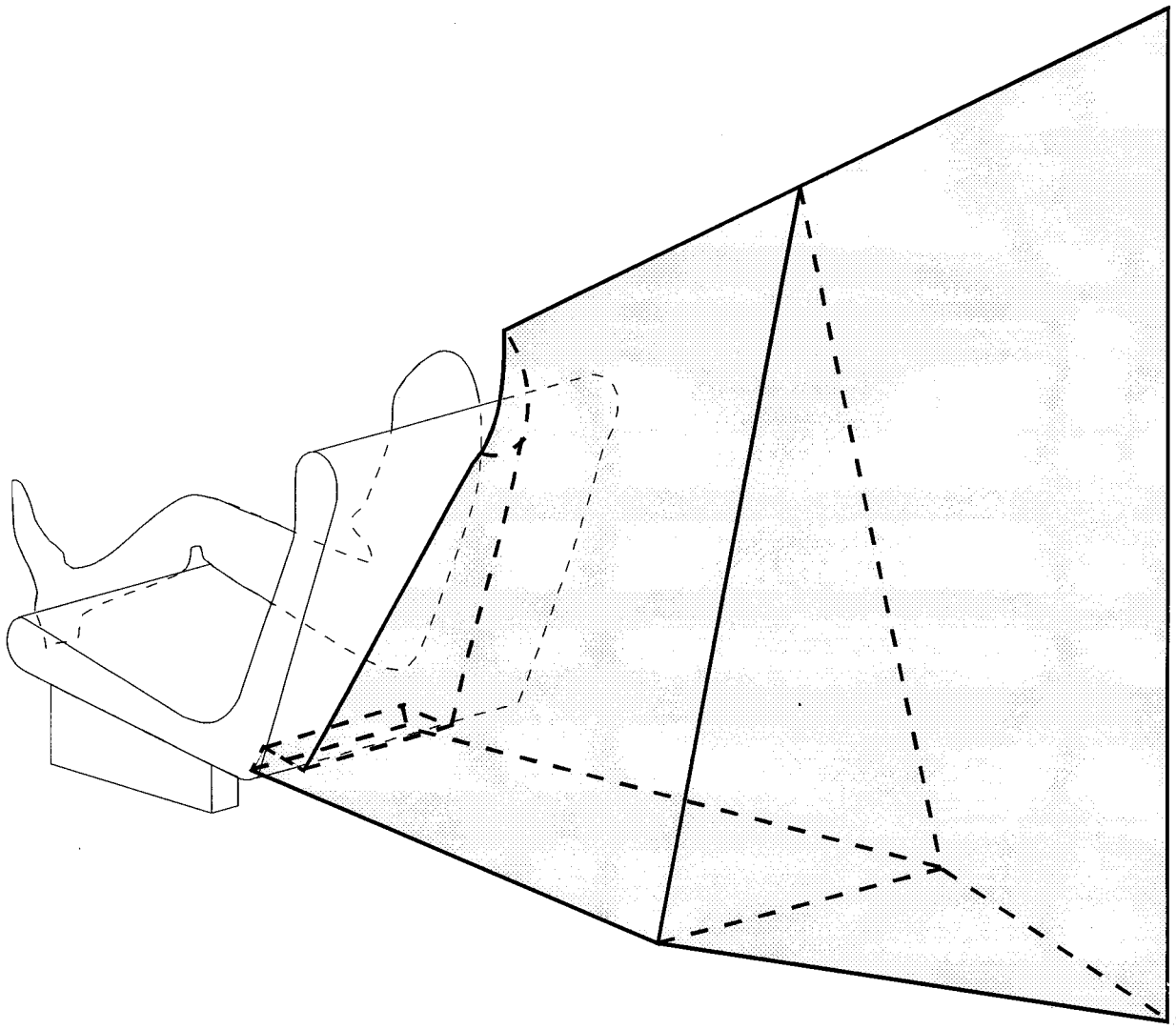


Figure 8—Three-Dimensional Schematic View for Tether Anchorage Location for Passenger Cars, Multi-Purpose Passenger Vehicles and Trucks

4. Section 571.213 would be amended by:

a. adding to S4, in alphabetical order, a definition of ''child restraint anchorage system,'' ''tether anchorage hardware,'' ''tether strap,'' and ''tether strap hook'';

b. revising S5.1.3, S5.1.3.1, S5.3.1, S5.3.2 and S5.6.1;

c. adding S5.9 and S5.10;

d. revising S6.1.1(a)(1), S6.1.1(c) and S6.1.2(a)(1)(i);

e. adding S6.1.2(d)(1)(iii); and

f. revising Figure 1A and adding figures 11 and 12.

The revised and added paragraphs would read as follows:

§ 571.213 Standard No. 213; Child restraint systems

* * * * *

S4. Definitions.

* * * * *

Child restraint anchorage system is defined in S3 of FMVSS No. 210a (49 CFR 571.210a).

* * * * *

Tether anchorage hardware is defined in S3 of FMVSS No. 210b (49 CFR 571.210b).

Tether strap means a device that is fitted with a tether strap hook and secured to the rigid structure of a child restraint system and that transfers the load from that system to the tether anchorage hardware.

Tether strap hook means a device, illustrated in Figure 11 of this standard, used to attach a tether strap to tether anchorage hardware.

* * * * *

S5.1.3 *Occupant excursion*. When tested in accordance with S6.1 and the requirements specified in this paragraph, each child restraint system shall meet the applicable excursion limit requirements specified in S5.1.3.1 through S5.1.3.3.

S5.1.3.1 *Child restraint systems other than rear-facing ones and car beds*. Each forward-facing child restraint system shall retain the test dummy's torso within the system.

(a) In the case of an add-on child restraint system, no portion of the test dummy's head shall pass through a vertical, transverse plane that is 720 mm forward of point Z on the standard seat assembly, measured along the center SORL (as illustrated in figure 1B of this standard), and neither knee pivot point shall pass through a vertical, transverse plane that is 915 mm forward of point Z on the standard seat assembly, measured along the center SORL, when attached to the seat assembly as described in S6.1.2(a)(1)(i)(*A*)(*1*).

(b) In the case of an add-on child restraint system, no portion of the test dummy's head shall pass through a vertical, transverse plane that is 813 mm forward of point Z on the standard seat assembly, measured along the center SORL (as illustrated in figure 1B of this standard), and neither knee pivot point shall pass through a vertical, transverse plane that is 915 mm forward of point Z on the standard seat assembly, measured along the center SORL, when attached to the seat assembly as described in S6.1.2(a)(1)(i)(*A*)(*2*) or S6.1.2(a)(1)(B).

(c) In the case of a built-in child restraint system, neither knee pivot point shall, at any time during the dynamic test, pass through a vertical, transverse plane that is 305 mm forward of the initial pre-test position of the respective knee pivot point, measured along a horizontal line that passes through the knee pivot point and is parallel to the vertical plane that passes through the vehicle's longitudinal centerline.

* * * * *

S5.3 *Installation*.

S5.3.1 Except for components designed to attach to a child restraint anchorage system, each add-on child restraint system shall have no means designed for attaching the system to a vehicle seat cushion or vehicle seat back and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back.

S5.3.2 (a) When installed on a vehicle seat, each add-on child restraint system, other than a belt-positioning seat, shall be capable of being restrained against forward movement solely by means of:

(1) A Type I seat belt assembly (defined in § 571.209) that meets Standard No. 208 (§ 571.208);

(2) A Type I seat belt assembly plus a tether anchorage; and,

(3) A child restraint anchorage system.

(b) Each belt-positioning seat shall be capable of being restrained against forward movement by means of a Type II seat belt assembly (defined in § 571.209) that meets Standard No. 208 (§ 571.208).

* * * * *

S5.6.1 Add-on child restraint systems.

Each add-on child restraint system shall be accompanied by printed installation instructions in English that provide a step-by-step procedure, including diagrams, for installing the system in motor vehicles, securing the system in the vehicles, positioning a child in the system, and adjusting the system to fit the child. If the child restraint system has components for attaching to a child restraint anchorage system, installation instructions shall be included that provide a step-by-step procedure, including diagrams, for properly attaching a child restraint system to a vehicle anchorage system equipped with lower anchorages conforming to the requirements of S4.2.1 of Standard No. 210a (49 CFR § 571.210a). In addition, if the child restraint is equipped with components that attach to a vehicle anchorage system equipped with lower anchorages conforming to the requirements of S4.2.2 of Standard No. 210a, instructions shall be provided for properly installing a child restraint to such an anchorage system.

* * * * *

S5.9 *Attachment to child restraint anchorage system*.

(a) Each add-on child restraint system, other than a belt-positioning seat, shall have components permanently attached to the system that securely fasten to the latchplates conforming to S4.2.1 of Standard No. 210a (49 CFR § 571.210a) and depicted in Drawing Package ____ (consisting of drawings and a bill of materials) with addendum A, revision dated January 6, 1997, (incorporated by reference; see § 571.5).

(b) In addition to the components required by S5.9(a), each child restraint system intended for use with lower anchorages conforming to S4.2.2 of Standard No. 210a (49 CFR § 571.210a) shall have components of a configuration depicted in Figure 12 of this standard, in a location that enable the child restraint to securely fasten to the anchorages.

S5.10 Each tether strap on a child restraint system must be equipped with a tether strap hook that conforms to the configuration and geometry specified in Figure 11 of this standard.

* * * * *

S6.1.1 *Test conditions.*

(a) Test devices.

(1) The test device for add-on restraint systems is a standard seat assembly consisting of a simulated vehicle bench seat, with three seating positions, which is described in Drawing Package SAS–100–1000 with Addendum A Revised (consisting of drawings and a bill of materials), dated December __, 1996 (incorporated by reference; see § 571.5). The assembly is mounted on a dynamic test platform so that the center SORL of the seat is parallel to the direction of the test platform travel and so that movement between the base of the assembly and the platform is prevented.

* * * * *

(c)(1) Attached to the seat belt anchorage points provided on the standard seat assembly (illustrated in Figures 1A and 1B of this standard) are Type I seat belt assemblies in the case of add-on child restraint systems other than belt-positioning seats, or Type II seat belt assemblies in the case of belt-positioning seats. These seat belt assemblies meet the requirements of Standard No. 209 (§ 571.209) and have webbing with a width of not more than 50 mm, and are attached to the anchorage points without the use of retractors or reels of any kind.

(2) Attached to the standard seat assembly is a child restraint anchorage system conforming to Standard No. 210a (§ 571.210a). The seat assembly is equipped with lower anchorages that conform to S4.2.1 and S4.2.2 of that standard.

* * * * * *

S6.1.2 *Dynamic test procedure.*

(a) Activate the built-in child restraint or attach the add-on child restraint to the seat assembly as follows:

(1)(i) *Test configuration I.*

(*A*) Except for a belt-positioning seat, an add-on child restraint system is installed at the center seating position of the standard seat assembly using either the standard lap belt or the child seat anchorage system—

(*1*) In accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1; or

(*2*) In accordance with the manufacturer's instructions, except that the add-on restraint is secured to the standard vehicle seat using only the standard vehicle lap belt (except a child harness, a backless child restraint system with a top anchorage strap, and a restraint designed for use by physically handicapped children are not subject to this paragraph.

(*B*) A belt-positioning seat is attached to either outboard seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1 using only the standard vehicle lap and shoulder belt.

* * * * *

(d) * * *

(1) * * *

(iii) When attaching a child restraint system to the child restraint anchorage system on the standard seat assembly, all belt systems used to attach the restraint to the standard seat assembly are tightened to a tension of not less than 53.5 N and not more than 67 N, as measured by a load cell used on the webbing portion of the belt.

* * * * *

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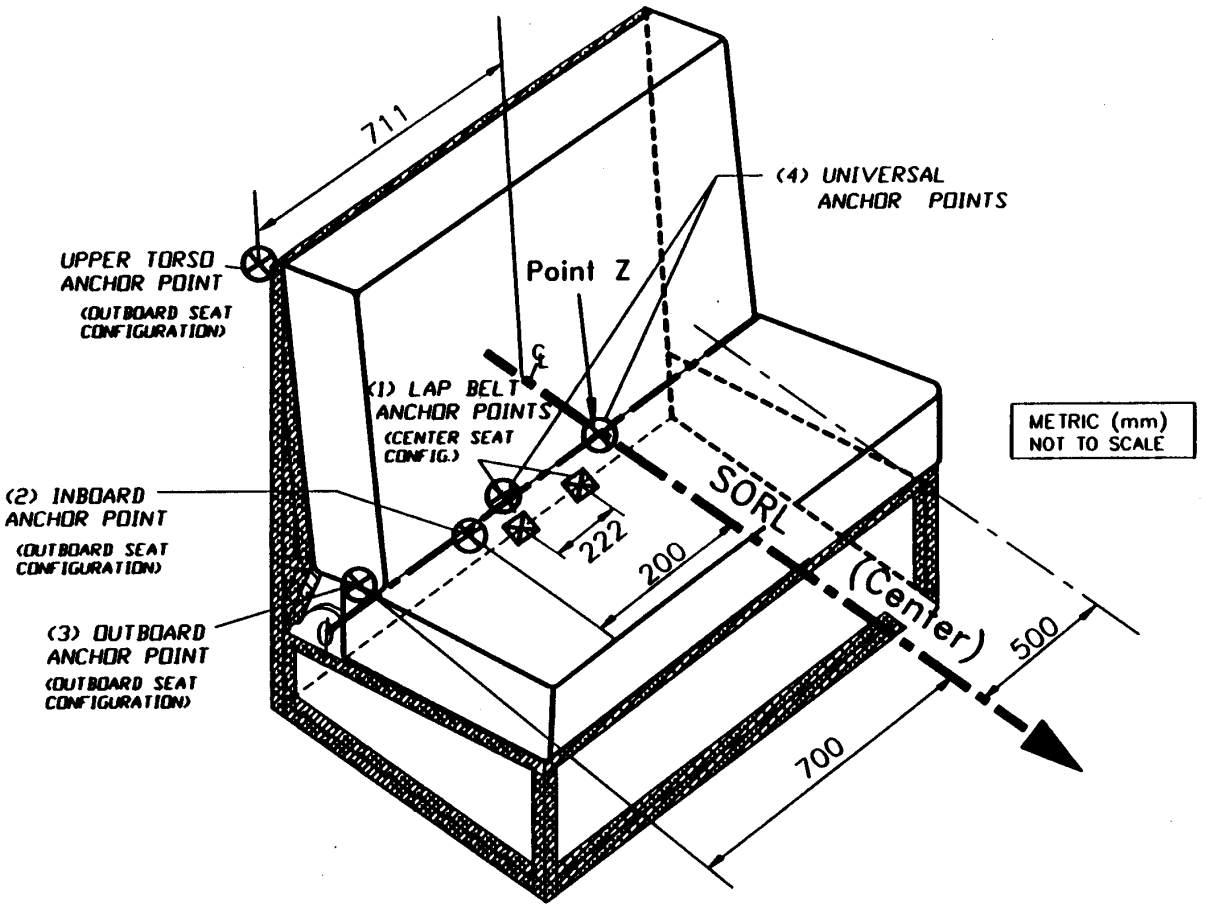


SEAT ORIENTATION REFERENCE LINE AND BELT ANCHORAGE POINTS LOCATIONS ON THE STANDARD SEAT ASSEMBLY

Figure 1A

Notes:

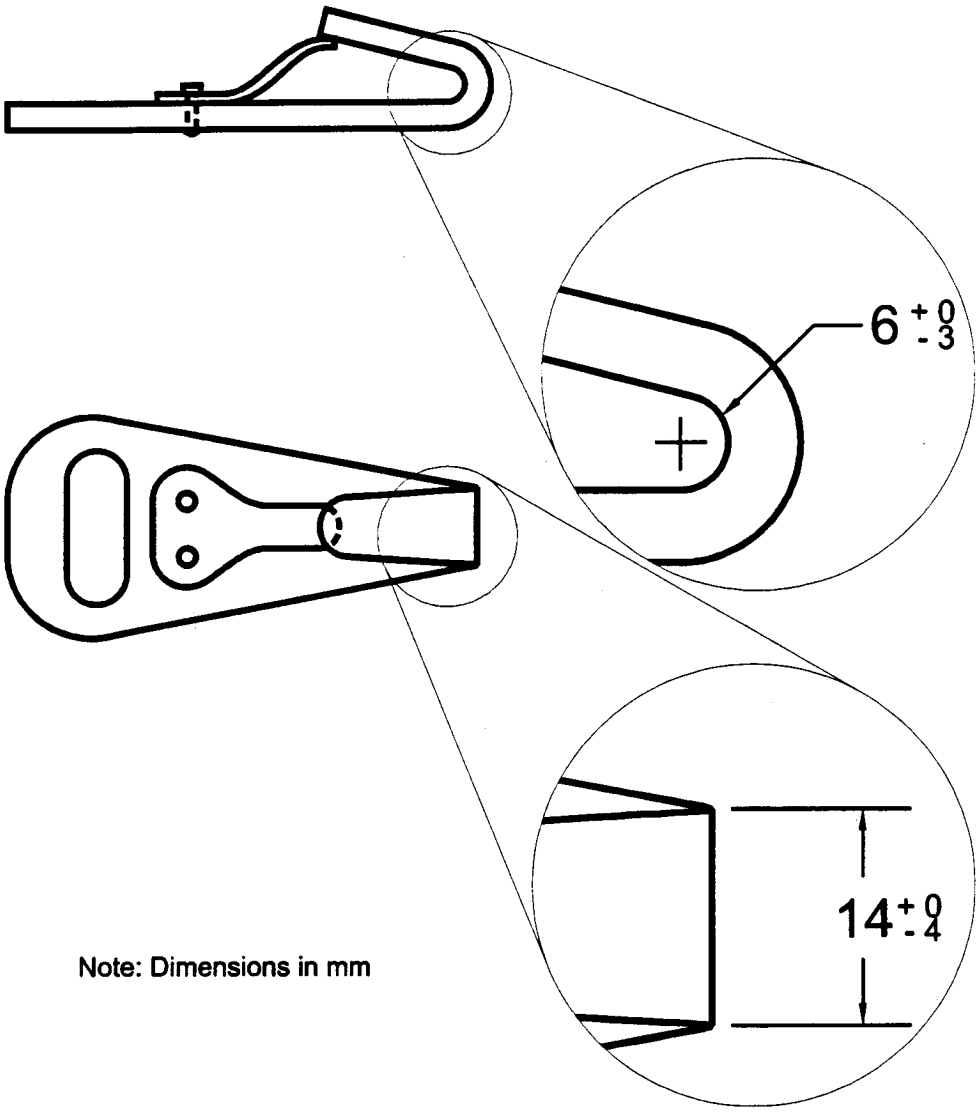
(1) Lap belt anchor points are symmetrically located with respect to the center SORL

(2) Maximum distance from the seat bight to the end of the buckle is 175 mm

(3) Outboard anchor point located 700 mm from the center SORL

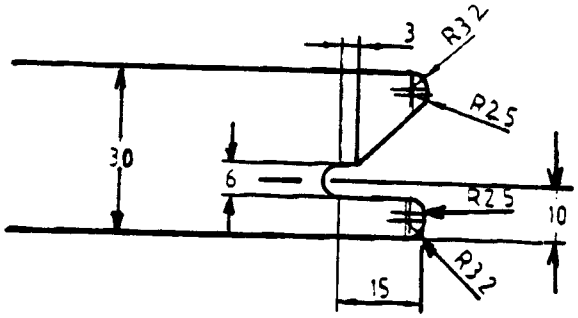
(4) (i) Minimum distance between universal anchor points is 280 mm; maximum distance is 300 mm

(ii) End of latchplate located ≤50 mm forward of seat bight



Notes:
Dimensions in mm
Drawing not to scale

Figure 11—Tether Strap Hook



Dimension according
ISO/WD 13216-1D

Figure 12—Rigid Connector-Side View

Issued on February 13, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–4084 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–59–C

Federal Register

Thursday
February 20, 1997

Part V

Securities and Exchange Commission

17 CFR Parts 250 and 259

Exemption of Acquisition by Registered Public-Utility Holding Companies of Securities of Nonutility Companies Engaged in Certain Energy-Related and Gas-Related Activities; Exemption of Capital Contributions and Advances to Such Companies; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 250 and 259

[Release No. 35–26667; File No. S7–12–95]

RIN 3235–AG46

Exemption of Acquisition by Registered Public-Utility Holding Companies of Securities of Nonutility Companies Engaged in Certain Energy-Related and Gas-Related Activities; Exemption of Capital Contributions and Advances to Such Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting new rule 58 and conforming amendments to rules 45(b) and 52(b) under the Public Utility Holding Company Act of 1935 (''Holding Company Act'' or ''Act''). Rule 58 exempts from the requirement of prior Commission approval a direct or indirect acquisition by a registered holding company or its subsidiary of an interest in an ''energy-related company,'' as defined in the rule, subject to certain limitations and reporting requirements; and by a gas registered holding company or its subsidiary of an interest in a ''gas-related company,'' as defined in the rule, subject to certain reporting requirements. The rule and related rule amendments eliminate unnecessary regulatory limitations on investments in certain businesses that are closely related to the core utility business of the registered system while establishing disclosure and reporting requirements that promote the public interest and serve to protect consumers and investors.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Bonnie Wilkinson, Assistant Director, Martha Cathey Baker, Senior Special Counsel, Sidney L. Cimmet, Senior Special Counsel, or Robert P. Wason, Chief Financial Analyst, all at (202) 942–0545, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting rule 58 and related amendments to rule 45(b) and rule 52(b) (17 CFR 250.45(b) and 250.52(b)) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*). The Commission issued a release proposing rule 58 and the amendments to the existing rules on June 20, 1995.[1] Subject to certain conditions, rule 58 provides an exemption, pursuant to section 9(c)(3) of the Act, from the requirement of prior Commission approval under sections 9(a)(1) and 10, for acquisitions by registered holding companies and their subsidiaries of securities of companies engaged in activities with which the Commission is familiar as a result of its administrative experience and which are so closely related to the ordinary course of the utility business as not to require case-by-case analysis under sections 9(a)(1) and 10.

Rule 58 exempts from the requirement of prior approval the acquisition by a registered holding company or its subsidiary company of any securities of an energy-related company, subject to certain limitations and reporting requirements. The rule defines an energy-related company as one that derives, or will derive, substantially all of its revenues from one or more activities specifically enumerated in the rule. The exemption provided by the rule will be available only if the aggregate investment by the registered holding company and its subsidiaries in energy-related companies does not exceed the greater of $50 million or 15% of consolidated capitalization.

Rule 58 also exempts from the requirement of prior approval the acquisition by a gas registered holding company or its subsidiary company of any securities of a gas-related company, subject to certain reporting requirements. The rule defines a gas-related company as one that derives, or will derive, substantially all of its revenues from one or more activities permitted under the Gas Related Activities Act of 1990 (''GRAA'').

Rule 58 requires a registered holding company that seeks to rely upon the rule to file with this Commission and each state commission having jurisdiction over the retail rates of the registered system operating companies a quarterly report disclosing acquisitions pursuant to the rule and certain other information required by proposed Form U–9C–3. The reporting requirements are intended to enable the Commission and the state and local regulatory authorities to monitor acquisitions pursuant to the rule, including any transactions with rule 58 companies involving the operating companies in registered systems.

The Commission is also adopting amendments to rule 45(b) and rule 52(b), which concern financings by registered system companies, in each case to conform the rules to the limitations of rule 58. Rule 45(b) is amended to qualify the exception that the rule creates to the requirement of Commission approval under section 12(b) and rule 45(a) for capital contributions and open account advances without interest to a subsidiary company. As amended, the exception of rule 45(b) is available if the aggregate amount of such financing transactions on behalf of a subsidiary energy-related company conforms to the limitations of rule 58. Rule 52(b) is similarly amended to qualify the exemption that the rule provides from the requirement of prior Commission approval under sections 6(a) and 7 for securities issued by energy-related subsidiary companies to associate companies.

I. Introduction

This rulemaking arises in the broad context of nonutility diversification by registered gas and electric public-utility holding companies. Section 9(a)(1) of the Holding Company Act requires prior Commission approval under the standards of section 10 for a direct or indirect acquisition by a registered holding company of ''any securities'' or ''any interest in any other business,'' *i.e.*, any nonutility interest.[2] Section 10(c)(1) precludes approval of an acquisition that would be ''detrimental to the carrying out of the provisions of section 11.'' Section 11, described in the legislative history of the Act as the ''very heart'' of the Act,[3] requires the Commission to confine the nonutility interests of such companies to those that are ''reasonably incidental, or economically necessary or appropriate to the operations of [an] integrated public-utility system.''[4] The Commission has interpreted the

[1] Holding Co. Act Release No. 26313 (June 20, 1995), 60 FR 33642 (June 28, 1995) (''Proposing Release'').

[2] The Commission has read the latter phrase to encompass any arrangement that entails the acquisition of a substantial interest in a nonutility business undertaking. See, *e.g.*, *Public Service Co. of Oklahoma*, 45 S.E.C. 878, 883–4 (1975).

[3] S. Rep. No. 621, 74th Cong., 1st Sess. (1935) (''Senate Report'') at 11.

[4] Section 11(b)(1) of the Act. Section 11(b)(1) further provides that the Commission may so characterize a nonutility interest that it finds to be ''necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system. * * *''

The interests of investors and consumers and the public interest are the protected interests under the Holding Company Act. The Commission has interpreted the public interest standard of the Act to extend to the interest in a sound gas and electric utility industry. See *Eastern Utilities Assocs.*, Holding Co. Act Release No. 26232 (Feb. 15, 1995).

provisions of section 11 to reflect a Congressional policy against nonutility activities that bear no operating or functional relationship to the utility operations of the registered system.[5] This interpretation was intended to focus the attention of the registered holding company on the needs of its operating utilities, and thereby protect consumers and investors against the risks that might be associated with unrelated businesses.[6]

Section 9(c)(3) of the Act provides an exemption from the requirements of section 9(a)(1) for the acquisition of ''such commercial paper and other securities, within such limitations as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.'' The Commission has previously issued orders under section 9(c)(3) exempting from section 9(a)(1) acquisitions of small amounts of securities of local industrial development corporations, affordable housing projects, and venture capital concerns, among others.[7] The Commission has also adopted rule 40(a)(5) under section 9(c)(3) to exempt such acquisitions from the requirements of section 9(a)(1), provided that an affiliate relationship does not result, and subject to certain annual dollar limitations.[8] The Commission has noted that section 9(c)(3) may not be used to circumvent section 11(b)(1)'s prohibition of the acquisition of an interest in a business unrelated to the core utility business.[9]

As noted in the Proposing Release,[10] registered holding companies have filed numerous applications in recent years seeking authorization to engage in nonutility activities that the companies contend complement, or are natural extensions of, the evolving gas and electric industries. In considering these applications, the Commission has attempted to balance the need for regulatory change due to industry developments with the need for continued protection under the Act of the public interest and the interest of investors and consumers.[11] The concept of a functional relationship has been expanded in some cases, in a manner consistent with the purposes and limitations of the Act, and the Commission has permitted some activities that would benefit the registered system in ways less tangible and direct than those considered and approved in orders of previous years. In some cases the Commission approved as part of this development extensive transactions with nonassociate companies and declined to limit the transactions to the particular service territory of the registered system utilities. To this extent, the Commission implicitly correlated the functional relationship test with changes in the industry.[12]

Congress has enacted a number of important legislative measures to facilitate acquisitions by registered holding companies of interests to which section 11 was perceived to create barriers. In some instances, the legislation treated acquisitions of essentially utility interests as nonutility acquisitions for purposes of the Act, so as to avoid the integration requirements of section 11.[13] In other instances, the legislation permitted essentially nonutility activities that were either closely related to core operations or otherwise deemed appropriate for participation by registered holding companies. An example of recent legislation relates to nonutility activities involved in the supply of natural gas.

In 1990, Congress enacted the Gas Related Activities Act to permit a gas registered holding company to engage in transportation, marketing, storage and other nonutility gas-related activities that are not functionally related to the company's business.[14] The GRAA provides that an acquisition of an interest in a company that engages in certain gas-related activities, including storage, transportation and wholesale sales, is deemed to meet the requirements of section 11(b)(1) of the Act. The GRAA further provides that an acquisition of an interest in a company that engages in other activities relating to the supply of natural gas is deemed to meet the requirements of section 11(b)(1), if the Commission finds that the acquisition is in the interest of consumers of the holding company system and is not detrimental to those consumers or to the proper functioning of the registered system.[15]

In 1992, Congress acted to permit both gas and electric registered holding companies to acquire interests in cogeneration and small power production facilities, wherever located,

[5] See *generally Michigan Consolidated Gas Co.*, 44 S.E.C. 361, 363–66 (1970), *aff'd*, 444 F.2d 913 (D.C. Cir. 1971) (rejecting proposed investment in low income housing projects). See also *CSW Credit, Inc.*, Holding Co. Act Release No. 25995 (Mar. 2, 1994) (rejecting proposed expansion of transactions with nonassociate companies by subsidiary engaged in factoring of utility accounts receivable). By its terms, section 11 applies only to registered holding companies. The Commission has never determined the limits on diversification by exempt holding companies.

[6] Section 11 was intended ''simply to provide a mechanism to create conditions under which effective Federal and State regulation will be possible.'' Senate Report at 11. As an historical matter, the statute led to the refashioning of the structure and the business practices of an entire industry. See, *e.g.*, Joel Seligman, *The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance* (rev. ed. 1995).

[7] *See, e.g., Hope Gas, Inc.*, Holding Co. Act Release No. 25739 (Jan. 26, 1993) and *Georgia Power Co.*, Holding Co. Act Release No. 25949 (Dec. 15, 1993) (securities of local venture capital companies); *Georgia Power Co.*, Holding Co. Act Release No. 26220 (Jan. 24, 1995) and *East Ohio Gas Co.*, Holding Co. Act Release No. 25046 (Feb. 27, 1990) (securities of affordable housing partnerships); *Potomac Edison Co.*, Holding Co. Act Release No. 25312 (May 14, 1991) (shares of for-profit economic development corporation).

[8] Under rule 40(a)(5), a holding company or subsidiary may acquire up to $5 million annually of the securities of economic development companies created under special state laws promoting economic development, and up to $1 million annually in local industrial or nonutility enterprises.

[9] Michigan Consolidated Gas Co., 44 S.E.C. at 366.

[10] 60 FR at 33643.

[11] The Commission in some instances imposed percentage, geographic or other limitations upon transactions on behalf of nonassociate companies. These limitations were intended to ensure that the particular nonutility interest would continue to benefit the integrated system primarily and thereby conform to the functional relationship requirement.

[12] The Commission took a more flexible approach to functional relationship in *Southern Co.*, Holding Co. Act Release No. 26211 (Dec. 30, 1994). In that case, Southern proposed to develop a communications system to provide services to both system companies and nonassociates. While only a small additional investment in the system was required to facilitate nonassociate transactions, a majority of the revenues from the system could ultimately be derived from these transactions. The Commission approved the proposal, stating that the relative investment for associate and nonassociate purposes is relevant to a determination of a functional relationship. Alternatively, the Commission found a functional relationship existed because the nonutility interest being acquired (1) would involve the sale or lease of products or skills of some complexity developed by the holding company at considerable expense for the benefit of its utility subsidiaries and not readily available to the rest of the public from other sources; (2) would generally require little or no further investment by the holding company; and (3) would permit the amortization of product development expenses with little or no risk (citing *Jersey Central Power & Light Co.*, Holding Co. Act Release No. 24348 (Mar. 18, 1987), as approved in *CSW Credit, Inc.*, note 5 above).

[13] Under the Public Utility Regulatory Policies Act of 1978 (''PURPA''), 16 U.S.C. 824a–3, and related legislation, a registered holding company can acquire an interest in ''qualifying facilities'' (''QFs''), as defined in the regulations under PURPA, that are unrelated to its core utility operations. See also the Energy Policy Act of 1992, discussed below.

[14] Pub. L. No. 101–572, 104 Stat. 2810 (Nov. 15, 1990), codified as a note to section 11 of the Act.

[15] *See, e.g., Columbia Gas System*, Holding Co. Act Release No. 25802 (Apr. 22, 1993) (authorizing subsidiary to engage in marketing of natural gas). Section 2(b) of the GRAA requires the Commission to determine whether the proposed activities will benefit both the retail and the wholesale utility customers of the registered system.

and to market and broker electric power through affiliated exempt wholesale generators (''EWGs''). [16] In 1992, Congress also enacted legislation to promote the development of alternative powered vehicles as a part of a national energy policy to reduce automobile emissions. The legislation permits gas registered holding companies to engage in activities related to vehicular natural gas, as defined. [17]

As a result of Congressional action, combined with initiatives of the Federal Energy Regulatory Commission (''FERC'') and the state and local ratemaking authorities, the pace of change in the gas and electric utility industry is accelerating. Today, the gas industry is largely deregulated and the electric industry is undergoing a similar process. [18] In addition to increasing competition at the wholesale level, retail electric competition is developing more rapidly than anticipated, due to state efforts. [19] Utilities and other suppliers of energy appear poised to compete in retail markets. [20] As a result of these developments, the contemporary gas and electric industries no longer focus solely upon the traditional production and distribution functions of a regulated utility, but are instead evolving toward a broadly based, competitive, energy services business. [21]

As discussed previously, the Commission has sought to respond to developments in the industry by expanding its concept of a functional relationship in a manner consistent with the purposes and limitations of the Act. In several recent filings, the Commission has been requested to reconsider some administrative restrictions employed in the past. In approving these requests, the Commission determined, as required by the Act, that its action would not be detrimental to the interests protected under the Act. The Commission suggested that various considerations, including developments in the industry, the Commission's familiarity with the particular nonutility activities at issue, the absence of significant risks inherent in the particular venture, the specific protections provided for consumers and the absence of objections by the relevant state regulators, made it unnecessary to adhere rigidly to the types of administrative measures discussed above. [22] Further, a 1995 Commission staff report recommended that the Commission replace the use of bright-line limitations with a more flexible standard that would take into account the risks inherent in the particular venture and the specific protections provided for consumers. [23]

Finally, after the issuance of the Proposing Release, Congress enacted legislation amending the Act to permit registered holding companies, without prior Commission approval under sections 9(a)(1) and 10, to participate in a broad range of telecommunications activities through a special purpose subsidiary, an ''exempt telecommunications company'' (''ETC''). [24] Once an entity is certified as an ETC by the Federal Communications Commission, acquisition and retention by a registered holding company of an interest in the entity is exempt from substantive requirements under the Holding Company Act. [25] As a result of this legislation, the provisions of proposed rule 58 concerning telecommunications activities are no longer needed.

The Commission believes that the realities of the contemporary gas and electric industries, and its experience in the administration of sections 9 and 10 of the Act, permit a recognition that certain activities are an integral part of the contemporary utility business, and so may be deemed to be activities ''in the ordinary course of business'' of a registered holding company within the meaning of section 9(c)(3) of the Act. Rule 58 identifies such activities. The rule is variously subject to qualifications and limitations that are intended to ensure that acquisitions pursuant to the rule are appropriate in the ordinary course of business, as contemplated by section 9(c)(3), are consistent with prior orders under section 9(a)(1) and 10, and are not detrimental to the protected interests. [26]

II. Proposed Rule 58

Rule 58 is intended to facilitate investments by registered holding companies in energy-related and gas-related companies. Acquisitions pursuant to the rule are considered to be

[16] Energy Policy Act, Pub. L. 102–486, 106 Stat. 2776 (1992). These activities of EWGs are limited primarily to the sale of electric power for resale.

[17] See Articles IV, V and VI, Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2777 (1992) (codified as a note to section 2). These legislative developments are discussed at greater length in the Proposing Release. 60 FR at 33644.

[18] See generally The Regulation of Public-Utility Holding Companies, Report of the Division of Investment Management, Securities and Exchange Commission (June 1995) (''Report''), at 19–22, 26–27 (surveying recent regulatory and other developments in the electric and gas industries). Among other things, the Report notes that following the Energy Policy Act, the FERC has engaged in a series of initiatives to encourage the development of competitive energy markets. Id. at 23. More recently, on April 24, 1996, the FERC adopted Order No. 888, FERC Stats. & Regs. ¶ 31,036, which represents a major step in the effort to increase competition in the generation and transmission segments of the electric industry.

[19] See, e.g., ''State Regulators Debate Taking a Stand on National Retail Wheeling Legislation'', *Energy Report* (March 4, 1996) (describing state initiatives and possible support for federal legislation establishing retail wheeling). At the state level, for instance, New Hampshire has adopted a pilot program under which each New Hampshire utility must allow customers representing three percent of peak load to have access to alternative suppliers of electricity for two years, beginning on or about May 28, 1996. Order of the New Hampshire Public Utilities Commission on the Retail Competition Pilot Program Establishing Final Guidelines and Requiring Compliance Filings (Order No. 22,033, dated Feb. 28, 1996). Other states, such as Massachusetts, Rhode Island and Illinois, are also implementing or considering programs to promote retail competition.

[20] The Commission has authorized registered holding companies to engage, through nonutility subsidiaries, in the retail marketing of electric power in specific states that have implemented plans and programs for competition in retail electric markets, see, e.g., *Eastern Utilities Assocs.*, Holding Co. Act Release No. 26519 (May 23, 1996) (authorizing retail sales of electric power pursuant to pilot programs in New Hampshire and Massachusetts) and, more recently, has authorized retail marketing of both electric power and natural gas on a nationwide basis, subject to compliance with applicable state law. *SEI Holdings, Inc.*, Holding Co. Act Release No. 26581 (Sept. 26, 1996).

[21] The Commission acknowledged these developments in the Proposing Release, 60 FR at 33643, and, again, in a recent order authorizing a gas registered holding company to acquire an interest in a partnership formed to engage in the wholesale brokering and marketing of natural gas, electricity and other fuels. *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26512 (Apr. 30, 1996). The order noted the growing competition among various companies, including exempt holding companies, as well as stand-alone utilities and other companies not subject to the Act, to meet increasing customer demand for a full range of energy options.

[22] See, *e.g., Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26512 (approving wholesale marketing and brokering of natural gas, electricity and other fuels, without percentage limitations); *Eastern Utilities Assocs.*, Holding Co. Act Release No. 26232 (removing percentage limitation previously placed upon demand-side management and energy management services business of registered holding company); *Southern Co.*, Holding Co. Act Release No. 26211 (considering, in assessment of a functional relationship, the relative investment for associate and nonassociate companies).

[23] Report at 81–87, 91–92.

[24] Telecommunications Act of 1996, Pub. L. 104–104, 110 Stat. 56 (1996) (''Telecommunications Act''), codified as section 34 of the Act.

[25] The Telecommunications Act does not provide that ETCs themselves are exempt from regulation under the Act. See section 34. However, the law contemplates that the role of the Commission will consist largely of monitoring telecommunications investments of registered holding companies. The Commission is authorized to require reporting of investments in, and activities of, ETCs that are likely to have a material impact on the financial or operational condition of a registered holding company. See section 34(f).

[26] As noted in the Proposing Release, rule 58 is intended largely to encompass investments in companies engaged in activities of the same or substantially similar character as those approved in previous orders of the Commission under sections 9(a)(1) and 10. 60 FR at 33648.

''appropriate in the ordinary course of business'' within the meaning of section 9(c)(3), and are thus exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10.

The Commission received comment letters from, or on behalf of, eleven registered holding companies, one exempt holding company, one industry trade association, and one local regulatory authority.[27] With the exception of the Council of the City of New Orleans (''New Orleans''), all commenters support adoption of the rule[28] and, in many cases, propose additional changes to expand the rule.[29] New Orleans opposes adoption of the rule,[30] and requests, in the alternative, a more restrictive rule. The comments received on various aspects of the rule are discussed below. The Commission is adopting rule 58 and the conforming amendments to rules 45 and 52 substantially as proposed, but with a number of clarifications.

A. Investments in Energy-Related Companies

Rule 58(a)(1) exempts from the requirement of prior Commission approval under sections 9(a)(1) and 10, pursuant to section 9(c)(3), the acquisition by a registered holding company or its subsidiary company of securities of an ''energy-related company;'' provided, that aggregate investment (as defined) in such companies does not exceed the greater of 15% of consolidated capitalization or $50 million. Investments made prior to effectiveness of the rule are excluded for purposes of calculating the investment limitations.

The Proposing Release defines an ''energy-related company'' in terms of the activities in which it may engage. Specifically, as proposed, the rule would define an energy-related company as one that engages in: (1) One or more of various categories of specific activities set forth in the rule, described below, and (2) such other nonutility activities as the Commission may from time to time approve by order upon application under sections 9 and 10, and, so doing, designate as energy-related for purposes of the rule. Rule 58 requires that an energy-related company at all times derive substantially all of its revenues from the activities designated in the rule.

The energy-related activities specified in subsection (b)(1) of the rule as proposed were:

(1) The rendering of energy conservation and demand-side management services;

(2) The development and commercialization of electrotechnologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;

(3) The manufacture, conversion, sale and servicing of electric and compressed natural gas powered vehicles and ownership and operation of related refueling and recharging equipment;

(4) The sale, installation, and servicing of electric and gas appliances for residential, commercial and industrial heating and lighting;

(5) The brokering and marketing of energy commodities, including but not limited to electricity or natural or manufactured gas;

(6) The production, conversion, and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources;

(7) The sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; environmental licensing, testing and remediation; and other similar areas;

(8) The ownership or operation of QFs, and facilities necessary or incidental thereto, including thermal energy utilization facilities purchased or constructed primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;

(9) The ownership or operation of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities;

(10) The production, transportation, distribution or storage of all forms of energy other than electricity and natural or manufactured gas;

(11) The development and commercialization of technologies or processes that utilize coal waste by-products as an integral component of such technology or process; and

(12) The ownership, sale, leasing or licensing of the use of telecommunications facilities and equipment (such as fiber optic lines, coaxial cable, or other communications capacity, towers and tower sites and other similar properties).

The rule as proposed also specifically provided a means for the Commission to add additional activities to the definition upon application in the future.

1. Definition of ''Energy-Related Company''

a. General. The Commission received a substantial number of comments concerning the definition of ''energy-related company.'' Several commenters assert that the definition should not consist of enumerated categories of specific activities, but should instead be broad and general.[31] Although this approach would offer greater flexibility,

[27] The registered holding companies that submitted comments are Allegheny Power System, Inc. (''Allegheny''), American Electric Power Company, Inc. (''AEP''), Central and South West Corporation (''CSW''), Cinergy Corp. (''Cinergy''), The Columbia Gas System, Inc. (''Columbia''), Consolidated Natural Gas Company (''Consolidated''), Eastern Utilities Associates (''EUA''), Entergy Corporation (''Entergy''), General Public Utilities Corporation (''GPU''), Northeast Utilities (''Northeast'') and The Southern Company (''Southern''). The exempt holding company that submitted comments is Wisconsin Energy Corporation (''Wisconsin Energy''), and the industry association is the American Gas Association (''AGA''). The local regulator that submitted comments is the Council of the City of New Orleans. Copies of the comments are available for inspection in File No. S7–12–95 in the Commission's public reference room.

[28] See, *e.g.*, Comments of AEP (the rule would reduce regulatory burdens on registered systems and permit them to compete in the energy industry); and Columbia (the rule eliminates unnecessary and costly regulatory burdens on registered systems). Some commenters also note that, beyond adoption of rule 58, the Commission should provide registered holding companies with the flexibility to engage in utility-related businesses without limitation. See, *e.g.*, Comments of AGA (section 11 should be broadly interpreted to permit gas systems to enter into any business involving production, transmission, dissemination or marketing of any form of consumable energy or any business or operation based on the facilities, resources or expertise from the company's operations); and CSW (restrictions on diversification prevent registered systems from engaging in businesses that would benefit customers and investors and impede efficient evolution of the electric utility industry).

[29] For example, one commenter notes that the rule should generally be more flexible, so as to accommodate changes that may arise as the restructuring of the electric industry continues. Comments of Wisconsin Energy. The Commission notes, however, that various issues, such as those that surround the possible disaggregation of utility assets and horizontal integration of utility functions, are beyond the scope of a rule that is intended to exempt nonutility interests that are commonplace today and closely related to the core utility business. The Commission continues to examine the issues raised by industry restructuring, and will undertake any necessary or appropriate rulemaking or other administrative action in the future.

[30] New Orleans opposes the rule on many grounds. Among other things, New Orleans asserts that the rule constitutes ''deregulation of nonutility investment by registered holding companies [that] is unlawful and not in the public interest.'' It further asserts that the rule does not adequately protect consumers from ''diversification risks and failures which are well known and documented in this industry.'' New Orleans states that only the Commission has the authority to regulate diversification and that it has a ''duty to protect consumers'' in this area. Comments of New Orleans at 3–4.

[31] Comments of AGA, Columbia and Consolidated. Suggested definitions would include any company engaged in a business based on or developed from the facilities, resources, technology or expertise of the registered system's operations (Comments of AGA and Columbia); and any company engaged in a business involving the production, transmission, dissemination or marketing of any form of consumable energy (Comments of AGA).

the Commission believes that it is not consistent with the requirements of section 9(c)(3) of the Act. As discussed previously, that section provides an exemption only for acquisitions of securities that are made in the ordinary course of business of the registered system and that are not detrimental to the protected interests. Rule 58 is intended to encompass activities with which the Commission is familiar as a result of its administrative experience and that appear to be so closely related to the ordinary course of the contemporary utility business as not to require case-by-case analysis pursuant to sections 9(a)(1) and 10. For this reason, the Commission is retaining enumerated categories in the rule as adopted.

Similarly, the Commission notes that the enumerated categories of specific energy-related activities in rule 58 are exhaustive, rather than illustrative. In order for a direct or indirect acquisition of securities by a registered holding company or its subsidiary to qualify for the exemption provided by the rule, the company in which the interest is acquired must be engaged almost exclusively in the type of activities specified in the rule. A registered holding company will continue to apply to the Commission for prior approval of any acquisitions concerning activities that fall outside the categories identified by the rule as energy-related. Further, as discussed below, to the extent that a company engages in activities in addition to those permitted under rule 58, an application will also be required.

New Orleans suggests that the definition should include a requirement that the permitted activity be functionally related to the system's utility business under sections 10 and 11.[32] Such a requirement is unnecessary for several reasons. First, a finding of a functional relationship is not required in order to qualify for an exemption under section 9(c)(3).[33] Moreover, even though a finding of a functional relationship under section 11(b)(1) is not required in this context, each of the activities permitted under the rule as adopted has in many instances been found, by order upon application under sections 9(a)(1) and 10, to satisfy the statutory requirements, including those of section 11(b)(1).

One commenter objects to the requirement that an energy-related company derive ''substantially all'' of its revenues from activities designated as ''energy-related,'' and suggests that the rule should instead require that a company derive merely a stated portion, *e.g.*, at least 30%, from such activities.[34] The Commission notes, however, that this measure would permit registered holding companies to make sizeable investments in companies engaged primarily in novel, unspecified nonutility businesses. The Commission believes its authority to create such a broad exemption by rule under section 9(c)(3) is subject to question.[35] The Commission declines, therefore, to adopt this suggestion. Any acquisition of an interest in a nonutility business that does not derive substantially all of its revenues from one or more of the activities set forth in the categories of the rule will continue to require prior Commission approval by order upon application.

New Orleans objects to the proposed provision of the rule creating a procedure for designating additional activities to be energy-related by order upon application under section 10.[36] New Orleans asserts that new activities and investments should be approved only pursuant to rulemaking, so that all parties have an opportunity to evaluate and comment upon the relationship of the new activity to the core utility business and the potential effects on ratepayers.

In proposing this mechanism for updating the rule, the Commission intended that all procedural requirements applicable to agency rulemaking would be observed in connection with the proposed designation by order of additional activities as energy-related for purposes of rule 58, including in particular the requirements related to public notice and opportunity to comment.[37] On reconsideration, however, the Commission has determined that this provision could result in increased administrative burdens for both the registered holding companies seeking approval of new activities and the Commission staff.

If rulemaking is undertaken in the context of consideration of an application for approval of a specific nonutility investment, adherence to required procedures, including an extended comment period for the rulemaking and consideration of all views submitted, could delay approval of the proposed transaction that is the subject of the application. Further, repetitive paperwork in connection with the rulemaking aspects of each such application could consume extensive staff resources. Accordingly, this feature of proposed rule 58 has not been retained.[38] The Commission believes, however, that future expansion of the scope of the rule, to reflect additional nonutility activities found by the Commission to satisfy the standards of the Act, is essential to achieve the rule's intended flexibility. The Commission intends to evaluate periodically the coverage of the rule in light of existing Commission orders under sections 9 and 10 of the Act, and initiate rulemaking proceedings to reflect any appropriate changes.

One commenter suggests that the definition of energy-related company be expanded to include companies that derive substantially all of their revenues from the listed activities, either directly or indirectly.[39] The requested revision would permit a registered holding company system to use one or more intermediate subsidiaries (*i.e.*, ''project parents'') to invest in energy-related companies, yet retain the benefit of the exemption afforded by the rule.[40] The Commission believes that this suggestion is consistent with the intent of the rule as proposed. Use of an intermediate subsidiary could further insulate the holding company and its other subsidiaries, including utility subsidiaries, from any direct losses that could occur with respect to rule 58 investments. At the same time, this measure would offer greater flexibility in the structuring of these investments.

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[32] As discussed above, the Commission has interpreted the provisions of section 11 of the Act, referenced in section 10(c)(1), to reflect a Congressional policy against nonutility activities that bear no operating or functional relationship to the utility operations of the registered system. See generally *Michigan Consolidated Gas Co.*, 44 SEC 361 at 363–65.

[33] The Commission has determined that a transaction need not satisfy the standards of section 11(b)(1) in order to qualify for exemption under section 9(c)(3), but that section 9(c)(3) may not be used to circumvent the requirements of section 11(b)(1) generally. Id. at 366 (''Section 9(c)(3) cannot be employed to evade the proscription of section 11(b)(1) prohibiting the acquisition by a gas utility company of an interest in a business unrelated to its business''); but see *id.* at 369 (''the majority unduly constricts the scope of the section 9(c)(3) exemption when it holds that to be entitled to such exemption a transaction must also meet the standards of section 11(b)(1)'') (Commissioner Owens, concurring in part and dissenting in part) and 370 (Commissioner Smith, dissenting).

[34] Comments of CSW.

[35] As noted previously, the Commission has found that section 9(c)(3), under which rule 58 is adopted, may not be used to circumvent the requirements of section 11(b)(1) of the Act.

[36] This mechanism was provided in subsection (b)(1)(xiii) of the proposed rule.

[37] See *e.g.*, the relevant provisions of the Administrative Procedure Act, 5 U.S.C. 553, and the Commission's rules of practice, 17 CFR 201.192.

[38] A similar provision in the definition of ''gas-related company'' has also been eliminated.

[39] Comments of GPU.

[40] The provisions of the Act that permit use of intermediate holding companies in connection with investment in exempt wholesale generators reflect the same concept. See section 32(a)(1).

Accordingly, the rule, as adopted, is modified to incorporate the concept of indirect investment in energy-related companies through project parents.[41]

The Commission notes, however, that any such intermediate subsidiary, like the underlying energy-related companies, must derive ''substantially all'' of its revenues from the permitted activities. If the company will engage in other activities, directly or indirectly, prior Commission approval of an investment interest in such company will be required.

b. Categories of energy-related activities. The Proposing Release invited specific comment on whether the proposed rule should include additional kinds or categories of energy-related activities. One commenter suggests that customer financing for other energy-related activities should be a separate category of permitted activity for an energy-related company.[42] The Commission notes that customer financing has been approved in a number of cases involving activities that are designated as energy-related under rule 58, and agrees that it may be an appropriate activity for some energy-related companies. However, this type of activity is better addressed in the context of rule 48, as discussed below. The Commission therefore declines to include customer financing as an energy-related activity under rule 58.

Another commenter suggests that any nonutility business in which the applicable state commission would allow a regulated utility or exempt holding company to engage or invest should be a permitted activity for energy-related companies.[43] That a state commission permits utilities or holding companies that are subject to its jurisdiction to engage in a given nonutility activity can be a strong indication that the activity is appropriate, and, in a given case, it may be persuasive evidence that some of the standards of the Act have been satisfied. However, that a state commission has approved a type of investment does not necessarily mean that it is in the ordinary course of business of a registered holding company or its subsidiary for purposes of section 9(c)(3). The Commission does not believe that rule 58 should incorporate such state determinations as a general matter, without any indication as to the nature of the approved activities or the relevant state law standards. Thus, the Commission will continue to review any such activity on a case-by-case basis, giving due consideration to the views of state regulators toward the activity in question.

As proposed, the rule did not indicate clearly whether an interest in an energy-related company engaging in an enumerated activity could be acquired pursuant to the rule by companies in electric holding company systems, gas holding company systems, or both. As adopted, rule 58(b)(1) has been clarified in this regard to limit the exemption solely to those activities that are considered to be in the ordinary course of the type of utility business in which a particular holding company system is engaged.[44] Any proposal by a registered holding company system to acquire an interest in a company engaged in nonutility activities of a type not exempt under the rule for that type of registered system may be the subject of an application for Commission approval under sections 9(a) and 10.[45]

Many commenters suggest specific changes or additions to the categories of permitted activities set forth in the definition. A number of comments request clarifications and propose additions to the list of activities permitted for an energy related company. Some, but not all, comments and revisions to the categories of permitted activities are discussed below.

(1)Subsection (b)(1)(i): Energy and demand-side management services. This category of activities was defined in the Proposing Release to include the rendering of energy conservation and demand-side management services.[46] The Commission has previously considered and approved by order under sections 9(a)(1) and 10 a broad range of activities relating to the business of energy management and demand-side management, including the following: Energy audits; facility design and process enhancements; construction, maintenance and installation of, and training client personnel to operate, energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies; design and specification of energy consuming equipment; and general advice on programs.[47] Upon additional consideration, the Commission has concluded that ''energy conservation services'' may not be broad enough to cover the types of activities intended to be exempted under this category. The term ''energy management services'' more accurately reflects the scope of the exempted activity.[48] The rule as adopted is revised accordingly. Apart from this clarification, the subsection is adopted as proposed.[49]

Companies in both electric and gas registered systems may acquire interests in companies engaging in the activities specified in this subsection.

(2) Subsection (b)(1)(ii): development and commercialization of electrotechnologies.

As used in the rule, electrotechnologies relate to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction and similar innovations.[50] The Commission has, on many occasions, approved investments by electric registered system companies in technologies related to the electric utility business.[51] Because the Commission has not yet considered proposals by registered gas system companies to engage in activities related to such technologies, the Commission is not prepared at this time to deem these activities to be appropriate in the ordinary course of the utility business of such systems. Accordingly, the Commission is revising the rule to

[41] This concept is also reflected in the definition of a gas-related company.

[42] Comments of Northeast.

[43] Comments of CSW.

[44] Holding company systems engaged in both the electric and gas utility business will be considered, for purposes of the rule, to be engaged only in one type of utility business, as determined by the type of operations that constitute the holding company's primary utility business.

[45] For example, an electric registered holding company system would be required to file an application and obtain authorization to acquire an interest in a company engaged in ownership and operation of refueling equipment for natural gas-powered vehicles. While acquisition of an interest in such a company could be exempt under rule 58 for a gas registered holding company system, it is not in the case of an electric registered holding company.

[46] No comments were received on this subsection.

[47] See, e.g., *Eastern Utilities Assocs.*, Holding Co. Act Release No. 26232 (Feb. 15, 1995); and *Northeast Utilities*, Holding Co. Act Release No. 25114–A (July 27, 1990).

[48] See, e.g., *New England Electric System*, Holding Co. Act Release No. 22719 (Nov. 19, 1982).

[49] This subsection is intended to encompass all consumer-oriented activities that represent components of a holding company system's demand-side management and integrated-resource planning functions, or that are intended to reduce customer energy costs or lead to efficient use of energy resources by affecting energy consumption. Customer financing is not encompassed by this subsection.

[50] No comments were received on this category of activities.

[51] See, e.g., *American Electric Power Co.*, Holding Co. Act Release No. 25424 (Dec. 11, 1991) (acquisition of an interest in a company that develops, manufactures and markets efficient light bulbs); and *Allegheny Power System, Inc.*, Holding Co. Act Release No. 26085 (July 14, 1994) (investments in technologies related to power conservation and storage, conservation and load management, environmental and waste treatment, and power-related electronic systems and components).

clarify that only electric registered holding companies and their subsidiaries are permitted to acquire companies that engage in the activities in this subsection. The subsection is otherwise adopted as proposed.

(3) Subsection (b)(1)(iii): electric and gas vehicles. As proposed, this subsection included manufacture, conversion, sale and servicing of electric and compressed natural gas powered vehicles, and ownership and operation of related refueling and recharging equipment.[52] The Commission has determined that the subsection should be expanded to include ownership, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric- and gas-powered vehicles,[53] but should not extend to manufacture of such equipment and facilities or to manufacture, conversion and sale of the vehicles themselves.[54] The Commission has revised the subsection as adopted to make clear its intended scope.

In addition, the Commission believes, based on existing precedent, that it is appropriate to limit the described activities to those appropriate for gas registered system companies and electric registered system companies, respectively. The rule as adopted is revised to reflect this limitation.

(4) Subsection (b)(1)(iv): appliance sales. As proposed, this subsection included the sale, installation and servicing of electric and gas appliances for residential, commercial and industrial heating and lighting. Comments included suggestions that this category extend to leasing[55] and customer financing arrangements;[56] and that the equipment at issue include other energy-consuming devices[57] and equipment used for energy generation, both within and outside the system's service territory.[58]

The Commission finds that it is appropriate to expand the types of equipment addressed by the rule to include other types of energy-consuming devices.[59] Historically, the Commission approved the activities addressed in this subsection to encourage consumption of electricity and gas, to promote competition among fuels and, more recently, to further energy conservation.[60] The rule as adopted has been revised, consistent with these precedents, to include electric and gas appliances, equipment that promotes technologies that use gas or electricity and equipment that enables use of gas or electricity as an alternate fuel. Companies in both electric and gas holding company systems may acquire interests in companies engaging in the activities specified in this subsection.

The Commission declines to adopt the suggestion that the rule exempt sale, installation and servicing of generation equipment. These activities may involve issues of broader concern, which lie outside the ambit of this rulemaking.

(5) Subsection (b)(1)(v): brokering and marketing of energy commodities.

This subsection covers the brokering and marketing of energy commodities, including but not limited to electricity and natural or manufactured gas. One commenter proposes that this subsection should be expanded to cover energy-related commodities and should specify that it covers other combustible fuels in addition to electricity and gas.[61] The Commission does not believe there is a basis to include ''energy-related commodities'' in this context. However, the subsection is revised in the adopted rule to include other combustible fuels.[62]

As proposed, this subsection did not indicate the markets in which the permitted activities could be carried out. The Commission's existing orders in this area extend primarily to wholesale markets.[63] However, the Commission has authorized retail electric marketing activities in states with established retail wheeling programs,[64] and, more recently, authorized retail marketing activities with respect to both electric power and natural gas, throughout the United States, subject to compliance with applicable state statutes, regulations and orders with respect to such sales.[65] In view of these precedents, and in light of the rapid development of competition in retail markets, as discussed above, this subsection is intended to cover activities in both wholesale and retail markets that are in compliance with applicable law.

This subsection, as proposed, also did not indicate whether a registered holding company could acquire an interest in a company dealing in all energy commodities or only in electric power or natural gas, as appropriate. At the time the Proposing Release was issued, the Commission's previous orders had, for the most part, limited participation in gas marketing and brokering activities to gas holding company systems, and electric marketing and brokering activities to electric holding company systems. Since that time, however, the Commission has considered and approved several proposals by registered holding companies to engage in the brokering and marketing of energy commodities, including but not limited to electricity and natural or manufactured gas.[66] The rule as adopted permits companies in both electric and gas systems to acquire interests in

[52] No comments were received on this subsection.

[53] The Commission has issued orders authorizing broader involvement with respect to such activities than that reflected in the rule as proposed. See, *e.g., Columbia Gas System,* Holding Co. Act Release No. 26295 (May 23, 1995) (authorizing the sale, ownership, operation, installation and servicing of natural gas refueling equipment and sale of equipment and facilities for use in vehicle conversion); and *Consolidated Natural Gas Co.,* Holding Co. Act Release No. 25615 (Aug. 27, 1992) (same).

[54] The Commission has not yet approved these types of activities by order under sections 9(a) and 10.

[55] Comments of Consolidated and Northeast. Because the term ''sale,'' as defined in section 2(a)(23) of the Act, encompasses dispositions by lease, the Commission believes that no change to the subsection is needed.

[56] Comments of Northeast. Northeast also raised the question of customer financing in a broader context, suggesting the addition to the rule of a category concerning the financing of other energy-related activities. The Commission has determined to address this issue in the context of rule 48, as discussed below.

[57] Comments of CSW.

[58] Comments of Northeast.

[59] Prior orders in this area under sections 9(a)(1) and 10 permit the sale, installation, servicing and/or financing of significantly broader categories of equipment than appliances for heating and lighting. See, *e.g., Consolidated Natural Gas Co.,* Holding Co. Act Release No. 26234 (Feb. 23, 1995).

[60] See *e.g., Cities Service Co.,* 15 S.E.C. 962 (1944); *General Public Utilities Corp.,* Holding Co. Act Release No. 15184 (Feb. 9, 1965); and Louisiana Power & Light Co., Holding Co. Act Release No. 25445 (Dec. 26, 1991).

[61] Comments of Consolidated.

[62] Other combustible fuels would include, for example, coal, oil, wood chips, oil shale, isobutane and propane.

[63] See, *e.g., Consolidated Natural Gas Co.,* Holding Co. Act Release No. 26512 (Apr. 30, 1996) (approving wholesale marketing of energy commodities, but reserving jurisdiction over retail marketing activities until such time as state programs permitting such activities are implemented).

[64] See, *e.g., Eastern Utilities Assocs.,* Holding Co. Act Release No. 26519 (May 23, 1996) (participation in retail electric pilot programs in New Hampshire and Massachusetts); and New England Electric System, Holding Co. Act Release No. 26520 (May 23, 1996) (same).

[65] *SEI Holdings, Inc.,* Holding Co. Act Release No. 26581 (Sept. 26, 1996). The Commission noted that industry trends and competitive pressures make it important for registered system companies to be poised to compete in new markets as they are created, and that such participation appears to promote the goals of U.S. energy policy, including increased competition and lower utility rates.

[66] *Consolidated Natural Gas Co.,* Holding Co. Act Release No. 26512 (Apr. 30, 1996); *UNITIL Corp.,* Holding Co. Act Release No. 26527 (May 31, 1996); and *SEI Holdings, Inc.,* Holding Co. Act Release No. 26581 (Sept. 26, 1996). Other companies in both electric and gas holding company systems are also seeking similar authorizations. *See, e.g., National Fuel Resources, Inc.,* File No. 70–8651.

companies engaging in the activities described in this subsection.

One commenter recommends that the Commission revise the subsection to clarify that it concerns both regulated and unregulated activities.[67] Since rule 58 addresses only the acquisition of securities of nonutility companies engaged in specified activities, this comment is not reflected in the rule.

Several commenters suggest that the specified activities should include ''risk management activities'' [68] and ''market hedging tools.'' [69] The Commission has, in several instances, considered such activities in connection with the brokering and marketing of energy commodities. [70] In each case, the order was conditioned on representations that hedging tools would be used only to minimize risks associated with contracts for purchase or sale of energy commodities and would not be used to engage in speculation. Such activities are a means of limiting the risks associated with marketing of energy commodities and, subject to compliance with the limitations noted above, may be engaged in as part of the activities covered by this subsection.

(6) *Subsection (b)(1)(vi): Thermal energy products.* This subsection addresses the production, conversion and distribution of thermal energy products,[71] alternative fuels and renewable energy resources. The Commission received one comment, suggesting that sale of such products and servicing of thermal energy facilities should be added to the permitted activities.[72] The rule as adopted has been revised to include these suggestions. The rule has also been revised to limit availability of this subsection to electric registered holding company systems.

(7) *Subsection (b)(1)(vii): sale of services and expertise.* This section addresses the sale of technical, operational, management and other kinds of services and expertise developed in the course of utility operations.[73] Commenters offer various requests for expansion of this category.

One registered holding company suggests that the category should also include development, production, marketing and financing of such services and expertise.[74] The Commission notes, however, that the subsection is intended to address services and expertise that exist as a result of system utility operations. The development and production of such services and expertise, solely for the purpose of sale, are outside its scope. In addition, the marketing of such services and expertise is implicit in the concept of sale, and thus need not be specifically mentioned. As discussed below, the Commission believes that customer financing is better addressed in the context of rule 48. The Commission declines to adopt these proposed revisions to the rule.

Two commenters suggest that expertise and services developed in the course of nonutility operations should also be included.[75] While expertise related to some nonutility services may be appropriate for inclusion in the activities covered by the rule, the Commission believes that there is not yet an adequate basis for including them, and will continue to consider proposals on a case-by-case basis.

A registered holding company suggests an expansion of this category to include the sale of excess goods and assets.[76] The Commission declines to adopt this suggestion with respect to sale of utility assets and resources by a nonutility company, primarily because those activities could involve significant consumer protection issues, and could also raise restructuring issues that are beyond the scope of the rule. Some sales of excess nonutility assets and resources may be a legitimate activity for rule 58 companies, but the Commission does not believe that there is, as yet, an adequate basis for inclusion of such activities in the rule. Consideration of these types of activities will continue to be done on a case-by-case basis.

Another registered holding company proposes that this category of the rule be expanded to include the sale of administrative services and equipment related to services and expertise.[77] The Commission notes, however, that administrative services, to the extent they are within the scope of management services, need not be expressly addressed. In addition, as discussed above, sales by a nonutility subsidiary company of equipment used in utility operations, even equipment related to the service being sold, could raise consumer protection issues. Accordingly, the Commission declines to accept these suggestions.

Commenters also suggest that the list of examples of the types of services and expertise covered by this subsection be expanded.[78] As discussed previously, the rule is intended to encompass the types of activities that may be considered to be in the ordinary course of business of a registered holding company. In this regard, the Commission has taken into account its experience in administering sections 9(a)(1) and 10 of the Act. To the extent that the commenters request the inclusion of activities with which the Commission has little or no familiarity, it is appropriate to continue case-by-case review. Accordingly, the Commission declines to modify the adopted rule as these commenters request.

It should also be noted in this regard that only those type of services and expertise that are uniquely utility-related are intended to fall within this category of activity. Activities that are more generic are not intended to be a permitted activity for energy-related companies.[79]

The Commission notes in connection with this subsection that any use by a system nonutility company of personnel or other resources of an associate public-utility company raises issues under section 13 of the Act and rules thereunder [80] relating to pricing of

[67] Comments of CSW. Unregulated activities are stated to be those that are for the benefit of shareholders.

[68] Comments of CSW.

[69] Comments of Cinergy.

[70] *See, e.g., SEI Holdings, Inc.*, Holding Co. Act Release No. 26581 (Sept. 26, 1996); *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 25926 (Nov. 16, 1993); and *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26512.

[71] Examples given in the rule include process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products.

[72] Comments of GPU.

[73] Examples cited in the proposed rule include power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; environmental licensing, testing and remediation; and other similar areas. The activities contemplated by the rule do not extend to any that would render a company a public-utility company under the Act. See section 2(a)(3), (4) and (5).

[74] Comments of Consolidated.

[75] Comments of AGA and Columbia.

[76] Comments of CSW.

[77] Comments of Northeast.

[78] Comments of Consolidated (gas exploration, development, transmission or storage system design); CSW (waste management activities); GPU (consulting and training); Cinergy (revenue security and employee safety); and Northeast (distribution system engineering, development design and rehabilitation, environmental services, and transportation and fleet services).

[79] For instance, expertise in billing and customer service may be developed in the course of utility operations. These types of activities are not, however, uniquely utility-related and, thus, are not encompassed by this subsection.

[80] Section 13 prohibits registered holding companies from entering into or performing any contract for service, construction or the sale of goods with any associate utility or service company, except as may be permitted by rule in special circumstances or in the ordinary course of business. Section 13 also provides that subsidiaries of registered holding companies, in entering into or performing any such contracts, must comply with any limitations imposed by the Commission as necessary or appropriate to insure that such contracts are performed economically and efficiently for the benefit of such associate companies at cost, fairly and equitably allocated

Continued

intrasystem transactions. Persons engaging in these activities and relying upon the exemption provided by the rule are advised to consider these requirements.

Companies in both electric and gas registered systems may acquire interests in companies engaging in the activities specified in this subsection. As adopted, this subsection has been revised only to the extent necessary to eliminate redundant language.

(8) *Subsection (b)(1)(viii): ownership and operation of QFs.* This subsection, as proposed, included ownership or operation of QFs and of facilities necessary or incidental thereto.[81] The Commission received one comment on this provision, proposing that development of QFs also be included in the rule.[82] The Commission has approved project development activities in connection with QFs in a number of cases.[83] Such activities are implicit in the subsection as proposed, and the subsection has been revised to include them specifically.

After careful review of the precedent in this area under sections 9(a)(1) and 10, the Commission has also determined that it is appropriate to make clear that this subsection is intended to include ownership and operation of only the types of incidental facilities that are required in order to meet the requirements of PURPA.[84] Subsection (viii), as adopted, has been revised accordingly.

Companies in both electric and gas registered systems may acquire interests in companies engaging in the activities specified in this subsection.

(9) *Subsection (b)(1)(ix): fuel facilities, scrubbers, and resource recovery and waste water treatment facilities.* As proposed, this subsection included ownership and operation of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities.[85] One registered holding company suggests that servicing of such facilities should also be permitted.[86] The subsection has been revised expressly to permit such activity.

Another registered holding company suggests that this subsection should be expanded to permit use of excess system assets, such as office equipment and space and excess space in billing envelopes.[87] The Commission believes that this request is more appropriately directed to subsection (b)(1)(vii) and has addressed it in that context.

The Commission orders on which inclusion of these activities is based relate to generation of electricity. As a result, the rule's exemption for the acquisition of a company that engages in activities described in this subsection is available only for companies in electric registered systems.[88]

(10) *Subsection (b)(1)(x): production, transportation, distribution or storage of other forms of energy.* The activities in this subsection concern all forms of energy other than electricity and natural or manufactured gas. Commenting registered holding companies suggest that the permitted activities should also include the sale of these forms of energy,[89] as well as all activities in the supply chain concerning them, including development, exploration, research and testing.[90] The commenters further propose that the subsection specifically include sources of energy.[91]

The Commission has concluded that the activities in this proposed subsection duplicate in many respects the activities included in other subsections of the rule as adopted.[92] Accordingly, this subsection has been eliminated in the final rule.

(11) Subsection (b)(1)(xi): coal waste by-products. This subsection includes development and commercialization of technologies or processes that utilize coal waste by-products as an integral component. Two registered holding companies comment on this subsection and request that it be expanded to include all waste products and by-products of generation of electricity and natural gas production, as well as investments in facilities and equipment used in processes to improve wastes and by-products or convert them into useful goods.[93] The Commission notes that, to date, it has considered only cases involving coal waste products and by-products of electric generation,[94] and this subsection is adopted as proposed.

Only companies in electric holding company systems may acquire an interest in a company engaged in the activities in this subsection.

(12) Subsection (b)(1)(xii): telecommunications facilities. This subsection addresses the ownership, sale, leasing or licensing of the use of telecommunications facilities and equipment. The Commission received numerous comments on the advisability and scope of this part of the rule.[95] In view of the passage in 1996 of the Telecommunications Act, legislation that exempts from the requirement of prior Commission approval the acquisition and retention by a registered holding company of interests in companies engaged in a broad range of telecommunications activities and businesses, these activities are not included in the adopted rule.

2. Limitation on Investment

As noted above, the exemption of rule 58 is available so long as aggregate

among such companies. Rules 85 through 92, adopted under section 13, specify the situations in which such transactions are permitted and generally provide that, with some exceptions, such contracts must be performed at cost.

[81] Such facilities are stated to include thermal energy utilization facilities purchased or constructed primarily to enable the QF to satisfy the useful thermal output requirements under PURPA and regulations thereunder.

[82] Comments of GPU.

[83] *See, e.g., Southern Co.,* Holding Co. Act Release No. 26212 (Dec. 30, 1994); and *Allegheny Power System, Inc.,* Holding Co. Act Release No. 26229 (Feb. 3, 1995).

[84] The Commission has authorized registered holding companies to invest in an 18 acre thermal host greenhouse, *Central and South West Corp.,* Holding Co. Act Release No. 25399 (Nov. 1, 1991), and an integrated carbon dioxide plant steam host, *Central and South West Corp.,* Holding Co. Act Release Nos. 25477 (Feb. 18, 1992) and 25983 (Jan. 31, 1994). In each instance, the Commission found that the incidental facility was necessary to the operation of the QF. The Commission believes that it is appropriate for the subsection of the rule to extend to investments in any type of incidental facility that is needed for a facility to attain QF status.

[85] This subsection is not intended to encompass ownership or operation of any facilities that would cause an energy-related company to become an electric utility company under the Act. See section 2(a)(3).

[86] Comments of GPU.

[87] Comments of Northeast.

[88] Many activities related to procurement, transportation and storage of natural gas for sale are permitted for gas-related companies, as discussed below.

[89] Comments of GPU.

[90] Comments of AGA, CSW and Columbia.

[91] Comments of CSW.

[92] For instance, subsection (v) covers marketing of energy commodities; subsection (vi) covers production and sale of thermal energy products, alternative fuels and renewable energy resources; subsection (ix) covers ownership or operation of fuel procurement, transportation, handling and storage facilities; and subsection (x) covers utilization of certain waste by-products of the generation of electricity. In addition, as discussed below, production of other fuels may be a permitted activity for gas-related companies under some circumstances.

[93] Comments of Allegheny and Southern.

[94] *See Jersey Central Power & Light Co.,* Holding Co. Act Release No. 24373 (April 16, 1987) (investment in company developing a waste coal-fired generating unit); *American Electric Power Co.,* Holding Co. Act Release No. 26014 (March 30, 1994) (acquisition of securities of subsidiary that develops backfill material using fly ash, a coal waste by-product); and *New England Electric System,* Holding Co. Act Release No. 26277 (April 26, 1995) (investment in a venture that installs equipment to separate unburned carbon from coal ash).

[95] Registered holding companies generally commented that this section should be expanded to cover a broader range of telecommunication services and products. Comments of CSW, Entergy and GPU. New Orleans, however, commented that this subsection should be eliminated as not in the public interest due to possible cross-subsidization problems and lack of relationship to the core utility business.

investment by a registered holding company and its subsidiaries in energy-related companies does not exceed the greater of 15% of consolidated capitalization or $50 million. As proposed, investments in such companies made pursuant to Commission order prior to the effective date of the rule would be excluded for purposes of calculating the limitation. In the Proposing Release, the Commission requested specific comment on (1) whether the proposed investment limitation is reasonable under the circumstances; (2) whether a different measure of financial capacity, such as consolidated retained earnings, should be used instead; and (3) whether it is appropriate to exclude prior investments for purposes of the rule.

a. *Need for a limitation.* Some commenters consider an investment limitation to be unnecessary. They note that the types of energy-related businesses specified in the rule are closely related to the utility industry [96] and that competitive markets and the financial condition of any particular registered holding company establish prudent limits on diversification.[97] They state, further, that the Commission can monitor the effects of diversification through its review of holding company financing,[98] and they note that consumers are protected against potential cross-subsidization by various factors, including the at-cost rules under section 13 of the Act,[99] rate regulation and the companies' need to be competitive.[100] Several commenters, however, state that if the Commission determines that a limitation is appropriate, the proposed limitation is reasonable.[101] These commenters consider a more restrictive standard to be unnecessary.[102]

The Commission continues to believe that it is appropriate to limit the aggregate investment of a registered holding company in energy-related companies pursuant to the rule. Section 9(c)(3) by its terms contemplates that the Commission will condition rules thereunder upon such limitations as it may prescribe as appropriate in the ordinary business of a registered holding company or its subsidiary company and not detrimental to the public interest or the interest of investors or consumers. An aggregate limitation upon investments pursuant to the rule is appropriate to ensure that acquisitions of interests in energy-related companies are not so material as to depart from the statutory concept of transactions in the ordinary course of business or to raise the possibility of detriment to the protected interests.[103] The Commission may revisit the need for an investment limitation in rule 58 in the future, after gaining experience with the use and effects of the exemption provided by the rule.

b. *Basis for calculation of the limitation.* New Orleans asserts that either consolidated retained earnings or consolidated equity is preferable to consolidated capitalization as a means to measure shareholder funds that are not needed to meet the registered system's utility service obligations.

The commenting registered holding companies oppose a standard based on consolidated retained earnings. They note that such earnings can vary significantly as a result of factors that do not affect financial health, such as accounting changes and other nonrecurring items.[104] They also assert that consolidated retained earnings are primarily an indicator of ability to raise new capital economically, and, to this extent, lack relevance for the purpose of setting a limitation upon investment under the rule.[105]

The registered holding companies generally support a standard based on consolidated capitalization, because, in their view, it offers flexibility [106] and a meaningful measure of system financial integrity.[107] These commenters explain that a flexible standard is appropriate because the activities encompassed by the exemption of the rule are closely related to the utility business and have been reviewed and approved by order of the Commission.[108]

The Commission recently considered a question of the appropriate basis for an investment limitation in the context of EWGs. Rule 53, adopted under section 32 of the Act, provides a safe harbor for approval of proposals to issue securities related to investments in EWGs.[109] To qualify for the rule's safe harbor, the aggregate investment of the registered holding company system in EWGs and foreign utility companies (''FUCOs'') cannot exceed 50% of the system's consolidated retained earnings. In adopting rule 53, the Commission determined that retained earnings was an appropriate standard against which to measure the safe harbor limitation on these exempt investments.

Although the Commission has found a standard based on consolidated retained earnings to be appropriate in the context of rule 53, it does not follow that it is appropriate in the case of investments in energy-related companies. The Commission noted in adopting the safe harbor provisions of rule 53 that investments in EWGs and FUCOs were new activities, and that the potential risks, which could not accurately be predicted, could conceivably be significant. The Commission rejected a test based on consolidated capitalization, because it would not directly reflect the effect of losses in connection with an EWG or FUCO investment. The Commission concluded that the level of retained earnings, which is directly sensitive to losses, was a more appropriate standard against which to measure these investments.[110] In contrast, as discussed previously, investments under rule 58 are deemed to be appropriate within the ordinary course of business of registered systems and consistent with the

[96] Comments of Entergy.

[97] Comments of AGA and Columbia.

[98] Comments of Columbia and Entergy.

[99] Rules 90, 91 and 92 under the Act, 17 CFR 250.90, 250.91 and 250.92.

[100] Comments of AGA.

[101] Comments of Consolidated, GPU and Southern.

[102] Comments of AGA and GPU.

[103] The Commission notes that its jurisdiction over the issuance and sale of securities by a registered holding company and its subsidiaries to finance investments in nonutility companies pursuant to rule 58 will also serve to minimize risk and to enable the Commission to monitor the effects of nonutility activities on the registered system. The Commission has jurisdiction over such financing transactions under sections 6 and 7 of the Act, and must consider certain effects of proposed financings in determining whether the standards of the Act have been satisfied. See the Proposing Release, 60 FR at 33646.

[104] One registered holding company also observes in this regard that a standard based on consolidated retained earnings would create uncertainty in a registered holding company system's planning. Comments of CSW.

[105] Comments of Southern.

[106] Comments of GPU and Northeast.

[107] Comments of Allegheny and Southern.

[108] Comments of CSW.

[109] Section 32 of the Act provides that, in determining whether to approve a proposed issuance of securities related to EWG investments, the Commission may not make certain negative findings under the Act unless the proposed transaction would have a substantial adverse impact on the financial integrity of the registered holding company system. Section 32(h)(3) and (4). Section 32 also directs the Commission to adopt regulations that would set forth ''the actions which would be considered to have a substantial adverse impact on the financial integrity of the registered holding company system [and] ensure that the [financing in question] has no adverse impact on any utility subsidiary or its customers, or on the ability of State commissions to protect such subsidiary or customers * * *.'' Section 32(h)(6). Rule 53 was adopted to effectuate these provisions. If the rule's safe harbor are satisfied, the Commission is precluded from making the negative findings specified in section 32(h)(3) and (4).

[110] The Commission stated that ''(b)ecause EWGs and foreign utility companies are still novel entities, there is little experience on which to base predictions concerning their performance * * *. [R]etained earnings would best capture the effect upon a system's financial condition of reverses in EWG and foreign utility company investments.'' Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488, 51493 (Oct. 1, 1993).

protected interests under the Act. The risks are more predictable and presumably more limited. In rejecting alternative bases for the investment limitation in rule 53, the Commission also noted that consolidated capitalization ''relates principally to the capital structure created to fund the holding company system's domestic utilities * * *,''[111] and thus is not a particularly appropriate standard against which to measure investments in EWGs and FUCOs. This is not the case for acquisitions of interests in energy-related companies, whose activities, as previously discussed, are closely related to the core utility business of a registered system. Because total system capitalization is intended to support the system's utility business, the Commission regards it as an appropriate measure of the amount of capital that may be invested in utility-related businesses. In addition, because consolidated capitalization is a more stable base of calculation than retained earnings, the amount of the investment cap would be less subject to fluctuations.

The test in rule 53 was formulated to effectuate the specific protections required by section 32.[112] In contrast, section 9(c)(3), under which rule 58 is adopted, deals with a different type of investment than that covered by section 32, *i.e.*, one appropriate in the ''ordinary course of business.'' Investors and consumers are protected not only through the investment cap for energy-related investments, but also through this limitation.

In view of these considerations, the Commission believes that a consolidated capitalization standard is appropriate for purposes of a limitation on exempt investments under rule 58. The final rule incorporates this standard.

c. Treatment of previous investments. The Commission received a significant number of comments concerning the proposed exclusion of prior investments in energy-related companies, made pursuant to Commission order, from the calculation of aggregate investment for purposes of the limitation of the rule. New Orleans and one registered holding company[113] assert that such prior investments should be included in the calculation.[114] The majority of commenters, however, consider the ''grandfathering'' of these investments to be appropriate. These commenters note that the investments have been found to satisfy the requirements of the Act.[115] Further, the commenters assert that inclusion of prior investments would penalize those registered holding companies that have successful energy-related programs in place,[116] and also prevent registered holding companies from competing on an equal footing with exempt holding companies and companies not subject to the Act.[117] Finally, the commenters contend that it would be burdensome to require a determination of whether or not various prior investments are energy-related for purposes of rule 58.[118]

Several commenters propose that the limitation should exclude not only investments made pursuant to Commission order prior to the rule, but also previously-authorized investments that have not yet been made as of the date of the rule.[119] One commenter suggests, in addition, that investments that the Commission may authorize by future order should be excluded for purposes of the limitation of rule 58.[120] This commenter also requests the Commission to clarify whether previous investments in energy-related companies pursuant to other exemptions should be excluded from calculation of the investment limit. At issue are investments by registered holding companies in their nonutility subsidiaries pursuant to rules 52 and 45, as recently amended.[121]

The Commission believes that all amounts that have actually been invested in energy-related companies pursuant to Commission order prior to the date of effectiveness of the rule should be excluded from the calculation of aggregate investment under rule 58. The Commission also believes it is appropriate to exclude from the calculation all investments made prior to that date pursuant to available exemptions.[122]

The Commission believes, however, that any investment made after the date of effectiveness of rule 58 should be included for purposes of calculation of the limitation, regardless of whether these investments are made pursuant to prior Commission order or available exemptions.[123] As for the question of whether investments approved by order after the date of effectiveness of rule 58 should be excluded from the calculation, the Commission believes that the issue is best addressed on a case-by-case basis. This approach will enable the Commission to consider the effect of the particular transaction on the registered system.

d. Definition of ''aggregate investment''. Rule 58, as proposed, defined ''aggregate investment'' to mean all amounts invested, or committed to be invested, in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company. The Commission

[111] *Id.*

[112] In discussing the investment limitation, the Commission stated that rule 53 is ''intended to protect system financial integrity and so protect utilities and their ratepayers.'' A ''key factor'' in this regard is the ability of the holding company, which is a source of capital for its utility subsidiaries, to obtain financing at a reasonable cost. Retained earnings was chosen as the basis of the safe harbor investment limitation, among other things, because they are linked to the cost of capital, and thus provide a ''fundamental protection.'' 58 FR at 51492.

[113] Comments of Allegheny.

[114] New Orleans believes that the total of existing investments and future investments under rule 58 would be so great as to be detrimental to ratepayers. As of December 31, 1995, registered holding companies had invested approximately $1.25 billion in companies that would be energy-related companies within the meaning of rule 58(a). As of that date, such investments represented approximately 1.6% of consolidated capitalization of the registered systems having such investments. On an individual basis, no registered system had more than approximately 5.6% of its consolidated capitalization invested in energy-related companies as of December 31, 1995. The Commission believes that this level of investment does not raise any significant issues of risks to the interests protected by the Act. The Commission also notes that because registered holding companies often make these investments through nonutility subsidiaries, system operating companies and their ratepayers are insulated from exposure to any direct losses that may result from the investments.

[115] Comments of CSW, EUA, GPU and Northeast.

[116] Comments of EUA.

[117] Comments of AGA.

[118] Comments of EUA and GPU.

[119] Comments of AEP, Consolidated, EUA, Entergy and Southern.

[120] Comments of Entergy.

[121] See Holding Co. Act Release No. 26311 (June 20, 1995), 60 FR 33634 (June 28, 1995) (exempting from the requirement of prior Commission approval capital contributions and non-interest bearing open account advances by parent companies to nonutility subsidiaries, and the issuance by nonutility subsidiaries and acquisition by their parents of specified types of securities, the proceeds of which are for use in the subsidiary's existing business).

[122] Under this interpretation, amounts invested by a registered system company in an energy-related company during the period between adoption and effectiveness will be excluded for purposes of calculating aggregate investment; provided, that such investments are used solely to fund activities in which the company has previously been authorized to engage by order of the Commission and that such amounts are not disproportionate to the current operations of such business. Since these additional investments will fund activities that the Commission has previously considered and approved under sections 9(a)(1) and 10 of the Act, the Commission does not believe that their exclusion raises any significant concerns with respect to protection of the interests covered by the Act. Any investments in existing energy-related companies made prior to the effective date of the rule must be reported on Form U–9C–3.

[123] As discussed below, the Commission is adopting amendments to rules 52 and 45 that subject investments in energy-related companies to the same limitations under these rules as are applicable under rule 58. These limits apply to all energy-related companies, regardless of whether the initial investment in such company was made pursuant to order or pursuant to rule 58.

stated that the term was intended to have a meaning similar to that provided by rule 53.[124] The language of the definition, as proposed, did not specifically include amounts invested by subsidiary companies that are without guaranty by, or other recourse to, the parent holding company. Such investments, which are exempt under subsection (a)(1) from the requirement of Commission approval, are intended to be included in calculating the limitation under the rule. The rule as adopted reflects this intent.[125]

In terms of the types of investments encompassed, the scope of the definition of ''aggregate investment'' in rule 58 is intended to be similar to that of rule 53. The term thus would include amounts actually invested in an energy-related company, as well as amounts committed to be invested under the terms of subscription agreements, or stand-by or other similar capital funding agreements.

B. Investments by Gas Registered Holding Companies in Gas-Related Companies

Rule 58(a)(2) exempts from the requirement of prior Commission approval under sections 9(a)(1) and 10, pursuant to section 9(c)(3), the acquisition by a gas registered holding company or its subsidiary company of securities of a ''gas-related company,'' as defined. Such acquisitions are not subject to any limitation as to amount. A ''gas-related company'' is defined in the Proposing Release as a company that derives, or will derive, substantially all of its revenues from activities permitted under sections 2(a) and 2(b) of the GRAA and such other nonutility activities as the Commission may, from time to time, by order upon application under sections 9 and 10 and section 2(b) of the GRAA, authorize a gas registered holding company to engage in, and, in so doing, designate as gas-related for purposes of rule 58. The rule contemplates that gas-related companies, like energy-related companies, will derive substantially all of their revenues from the respective activities designated in the rule.

1. Definition of ''Gas-Related Company''

Some commenters question whether registered holding companies that have only electric utility operations or that have both electric and gas utility operations should be entitled to invest in gas-related companies on an unlimited basis under the rule.[126] The portion of rule 58 that permits such investments reflects and depends upon findings under the GRAA that certain activities satisfy the requirements of sections 10 and 11 of the Act. The GRAA is available only to companies in systems in which the holding company is registered solely by reason of ownership of voting securities of gas utility companies. As a result, other registered holding company systems are not entitled to the benefits of the GRAA or the related provisions of rule 58. The language of the rule has been clarified to make this explicit.

Several commenters raise an issue concerning the scope of the definition of gas-related company.[127] The definition, as proposed, can be read to include companies that derive substantially all of their revenues from only the activities specified in section 2(a) of GRAA and activities found by the Commission, by order, to satisfy the requirements of section 2(b) of GRAA. This interpretation would not, however, take into account that some activities specifically identified in section 2(b) as being related to the supply of natural gas (*i.e.*, exploration, development, production, marketing and manufacture of natural or manufactured gas) were found by the Commission to be permissible under the standards of the Act prior to the enactment of the GRAA, and are not the subject of a subsequent order under that legislation. Under rule 58 as proposed, a gas holding company system might be required to obtain an order under section 2(b) of GRAA in order for these gas-related activities to be covered by the rule's exemption.

Activities of the type specified in section 2(b) of GRAA were intended to be included in the activities in which gas-related companies may engage, regardless of whether a Commission order approving such activities was issued under GRAA[128] or under sections 9(a) and 10 prior to the enactment of GRAA,[129] or both.[130] In all of these cases, the Commission found that the standards of sections 10 and 11 were satisfied, either through traditional analysis or by means of the assumptions created by GRAA. The rule has been clarified to accomplish this result.

Several commenters also note that other activities associated with the natural gas supply chain, such as exploration and production of associated petroleum, were contemplated to be included in GRAA-permitted activities and should be included in the activities permitted to be engaged in by gas-related companies under rule 58.[131] The Commission agrees that the activities in which a gas-related company may engage under rule 58 should be consistent with those contemplated by GRAA.[132]

The definition, as proposed, contained a provision permitting addition of new activities by order upon application. As discussed above in the context of energy-related companies, this provision has not been included in the rule as adopted.

The definition of a gas-related company has also been revised, as was the definition of an energy-related company, to permit indirect investment through intermediate subsidiaries.

2. Limitation on Investments in Gas-Related Companies

The Commission requested comment on whether a limitation on investments

[124] See Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993). Rule 53(a)(1)(i) (17 CFR 250.53(a)(1)(i)) provides that aggregate investment includes all amounts invested, or committed to be invested, in exempt wholesale generators and foreign utility companies, for which there is recourse, directly or indirectly, to the registered holding company. Among other things, the term includes, but is not limited to, preliminary development expenses that culminate in the acquisition of an exempt wholesale generator or a foreign utility company; and the fair market value of assets acquired by an exempt wholesale generator or a foreign utility company from a system company (other than an exempt wholesale generator or a foreign utility company).

[125] An indirect investment made through an intermediate subsidiary will only be counted once in the calculation of aggregate investment.

[126] Comments of CSW and Cinergy.

[127] Comments of AGA, Columbia and Consolidated.

[128] See, *e.g.*, *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26363 (Aug. 28, 1995) (sale of propane services); *Columbia Gas System*, Holding Co. Act Release No. 25802 (April 22, 1993) (marketing natural gas to nonaffiliates); *National Fuel Gas Co.*, Holding Co. Act Release No. 25437 (Dec. 20, 1991) (marketing, storage and transportation of natural gas and pricing consultation); *National Fuel Gas Co.*, Holding Co. Act Release No. 25265 (March 5, 1991) (exploration and development of gas supply reserves); *CNG Transmission Corp.*, Holding Co. Act Release No. 25239 (Jan. 9, 1991) (development, construction and operation of natural gas pipelines); and *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 25224 (Dec. 21, 1990) (development of technologies to enhance the supply, transportation and utilization of natural gas).

[129] See, *e.g.*, *National Fuel Gas Co.*, Holding Co. Act Release No. 24381 (May 1, 1987) (drilling and well maintenance and related services); *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 23023 (Aug. 5, 1983) (sale of natural gas byproducts); *National Fuel Gas Co.*, Holding Co. Act Release No. 21903 (Feb. 2, 1981) (construction of underground storage facilities); and *Columbia Gas System*, Holding Co. Act Release No. 13610 (Nov. 27, 1957) (extraction and sale of natural gas byproducts).

[130] See, *e.g.*, *National Fuel Gas Co.*, Holding Co. Act Release Nos. 26181 (Dec. 6, 1994) and 24381 (May 1, 1987) (pipeline construction and maintenance and related services).

[131] Comments of AGA and Columbia.

[132] See, *e.g.*, 136 Cong. Rec. S17586 (Oct. 27, 1990) (Statement of Sen. D'Amato) (production and sale of oil and other petroleum products may constitute ''production'' for purposes of GRAA, if oil and natural gas are present in the geologic formation underlying a particular well).

in gas-related companies is appropriate. Two commenters state that no such limitation is needed.[133] They note, among other things, that because many activities involved in the gas business are nonutility interests for purposes of the Act, investment in such activities is necessarily significant, and any limitation would limit the usefulness of the rule for gas registered systems.[134] In view of the Congressional intent, evidenced by the GRAA, that gas systems be permitted to engage in certain gas-related activities without restriction as to amount, the Commission has not revised the rule to add a limitation on those activities.[135]

C. Other Conditions to Use of the Rule

The Commission sought comment on whether use of rule 58 should be conditioned on meeting other types of requirements, and the form such conditions should take. Commenters were invited to address the need for additional conditions to use of the rule 58 exemption based on, for example, the financial condition of the registered holding company system, the extent of losses experienced by the system over recent periods and prior bankruptcies of system companies.

The registered holding companies and the American Gas Association uniformly state, for various reasons, that no further conditions to use of rule 58 are needed in order for investors and consumers to be protected from risks.[136] One holding company suggests that, if conditions are imposed, they should be based on current or future facts rather than past circumstances.[137] New Orleans, however, disagrees and suggests that use of the rule be conditioned on a demonstration of financial viability by the holding company. New Orleans also recommends that consumer safeguards in the form of audit authority and access to books and records for ratemaking authorities be added.[138]

For several reasons, the Commission believes that no additional conditions are required in order to protect investors and consumers from the risks of these diversified activities. First, as noted above, the rule addresses activities that the Commission has determined previously to be so closely related to utility operations as to be in the ordinary course of business of a registered holding company and that, in many instances, have been approved in prior orders of the Commission under sections 9(a)(1) and 10. In addition, reasonable limitations on exempt investments in energy-related companies are an important feature of the rule, designed to limit the financial exposure of the registered system. Finally, through the filing of Form U–9C–3 under rule 58(c), both the Commission and interested state regulators will have the opportunity to monitor the nature and scope of each registered holding company system's activities pursuant to rule 58. In view of these safeguards, the Commission is adopting the rule without further condition.

III. Proposed Amendments to Rule 52 and Rule 45

The Proposing Release requested comment on proposed amendments to rules 52 and 45 under the Act, to conform the rules to rule 58.[139] Rule 52(b), as currently in effect, exempts from the requirement of Commission approval under sections 6(a) and 7 of the Act the issue and sale by a nonutility subsidiary of a registered holding company of any common stock, preferred stock, bond, note or other form of indebtedness, subject to certain conditions. Rule 52(d) further exempts from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act the acquisition by a registered holding company of any such security, provided that the transaction does not involve the formation of a new subsidiary.[140]

The exemptions under rule 52(b) and 52(d), both as previously in effect and as proposed to be amended, are broader than the exemption in proposed rule 58. Accordingly, the Commission proposed to amend rule 52 to add a limitation on the aggregate amount of securities that may be issued and sold by energy-related companies and acquired by associate companies, consistent with the limitation of rule 58.

Rule 45(b) currently exempts from the requirement of Commission approval under section 12(b) of the Act and rule 45(a) thereunder certain investments in existing subsidiaries by means of cash capital contributions or open account advances. In particular, rule 45(b)(4) exempts without limitation any capital contribution or open account advance without interest to a subsidiary company. Because this provision is inconsistent with the investment limitation in rule 58, the Commission proposed to amend rule 45(b)(4) to conform the aggregate amount of capital contributions and open account advances that may be made to energy-related subsidiary companies to the limitations of rule 58.

Few commenters express any view on the proposed amendments to rules 52 and 45. Two registered holding companies support adoption of the amendments.[141] An exempt holding company opposes the amendments as unnecessary and as potentially limiting the Commission's flexibility under rule 58.[142]

Without the proposed conforming changes, registered holding companies could use rule 58 to make initial acquisitions of securities of energy-related companies, and arguably could use rules 45 and 52 to make additional unlimited acquisitions of securities of such companies, in each instance without Commission approval. To permit this result would render meaningless the limitations of rule 58 on investments in energy-related companies. In addition, a question would arise whether section 9(c)(3), under which rule 58 is promulgated, permits such acquisitions of securities without Commission oversight. The Commission believes that the proposed amendments are necessary in order to carry out the purposes of rule 58. Accordingly, the amendments are adopted in the form proposed.

IV. Other Proposals in Connection With Rule 58

Several commenters propose changes to other rules or Commission orders to

[133] Comments of AGA and Consolidated.

[134] Comments of Consolidated.

[135] See the Proposing Release, 60 FR at 33647.

[136] Comments of Allegheny (the rule's investment limitation protects investors and ratepayers, and the Commission and the states can monitor activities through Form U–9C–3); AEP (the investment limitation and the fact that these activities are conducted separately from utility operations provide protections); AGA (each venture should be viewed on a prospective basis, not on the basis of past experience; adverse developments can be monitored through reports filed with the Commission, the FERC and state regulators); Columbia (a ''no bankruptcy'' condition is contrary to the policy of the bankruptcy laws, and bankruptcy is irrelevant where the company emerges with an investment grade rating); Consolidated (the Commission can invoke its jurisdiction if problems are perceived); Entergy (the Commission can monitor investments in the context of holding company financing approvals); GPU (the state regulators and the FERC can protect ratepayers from risk); and Southern (the rule addresses all conditions necessary for satisfaction of section 10; no other conditions are needed to protect against cross-subsidization, since rule 58 companies are still subject to the intrasystem transaction provisions of the Act and such transactions must be reported on Form U–9C–3).

[137] Comments of Columbia.

[138] Comments of New Orleans.

[139] See the discussion of the need for these amendments in the Proposing Release. 60 FR at 33648.

[140] The Commission has proposed to amend rule 52 further to expand the types of securities that qualify for the exemption. See Holding Co. Act Release No. 26312 (June 20, 1995), 60 FR 33640 (June 28, 1995).

[141] Comments of Allegheny and Southern.

[142] Comments of Wisconsin Energy.

conform them to the provisions of rule 58. These proposals are discussed below.

A. Rule 16

As currently in effect, rule 16 under the Act provides that any company and its affiliates will be exempt from all obligations, duties or liabilities imposed by the Act upon subsidiaries or affiliates of a registered holding company, if (1) the company is not a public-utility company, (2) the company engages primarily in certain specified activities related to the supply of natural or manufactured gas, (3) less than 50% of the voting stock of the company is owned by registered holding companies, and (4) the acquisition by a registered holding company of an interest in the company was approved by the Commission upon application.[143] Several commenters suggest that the coverage of the rule 16 exemption be extended to energy-related companies and gas-related companies, as defined in rule 58, and their affiliates.[144]

The Commission believes that a proposal to amend rule 16 to make it consistent with rule 58, and to enhance its usefulness (which is limited at present), should be considered. Such an amendment, however, is beyond the scope of this rulemaking.

B. Existing Limitations on Investments in Energy-Related Companies

In the past, the Commission in some instances incorporated conditions and limitations in certain orders approving energy-related activities, including a requirement that an energy-related company derive at least 50% of its revenues from associate companies or from specified geographic areas.[145] As discussed above, these geographic and other limitations are not included in rule 58 as adopted.[146] One commenter suggests that any 50% limitation in an order approving the acquisition of an interest in a business that would qualify as energy-related under rule 58 should cease to apply by virtue of the rule, without any need for an amended order.[147]

The Commission agrees that, where an order approving the acquisition or retention of a nonutility business by a registered holding company system includes a limitation of the type discussed above, and such limitation would not apply if the interest held by the registered holding company system were acquired under rule 58, the limitation in the order should no longer apply. These conditions are effectively superseded by rule 58, and no further filings and orders are needed to eliminate them.

C. Associate Transactions

Several commenters suggest that transactions between an energy-related company and some or all of its associate companies should be exempt from the requirements of the Act and rules thereunder,[148] including the rules under section 13(b) of the Act. Section 13(b) of the Act generally requires that intrasystem service, sales and construction contracts be performed in accordance with such terms and conditions as the Commission may prescribe, either by rule or order, ''as necessary or appropriate in the public interest or for the protection of investors or consumers and to insure that such contracts are performed economically and efficiently for the benefit of such associate companies, at cost, fairly and equitably allocated among such companies.'' Entergy Corporation suggests that rule 87 under the Act[149] be amended to provide that transactions subject to section 13(b) do not require an order upon application. General Public Utilities Corporation suggests an amendment of rule 90[150] to exclude transactions between an energy-related company and its associates from the at-cost standards. Northeast Utilities suggests that all transactions between an energy-related company and its affiliates should be exempt from the Act.

Section 13(b) authorizes the Commission to exempt conditionally or unconditionally such transactions as it may determine, by rule or order, to be consistent with the protected interests, if such transactions ''(1) are with any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public-utility company operating within the United States, or (2) involve special or unusual circumstances or are not in the ordinary course of business.'' It does not appear that the Commission has previously considered its authority to grant other exemptions from the requirements of section 13(b).

The commenters' requests are beyond the scope of the proposed rulemaking. In addition, the Commission believes that it would be inappropriate to address the issues raised in the limited context of the activities addressed in rule 58. Nonutility companies in registered holding company systems have, in any event, substantial freedom to engage in transactions with associate nonutility companies under rule 87(b)(1).[151] The Commission declines to accept the commenters' suggestions.

D. Rule 48

One commenter suggests that rule 48 under the Act be amended to permit energy-related companies to engage in customer financing in connection with their energy-related businesses.[152] As noted previously, customer financing in connection with certain energy-related activities has been approved by order in the past. The Commission considered whether customer financing should be included in rule 58, either as a separate energy-related activity or as an aspect of other energy-related activities.[153] However, it appears that an amendment to rule 48 would be the appropriate measure to address this question.[154]

V. Quarterly Reports on Form U–9C–3

The Commission proposed that registered systems provide periodic information with respect to all energy-related and gas-related company subsidiaries on Form U–9C–3, in lieu of the separate rule 24 certificates required under the terms of any outstanding Commission orders.[155] This procedure

[143] 17 CFR 250.16.

[144] Comments of Columbia and Consolidated.

[145] For instance, the Commission has conditioned approval of acquisitions of energy services and demand-side management businesses on a requirement that at least 50% of revenues be derived from a specified geographic area, within the system's retail service territory and contiguous areas. See, *e.g., Entergy Corp.,* Holding Co. Act Release No. 25718 (Dec. 28, 1992); and *Northeast Utilities,* Holding Co. Act Release No. 25114 (July 3, 1990). In addition, the registered system was required in some instances to divest its equity interest in the nonutility business within a specified period. See, *e.g., Entergy Corp.,* Holding Co. Act Release No. 25718.

[146] The rule does not incorporate geographic limitations based on the retail service territory of the registered holding company system. However, based on existing precedent and the markets with which the Commission is currently familiar, activities permitted by the rule are limited to the United States. The rule has been modified to make this limitation clear.

[147] Comments of CSW.

[148] Comments of Entergy, GPU and Northeast.

[149] Rule 87 specifies the cases in which subsidiaries of registered holding companies may perform services or construction for or sell goods to associate companies, subject to compliance with the ''at cost'' rules and certain other conditions.

[150] Rule 90 sets forth the general rule that any transaction involving service, construction or sale of goods between a subsidiary of a registered holding company and an associate company must be performed at cost, as defined, and provides exceptions.

[151] 17 CFR 250.87(b)(1).

[152] Comments of GPU. Rule 48 currently exempts financing in connection with purchases by utility customers of standard electric and gas appliances. 17 CFR 250.48.

[153] See comments of Northeast.

[154] Amendment of rule 48 is beyond the scope of this rulemaking.

[155] See the Proposing Release, 60 FR at 33648. Cinergy suggests that, to the extent that information

Continued

was intended to lessen the reporting burden for holding companies, and to make available a single, comprehensive report covering all energy-related and gas-related business activities of a registered holding company for the interested state commissions, with which the report must also be filed.

The Commission requested comment on the form and content of Form U–9C–3. In particular, the Commission sought comment on whether a report should be filed quarterly or on a semiannual or other basis. The Commission also requested comment on whether any special reporting requirements may be needed with respect to the revenues derived from any activities of such companies other than the activities specified in the rule, to ensure that energy-related and gas-related companies derive substantially all of their revenue from such activities, as required by the rule.

Several commenters assert that the form should not be adopted, because Form U5S provides sufficient information to enable regulators to protect consumers [156] and could be modified to require reporting of rule 58 investments in a manner similar to treatment of exempt wholesale generators and foreign utility companies.[157] One commenter suggests that no reporting requirements are needed with respect to investments in gas-related companies, since there are no limits on these investments.[158] Most commenters suggest that changes be made to the form if it is adopted.

With respect to the timing of reporting, one commenter, New Orleans,[159] specifically approves of quarterly filings, on the ground that regulators need quarterly reports in order to monitor activities and institute corrective action. Most industry commenters, however, object to quarterly filings, because the information in the proposed form duplicates other periodic reports, such as that on Form U5S;[160] because annual filings achieve the purpose of assuring compliance with the conditions of the rule;[161] because competitors are not burdened with preparation of the form;[162] because the benefits of quarterly reporting do not justify its costs;[163] and because rule 58 companies should not be required to file more frequently than holding companies and service companies.[164] Many of these commenters believe that annual filings are appropriate,[165] although one favors semiannual reporting,[166] and another proposes that the bulk of the information be filed annually, with quarterly filings used to report any changes during the quarter.[167] One commenter suggests that the form be clarified to indicate that filings are to be made quarterly rather than ''continuously.'' [168] The Commission has concluded that the filing of complete and current financial statements and other information (particularly information on transactions between rule 58 companies and their affiliates) in each quarterly report will facilitate appropriate monitoring of acquisitions pursuant to the rule. The form, as adopted, thus requires quarterly reporting.

Many commenters express concern with the type of reporting required by the proposed form, particularly the required financial statements. The commenters believe that this requirement is burdensome, and unnecessary, because registered systems file consolidating financial statements in their annual reports on Form U5S; [169] because separate financial information would be required even for a company in which only a minor investment is made; [170] because state regulators are interested in nonutility operations as a whole rather than separate components; [171] and because separate financial statements would be required for each subsidiary in cases where investments are structured through several tiers of subsidiaries.[172] The Commission believes that the filing of financial information for each investment under rule 58 is appropriate to enable the Commission and the interested state commissions to monitor activity under the rule. The Commission is, however, modifying certain of the requirements in the form as proposed to deal with certain issues raised by commenters on the proposal.

The purpose of requiring financial statements is to provide information on each significant investment, not to compel holding companies to prepare financial statements for shell companies. As a result, the form, as adopted, permits consolidation of the financial statements of downstream subsidiaries with those of the first-tier energy-related or gas-related company,[173] so long as the first-tier subsidiary owns interests only in companies engaged in one permitted activity.

The Commission also recognizes that the filing of financial statements for companies in which the registered system holds only a small interest may be overly burdensome without offering a significant measure of protection for utility shareholders and consumers. Accordingly, the form, as adopted, requires the filing of financial statements only for companies in which the registered system has at least a 50% equity or other ownership interest. The form provides that, for all other rule 58 companies, the registered holding company will make available to the Commission such financial statements as are available to it.

A number of commenters express concern that the form will result in disclosure of confidential financial and other commercially sensitive information that may damage the holding company's competitive position.[174] The Commission agrees that confidentiality of certain business information is an important concern. As noted in the Proposing Release, however, the form does not require reporting of sensitive information such as identity of customers. Further, applicants may claim confidential treatment pursuant to rule 104 under the Act for some items of information. Thus, commercially sensitive information should have adequate protection.

Other changes in the final form include the following. The filing instructions have been revised to reflect electronic filing under the Commission's EDGAR system.[175] Also, the report for the last period in the reporting company's fiscal year will be

on securities issuances is reported on Form U–9C–3, reports under rule 52 on Form U–6B–2 reporting the same information should not be required. Such a change may be appropriate, but is beyond the scope of this rulemaking.

[156] Comments of AGA.

[157] Comments of Columbia. See Item 9 of Form U5S, 17 CFR 259.5s.

[158] Comments of Columbia.

[159] Comments of New Orleans.

[160] Comments of AGA and Columbia.

[161] Comments of Entergy.

[162] Comments of Allegheny.

[163] Comments of Southern.

[164] Id.

[165] Comments of Allegheny, AGA, Columbia, Consolidated, Entergy and Southern.

[166] Comments of Cinergy.

[167] Comments of AEP.

[168] Comments of CSW. The rule has been revised to clarify that the filing requirement is not continuous.

[169] Comments of Columbia. Cinergy commented that financial statements should be filed with the form only upon the initial acquisition of securities of an energy-related or gas-related company; thereafter, the consolidating financial statements in Form U5S would provide sufficient updating information.

[170] Comments of Allegheny and Southern.

[171] Comments of Southern.

[172] Comments of Allegheny and Southern.

[173] As discussed previously, indirect investment in energy-related and gas-related companies through intermediate subsidiaries is permitted under the rule as adopted.

[174] Comments of Allegheny, Columbia and Southern.

[175] Comments of Consolidated and Northeast.

due 90 days, rather than 60 days, after the end of the period.[176] Finally, the form has been clarified to require disclosure with respect to all energy-related and gas-related companies in which investments were made during the reporting period.[177] Other specific comments were not adopted, including a suggestion that all items except 5(b) (relating to associate transactions) are unnecessary.[178] In addition, the form has been revised to provide a format for reporting of the required information and to clarify generally the filing instructions.

Commenters believe that no other new reporting requirements are needed to assure that rule 58 companies derive substantially all of their revenues from permitted activities.[179] The Commission has concluded that Form U–9C–3, together with other existing reporting requirements, provides sufficient information for this purpose, and that no additional new requirements are needed.

VI. Conclusion

The Commission believes that registered holding company systems should be relieved of the regulatory burden of having to file multiple applications for authority to engage, through acquisitions of securities, in nonutility activities that are closely related to utility operations and that are of the same character or type as those the Commission has allowed in previous cases. Rule 58 is intended to permit investments in energy-related companies and gas-related companies, as defined, without geographic limits based on the registered system's service territory or other restrictions similar to those incorporated in some previous orders. The Commission believes that the limitation of the rule on the aggregate amount that a registered holding company system may invest, directly or indirectly, in energy-related companies should help to assure that the public interest and the interest of investors and consumers will not be adversely affected by acquisitions made pursuant to the rule. In addition, the reporting requirements should enable the Commission and interested state and local regulators to monitor financial and other effects of such transactions.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission has certified as follows:

> I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed rule 58 and proposed amendments to rules 45 and 52 under the Public Utility Holding Company Act of 1935, as amended (15 U.S.C. 79 *et seq.*), together concerning the acquisition by a registered holding company and its subsidiaries of securities of certain nonutility companies, without a filing requirement, will not have a significant impact on a substantial number of small businesses. The reason for this certification is that it does not appear that any small businesses would be affected by the proposed rule and rule amendments.
>
> Arthur Levitt, Chairman
>
> Dated: June 19, 1995.

The Commission did not receive any comments with respect to the Chairman's certification.

Costs and Benefits

Rule 58 will substantially decrease regulatory costs for the twelve (12) electric and three (3) gas registered holding companies. In calendar year 1995, 35 applications would not have been filed had the proposed rule 58 and related rule amendments been in place. Estimated savings per application would have been approximately $28,000, including related legal, accounting, and management costs. Thus, for 35 applications filed in calendar year 1995, the aggregate savings would have been approximately $980,000 per year. Moreover, the reduction in Commission staff hours would have been approximately 3,800 hours (approximately 2 staff years). The only cost to the registered holding companies in complying with the rule will be the cost of completing and filing Form U–9C–3 on a quarterly basis. It is estimated that approximately 16 hours will be required to complete each form at an estimated cost of $100 per hour. Assuming 56 form submissions per year, the cost of compliance reporting would approximate $89,600 per year.

Paperwork Reduction Act

The proposed rule and rule amendments are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been submitted to the Office of Management and Budget for approval for use through September 30, 1998.

Statutory Authority

The Commission is adopting rule 58 and amending rules 45 and 52 pursuant to sections 6, 9, 12 and 20 of the Act.

List of Subjects in 17 CFR Parts 250 and 259

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Rules

For the reasons set out in the preamble, chapter II, title 17, of the Code of Federal Regulations is amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

2. Section 250.45 is amended by revising paragraph (b)(4) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company; *Provided*, That capital contributions or open account advances to any energy-related company subsidiary, as defined in § 250.58, shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such company and all other such energy-related company subsidiaries does not exceed the limitation in § 250.58(a)(1).

* * * * *

3. Section 250.52 is amended by revising paragraph (b) to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

* * * * *

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any

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[176] Comments of Northeast.

[177] Comments of Cinergy.

[178] Comments of Allegheny. While the reporting of associate transactions is a primary purpose of the form, it is also intended to solicit information through which the staff of the Commission and interested state commissions can monitor compliance with the limitations of the rule, including limitations on the type of activities in which the company in question is engaged.

[179] Comments of AGA (information in Form U5S is adequate for this purpose); CSW (existing proposed reporting requirements could be reduced and still provide this assurance); Consolidated (if further assurance is needed, a statement of compliance could be included in the Form U5S) and Entergy and Northeast (Form U–9C–3 provides sufficient information to put regulators on notice of other activities).

common stock, preferred stock, bond, note or other form of indebtedness, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company; *Provided*, That any security issued to an associate company by any energy-related company subsidiary, as defined in § 250.58, shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such subsidiary and all other such energy-related company subsidiaries does not exceed the limitation in § 250.58(a)(1).

* * * * *

4. Section 250.58 is added to read as follows:

§ 250.58 Exemption of investments in certain nonutility companies.

(a) *Exemption from Section 9(a).* Section 9(a) of the Act (15 U.S.C. 79i(a)) shall not apply to:

(1) The acquisition by a registered holding company, or a subsidiary company thereof, of the securities of an energy-related company; *Provided*, That, after giving effect to any such acquisition, the aggregate investment by such registered holding company and subsidiaries in all such companies does not exceed the greater of:

(i) $50 million; or

(ii) 15% of the consolidated capitalization of such registered holding company, as reported in the registered holding company's most recent Annual Report on Form 10–K or Quarterly Report on Form 10–Q (§ 249.308a or § 249.310 of this chapter) filed under the Securities Exchange Act of 1934, as amended (15 U.S.C. 78 *et seq.*); or

(2) The acquisition by a holding company that is registered solely by reason of ownership of voting securities of gas utility companies, or a subsidiary company thereof, of the securities of a gas-related company.

(b) *Definitions.* For purpose of this section:

(1) The term *energy-related company* shall mean any company that, directly or indirectly through one or more affiliates, derives or will derive substantially all of its revenues (exclusive of revenues from temporary investments) from one or more of the following activities within the United States:

(i) The rendering of energy management services and demand-side management services;

(ii) The development and commercialization of electrotechnologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;

(iii) The ownership, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric and compressed natural gas powered vehicles;

(iv) The sale of electric and gas appliances; equipment to promote new technologies, or new applications for existing technologies, that use gas or electricity; and equipment that enables the use of gas or electricity as an alternate fuel; and the installation and servicing thereof;

(v) The brokering and marketing of energy commodities, including but not limited to electricity, natural or manufactured gas and other combustible fuels;

(vi) The production, conversion, sale and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources; and the servicing of thermal energy facilities;

(vii) The sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; and environmental licensing, testing and remediation;

(viii) The development, ownership or operation of ''qualifying facilities,'' as defined under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), and any integrated thermal, steam host, or other necessary facility constructed, developed or acquired primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;

(ix) The ownership, operation and servicing of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities; and

(x) The development and commercialization of technologies or processes that utilize coal waste by-products as an integral component of such technology or process; *Provided*, That any company engaged in the activities specified in paragraphs (b)(1)(ii), (b)(1)(iii) with respect to electric powered vehicles, (b)(1)(vi), (b)(1)(ix) or (b)(1)(x) of this section, shall be an ''energy-related company'' for purposes of this section only if the securities of such company are acquired, directly or indirectly, by a registered holding company whose public-utility company subsidiaries are primarily electric utility companies; and *Provided further*, That any company engaged in the activities specified in paragraph (b)(1)(iii) of this section with respect to compressed natural gas powered vehicles, shall be an ''energy-related company'' for purposes of this section only if the securities of such company are acquired, directly or indirectly, by a registered holding company whose public-utility company subsidiaries are primarily gas utility companies.

(2) The term *gas-related company* shall mean any company that, directly or indirectly through one or more affiliates, derives or will derive substantially all of its revenues (exclusive of revenues from temporary investments) from one or more of the following activities within the United States:

(i) Activities permitted under section 2(a) of the Gas-Related Activities Act of 1990, 104 Stat. 2810; and

(ii) Activities specified in section 2(b) of the Gas-Related Activities Act and approved by order of the Commission under sections 9 and 10 of the Act (15 U.S.C. 79i–j).

(3) The term *aggregate investment* shall mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company or any subsidiary company thereof.

(c) *Report on related business activities.* For each quarter of the fiscal year of the registered holding company in which any acquisition that is exempt under this section is made, and for each such quarter thereafter in which the acquired interest is held, the registered holding company shall file with this Commission and with each state commission having jurisdiction over the retail rates of the public-utility subsidiary companies of such registered holding company a Quarterly Report on Form U–9C–3 (§ 259.208 of this chapter). Such filing shall be made within 60 days following the end of the first three quarters of the fiscal year, and within 90 days after the end of the fourth quarter.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

5. The authority citation for part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q and 79t.

6. Section 259.208 and Form U–9C–3 are added to read as follows:

§ 259.208 Form U–9C–3, for notification of acquisition of securities exempt from section 9(a) pursuant to rule 58 (§ 250.58 of this chapter).

This form shall be filed pursuant to § 250.58(c) as the certificate of notification of an acquisition of securities exempted from the application of section 9(a) of the Act (15 U.S.C. 79a *et seq.*) pursuant to § 250.58.

[Editorial Note: The text of Form U–9C–3 appears in the appendix to this document and will not appear in the Code of Federal Regulations.]

Dated: February 14, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix

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

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM U–9C–3

QUARTERLY REPORT PURSUANT TO RULE 58

_____

(Name of registered holding company)

_____

(Address of principal executive offices)

GENERAL INSTRUCTIONS

A. Use of Form

1. A reporting company, as defined herein, shall file a report on this form within 60 days after the end of each of the first three quarters, and within 90 days after the end of the fourth quarter, of the fiscal year of the registered holding company. The period beginning on the date of effectiveness of rule 58 and ending at the end of the quarter following the quarter in which the rule becomes effective shall constitute the initial period for which any report shall be filed, if applicable.

2. The requirement to provide specific information by means of this form supersedes and replaces any requirement by order of the Commission to provide identical information by means of periodic certificates under rule 24; but does not so supersede and replace any requirement by order to provide information by means of an annual report on Form U–13–60.

3. Information with respect to reporting companies that is required by Form U–13–60 shall be provided exclusively on that form.

4. Notwithstanding the specific requirements of this form, the Commission may informally request such further information as, in its opinion, may be necessary or appropriate.

B. Statements of Monetary Amounts and Deficits

1. Amounts included in this form and in related financial statements may be expressed in whole dollars, thousands of dollars or hundred thousands of dollars.

2. Deficits and other similar entries shall be indicated by either brackets or parentheses. An explanation should be provided by footnote.

C. Formal Requirements

This form, including exhibits, shall be filed with the Commission electronically pursuant to Regulation S–T (17 CFR 232.10 *et seq.*). A conformed copy of each such report shall be filed with each state commission having jurisdiction over the retail rates of a public-utility company that is an associate company of a reporting company. Each report shall provide the name and telephone number of the person to whom inquiries concerning the report should be directed.

D. Definitions

As used in this form, the word ''reporting company'' means an energy-related company or gas-related company, as defined in rule 58(b). All other words and terms have the same meaning as in the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations thereunder.

ITEMS

ITEM 1—ORGANIZATION CHART

Name of reporting company	Energy or gas-related company	Date of organization	State of organization	Percentage of voting securities held	Nature of business

Instructions

1. Complete Item 1 only for the first three calendar quarters of the fiscal year of the registered holding company.

2. Under the caption ''Name of Reporting Company,'' list each energy-related and gas-related company and each system company that directly or indirectly holds securities thereof. Add the designation ''(new)'' for each reporting company of which securities were acquired during the period, and the designation ''(*)'' for each inactive company.

3. Under the caption ''Percentage of Voting Securities Held,'' state the aggregate percentage of the outstanding voting securities of the reporting company held directly or indirectly by the registered holding company at the end of the quarter.

4. Provide a narrative description of each reporting company's activities during the reporting period.

ITEM 2—ISSUANCES AND RENEWALS OF SECURITIES AND CAPITAL CONTRIBUTIONS

Company issuing security	Type of security issued	Principal amount of security	Issue or renewal	Cost of capital	Person to whom security was issued	Collateral given with security	Consideration received for each security

Instruction

With respect to a transaction with an associate company, report only the type and principal amount of securities involved.

Company contributing capital	Company receiving capital	Amount of capital contribution

ITEM 3—ASSOCIATE TRANSACTIONS

Part I—Transactions Performed by Reporting Companies on Behalf of Associate Companies

Reporting company rendering services	Associate company receiving services	Types of services rendered	Direct costs charged	Indirect costs charged	Cost of capital	Total amount billed

Part II—Transactions Performed by Associate Companies on Behalf of Reporting Companies

Reporting company rendering services	Associate company receiving services	Types of services rendered	Direct costs charged	Indirect costs charged	Cost of capital	Total amount billed

Instructions

1. This item is used to report the performance during the quarter of contracts among reporting companies and their associate companies, including other reporting companies, for service, sales and construction. A copy of any such contract not filed previously should be provided as an exhibit pursuant to Item 6. B.

2. Parts I and II concern transactions performed by reporting companies on behalf of associate companies, and transactions performed by associate companies on behalf of reporting companies, respectively.

ITEM 4—SUMMARY OF AGGREGATE INVESTMENT

Investments in energy-related companies:			
Total consolidated capitalization as of _____	$xxx,xxx	.....	Line 1.
Total capitalization multiplied by 15% (line 1 multiplied by 0.15)	xxx,xxx	.....	Line 2.
Greater of $50 million or line 2	.....	$xxx,xxx	Line 3.
Total current aggregate investment:			
(categorized by major line of energy-related business)			
Energy-related business category 1	xxx,xxx	.....	
Energy-related business category 2	xxx,xxx	.....	
Etc.	xxx,xxx	.....	
Total current aggregate investment	.....	xxx,xxx	Line 4.
Difference between the greater of $50 million or 15% of capitalization and the total aggregate investment of the registered holding company system (line 3 less line 4).	.....	$xxx,xxx	Line 5.
Investments in gas-related companies:			
Total current aggregate investment:			
(categorized by major line of gas-related business)			
Gas-related business category	xxx,xxx	.....	
Gas-related business category 2	xxx,xxx	.....	
Etc.	xxx,xxx	.....	
Total current aggregate investment		xxx,xxx	

ITEM 5—OTHER INVESTMENTS

Major line of energy-related business	Other investment in last U–9C–3 report	Other investment in this U–9C–3 report	Reason for difference in other investment

Instruction

This item concerns investments in energy-related and gas-related companies that are excluded from the calculation of aggregate investment under rule 58.

ITEM 6—FINANCIAL STATEMENTS AND EXHIBITS

List all financial statements and exhibits filed as a part of this report.

Instructions

A. Financial Statements

1. Financial statements are required for reporting companies in which the registered holding company system has at least a 50% equity or other ownership interest. For all other rule 58 companies, the registered holding company shall make available to the Commission such financial statements as are available to it.

2. For each reporting company, provide a balance sheet as of the end of the quarter and income statements for the three-month and year-to-date periods ending as of the end of the quarter, together with any notes thereto. Financial statements shall be provided only for the first three calendar quarters of the fiscal year of the registered holding company.

3. If a reporting company and each of its subsidiaries engage exclusively in a single category of energy-related or gas-related activity, consolidated financial statements may be filed.

4. Separate financial statements need not be filed for inactive companies or for companies engaged solely in the ownership of interests in energy-related or gas-related companies.

B. Exhibits

1. Copies of contracts required to be provided by Item 3 shall be filed as exhibits.

2. A certificate stating that a copy of the report for the previous quarter has been filed with interested state commissions shall be filed as an exhibit. The certificate shall provide the names and addresses of the state commissions.

SIGNATURE

[Registered Holding Company]

By: _____

(Name)

_____

(Title)

_____

(Date)

[FR Doc. 97–4167 Filed 2–19–97; 8:45 am]

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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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